
Syllabus.

of Muscatine was created, which limited the taxing power of its authorities to one per cent. per annum. The later law must repeal the former if they are inconsistent. But they are not so. It is only necessary to hold that persons giving credit to the city, with a knowledge of this limit to its taxing powers, must do so on the condition of waiting until that amount of tax will pay them, or until the legislature shall remove the restriction; and that within that limit the code gives them a right to compel the exercise of the taxing power to pay the debt so created. Such has been the reasonable construction given to the code by the courts of Iowa for many years and by the Circuit Court of the United States for that district for several years past, and never contradicted by any court until the present time.

These frequent dissents in this class of subjects are as distasteful to me as they can be to any one else. But when I am compelled, as I was last spring, by the decisions of this court, to enter an order to commit to jail at one time over a hundred of the best citizens of Iowa, for obeying as they thought their oath of office required them to do, an injunction issued by a competent court of their own State, founded, as these gentlemen conscientiously believed, on the true interpretation of their own statute, an injunction which, in my own private judgment, they were legally bound to obey, I must be excused if, when sitting here, I give expression to convictions which my duty compels me to disregard in the Circuit Court.

UNITED STATES *v.* SMITH.

Under the act of June 30th, 1864, to provide internal revenue to support the government, &c., which requires a license to persons exercising certain occupations, and fixes the limit to its duration, the parties to the bond given on the granting of the license, are not bound to answer for any breach of the condition of the bond after the expiration of the license.

On certificate of division between the judges of the Northern District of Ohio; the case being this:

Statement of the case.

The act of June 30th, 1864, "to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," enacts, by its 71st section,* that no person shall carry on the business of a coal oil distiller until he have obtained a license in the manner prescribed.

The 73d section subjects all persons who violate the enactment to fine and imprisonment.

"The 74th section enacts that all licenses granted after the 1st day of May in any year, shall continue in force *until the 1st day of May in any year next succeeding.*"

The 53d section of the same act provides that any person required by law to be licensed as a distiller, before distilling any spirits, shall, in addition to what is required by other provisions of law, make an application for a license to the assessor of the district; and that before the same is issued the person applying shall give bond with surety conditioned that he will render to the assessor, on the certain days of each month, *during the continuance of the license*, an exact account of the number of gallons of spirits distilled, &c., and that he will pay to the collector the duties on them.

And the 94th section provides that "distillers of coal oil shall be subject to all the provisions of laws applicable to distillers of spirits with regard to licenses, bonds, &c., and all other provisions designed for the purpose of securing the payment of duties, so far as the same may, *in the judgment of the Commissioner of Internal Revenue, and under regulations prescribed by him*, be deemed necessary for that purpose."

The act of June 30th, 1864—which is one of great length, and contains a hundred and eighty-two sections, some of them with numerous subdivisions and schedules—repeals a prior act of July 1st, 1862, with a title similar to its own.

With this statute of 1864 in force, Smith got a license as a distiller of coal oil on the 27th May, 1865, and gave bond with surety conditioned that he, Smith, should conform to all the provisions of an act entitled "An act to provide internal revenue," &c., approved July 1st, 1862, and of *such*

* 13 Stat. at Large, 248; and see § 79, art. 19.

Opinion of the court.

other act or acts as were then or might thereafter be in that behalf enacted.

Upon suit brought by the United States against him and his surety in the court below, for breaches of the condition of the bond at various times during the months of *June and July*, 1866, the judges there were divided in opinion upon the question whether he or his surety were liable for any breach after the 1st of May, 1866; to wit, after the expiration of the license granted to them in May, 1865.

Mr. Hoar, Attorney-General, and Mr. Field, Assistant Attorney-General, for the United States; Mr. Wills, contra.

Mr. Justice GRIER delivered the opinion of the court.

The act of July 1st, 1862, has been inserted in the bond *ex majori cautela*; for it is admitted that the act of June 30th, 1864, entitled "An act to provide internal revenue, to support the government, to pay the interest on the public debt, and for other purposes," is the only act applicable to this case. The act of 1862 was repealed by it.

As might be expected in an act embracing the almost innumerable subjects of taxation contained in this one, and covering more than seventy pages of the statute-book, provisions may probably be found in one part of it difficult to be reconciled with some contained in other parts. Yet, when carefully examined, we find no difficulty in answering the question proposed.

The seventy-first section of the act is the one which prescribes the conditions under which licenses shall be given.

The seventy-third section subjects all persons who neglect it, to fine and imprisonment.

The seventy-fourth section fixes the limit to the license, beyond which time the parties to the bond are not bound to answer for any breach of the condition.

The provisions of the fifty-third and ninety-fourth sections of the act, which subject distillers of coal oil to the provisions of the act applicable to the distillers of spirits, "so far as the same may, in the judgment of the Commissioner of

Statement of the case.

Internal Revenue, be deemed necessary," have no application to the point. The commissioner has exercised no judgment, and prescribed no regulations on the subject, so far as appears. The bond has no reference to such conditions as are required in distillery bonds, and cannot be affected by them. "'Tis not so written in the bond."

ORDERED that it be certified to the judges of the Circuit Court, in answer to the question submitted, that the defendants are

NOT LIABLE.

THE POTOMAC.

1. Although the duty of vessels propelled by steam is to keep clear of those moved by wind, yet these latter must not, by changing their course, instead of keeping on it, put themselves carelessly in the way of the former, and so render ineffective their movements to give the sailing vessels sufficient berth.
2. The confessions of a master, in a case of collision, are evidence against the owner.

APPEAL from a decree of the Circuit Court of New York, in a case of collision between the schooner *Bedell* and the steamer *Potomac*, in the Chesapeake Bay, resulting in the total loss of the schooner. The collision occurred on a starlight night in July. The schooner was heading about north, going up the bay, sailing by the wind, closehauled, with a fresh breeze, west-northwest. Whether or not she had a light on board was a matter about which the evidence was contradictory; the weight of it being to the effect that she had not. The steamer, with a good lookout and a full number of seamen, was descending the bay and sailing due south at about nine miles an hour, with all her lights set and brightly burning. When about three-quarters of a mile off the schooner was discovered on the starboard bow of the steamer by the lookout of the steamer, who reported the fact to the officer in charge. The order was immediately given to starboard the helm two points, and after this was