

United States v. Cantrill.

Bradley (of Vermont), for the plaintiffs, contended, 1st. That by the common law of Vermont, the words "equally to be divided between them" do not make a tenancy in common, because a tenancy in common is not thereby necessarily implied. Joint heirs, in Vermont, hold as coparceners.

*166] *2d. That if the plaintiffs are tenants in common, yet they have a right, by the common law, to maintain a joint action for an injury to their lands holden in common. (3 Bac. Abr. 216.)

3d. That even if the plaintiffs are to be considered as tenants in common, and could not, by the common law, join in an action to recover possession, yet by the statute of Vermont of 2d of March 1797 (Laws of Vermont, p. 118, § 88), they must join in an action for the mesne profits, or rather no other action is given for the mesne profits, than an action for the possession itself, in which the plaintiffs shall recover the possession as well as damages.

The words of the act are, "and in every such action" (ejectment), "if judgment be rendered for the plaintiff, he shall recover as well his damage as the seisin and possession of the premises." As, therefore, the action for the mesne profits cannot be severed from the action of ejectment, and as, upon every principle of law, tenants in common must join in the action for the mesne profits, it follows, that they must join in the possessory action also.

The principle has also been admitted by the legislature of Vermont, by the act of 29th of October 1806, § 4, which declares, "that tenants in common of any lands, &c., may join in any action which concerns their common interest in such land."

There was no argument on the part of the defendant.

February 23d, 1807. THE COURT decided, that the action was well brought, and that the will ought to be received in evidence to support the declaration.

*167] *UNITED STATES v. ZEBULON CANTRILL.

Indictment.—Repugnancy.

The act of congress of 27th of June 1798, to punish frauds committed on the bank of the United States, is, in itself, repugnant, and will not support an indictment for knowingly uttering as true, a false, forged and counterfeit paper, purporting to be a bank-bill of the United States, signed by the president and cashier.

THIS case was certified from the Circuit Court of the district of Georgia, the opinions of the judges of that court being opposed upon a motion in arrest of judgment, upon a verdict of guilty on the following indictment, viz :

"The jurors," &c., "upon their oath present, that Zebulon Cantril, late," &c., on the 1st of January 1806, "with force and arms, at the house of one William Gibson, in the town of St. Mary's," &c., "a certain false, forged and counterfeit paper, partly written and partly printed, purporting to be a bank-bill of the United States, for ten dollars, signed by Thomas Willing, president, and G. Simpson, cashier, dated at Philadelphia, the second day of September 1804, payable on demand, to R. Beatty, or bearer, with force and arms, did feloniously

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ously utter and publish as a true bank-bill of the United States, with intent to defraud the said William Gibson, and which said false, forged and counterfeit bill, partly written and partly printed, is in the words, figures and letters following, to wit" (here the bill was inserted) : "he the said Zebulon Cantil," "at the said time of uttering and publishing the said false, forged and counterfeit bill, partly written and partly printed, there, by him, in form aforesaid, well knowing the same, so by him uttered and published, to be false, forged and counterfeited ; against the form of the statute in that case made and provided, and against the peace and dignity of the United States."

The reasons assigned in arrest of judgment were, 1. That the indictment is insufficient and repugnant, inasmuch as it charges the prisoner with having uttered and published as true, a certain false, forged and counterfeit paper, partly written and partly printed, purporting to be a bank-bill of the United States for ten dollars, signed by Thomas Willing, president, and G. Simpson, cashier, &c.

*2. Because the act of congress, passed the 27th of June 1798, [*168 entitled "an act to punish frauds committed on the bank of the United States" (1 U. S. Stat. 573), under which the prisoner is indicted, or so much thereof as relates to the charge set forth in the indictment, is inconsistent, repugnant, and therefore, void.

The words of the act of congress, so far as they describe the offence charged, are as follows, viz : "If any person shall utter or publish, as true, any false, forged or counterfeited bill or note, issued by order of the president, directors and company of the bank of the United States, and signed by the president, and countersigned by the cashier thereof, with intention to defraud the said corporation, or any other body politic or person, knowing the same to be falsely altered, forged or counterfeited, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted, according to the due course of law, shall be sentenced," &c. The question was submitted without argument.

February 28th, 1807. MARSHALL, Ch. J., delivered the opinion of the court, that the judgment ought to be arrested, for the reasons assigned in the record, and directed the opinion to be certified accordingly.

The same order was made in the case of *United States v. Baylis*, for a similar offence. (a)

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Collectors of internal revenue.

A collector of the revenue of the United States, after removal from office, has no authority to collect the duties outstanding at the time of his removal, and which had accrued while he remained in office, but this power and duty devolves upon his successor.

THIS was an action of debt, brought by the United States in the District Court of Kentucky district, for the penalty of an official bond given by

(a) An act of congress was passed at the session of 1806-7, to amend the law in this respect. (2 U. S. Stat. 423.)