## The United States, Plaintiff, *v.* Ephraim Briggs.

When a case is brought up to this court on a certificate of division in opinion, the point upon which the difference occurs must be distinctly stated.[1]

Where there was a demurrer, upon three grounds, to an indictment, it is not enough to certify that the court was divided in opinion whether or not the demurrer should be sustained.

This case came up from the Circuit Court of the United States for the District of Michigan, on a certificate of division in opinion.[2]

The circumstances of the case are thus stated by the Chief Justice, as introductory to the opinion of the court.

*This case comes before the court upon a certificate of division from the Circuit Court of the United States for the District of Michigan. [*209

The defendant was indicted under the act of Congress of March 2, 1831, ch. 66 (4 Stat. at L., 472), for unlawfully cutting timber upon certain lands of the United States, called the Wyandotte reserve. He demurred to the indictment upon the following grounds:—

First. Because the offence stated and set forth in the indictment is not an offence under the statute of the United States, punishable criminally by indictment.

Second. Because, under the statutes of the United States, trespass on the public lands of the United States is, in no case, an offence punishable criminally by indictment; but is

[1] Cited. *Dennistown* v. *Stewart*, 18 How., 568; *Daniels* v. *Railroad Co.*, 3 Wall., 255.

The only mode of bringing a criminal case into the Supreme Court is upon a certificate of the judges of the Circuit Court that their opinions are opposed upon a question *raised at the trial*. *Ex parte Gordon*, 1 Black, 503.

No party has a right to ask for such a certificate, nor can it be made consistently with the duty of the court, if the judges are agreed, and do not think there is doubt enough upon the question to justify them in submitting it to the judgment of the Supreme Court. Ib.

In some cases, where the point arising is one of importance, the judges of the Circuit Court have sometimes, by consent, certified the point to the Supreme Court, as upon a division of opinion, when in truth they both rather seriously doubted than differed about it. *United States* v. *Stone*, 14 Pet., 524.

The certificate of the judges leaves no doubt that the whole cause was submitted to the Circuit Court by the motion of the counsel of the prisoner. It has been repeatedly decided that the whole cause cannot be adjourned on a division of the judges. *United States* v. *Bailey*, 9 Pet., 267.

The Supreme Court cannot take cognizance, under the judiciary act of 1802, of a division of opinion between the judges of the Circuit Court upon a motion to quash an indictment. *United States* v. *Rosenburgh*, 7 Wall., 580; *United States* v. *Daniel*, 6 Wheat., 542; *United States* v. *Avery*, 13 Wall., 251.

[2] For a further decision in this case, see 9 How., 351.

either a mere trespass, punishable by action of trespass at common law, or by action of debt in the statute.

Third. For that the said indictment is in other respects informal, insufficient, and defective.

The United States joined in demurrer; and the record states, that the demurrer coming on to be heard, and having been argued by counsel on either side, the opinions of the court were opposed as to the point whether said demurrer should be sustained; and thereupon it was ordered that the cause be certified to this court on the indictment, demurrer, and joinder thereto.

The cause was argued by *Mr. Clifford* (Attorney-General) and *Mr. Norvell*, on behalf of the United States.

Mr. Chief Justice TANEY, after stating the case as above, proceeded to deliver the opinion of the court.

The act of Congress of April 29, 1802, ch. 31, § 6, provides, that whenever a question shall occur before a Circuit Court, upon which the opinions of the judges shall be opposed, the point on which the disagreement shall happen, upon the request of either party, shall be stated, and certified to this court, to be finally decided. It is this act alone that gives jurisdiction to the Supreme Court in cases of division of opinion in the Circuit Court, and the jurisdiction thus given must of course be exercised in the manner pointed out in the law. Consequently, we are not authorized to decide in such cases, unless the particular point upon which the judges differed is stated and certified. *United States* v. *Bailey*, 9 Pet., 272; *Adams* v. *Jones*, 12 Id., 213; *White* v. *Turk and others*, Id., 238.

Now in the case before us, the question upon which the disagreement took place is not certified. The difference of opinion is indeed stated to have been on the *point* whether the demurrer should be sustained. But such a question can
*210] hardly be called a point in *the case, within the meaning of the act of Congress; for it does not show whether the difficulty arose upon the construction of the act of Congress on which the indictment was founded,—or upon the form of proceeding adopted to inflict the punishment,—or upon any supposed defect in the counts in the indictment. On the contrary, the whole case is ordered to be certified upon the indictment, demurrer, and joinder, leaving this court to look into the record, and determine for itself whether any sufficient objection can be made in bar of the prosecution;

and without informing us what questions had been raised in the Circuit Court, upon which they differed.

Neither can this omission in the certificate be supplied by the causes of demurrer assigned by the defendant. The judges do not certify that they differed on the points there stated, or on either of them, and indeed the third ground there taken is as vague and indefinite as the certificate itself, and could not therefore help it, even if it could be invoked in its aid.

But we are bound to look to the certificate of the court alone for the question which occurred, and for the point on which they differed, and as this does not appear, we have no jurisdiction in the case, and it must be remanded to the Circuit Court.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Michigan, and on the point and question on which the judges of the said Circuit Court were opposed in opinion, and which was certified to this court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel; and it appearing to this court, upon an inspection of the said transcript, that no point in the case, within the meaning of the act of Congress, has been certified to this court, it is thereupon now here ordered and adjudged by this court, that this cause be and the same is hereby dismissed, and that this cause be and the same is hereby remanded to the said Circuit Court, to be proceeded in according to law.

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JOHN C. SHEPPARD AND OTHERS, PLAINTIFFS IN ERROR, *v.* JOHN WILSON.

Where a writ of error was allowed, the citation signed, and the bond approved, by the chief justice of the Territorial court of Iowa, it was a sufficient compliance with the statutes of the United States.

Under the acts of 1789 and 1792, the clerk of the Circuit Court where the judgment was rendered may issue a writ of error, and a judge of that court may sign the citation, and approve the bond.[1]

*The act of 1838, providing that writs of error, and appeals from the final decision of the Supreme Court of the Territory, shall be allowed in the same manner and under the same regulations as from the Circuit [*211

[1] For a further decision in this case, see 6 How., 260.