

Sthreshley v. United States.

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)

*STHRESHLEY and O'BANNON v. UNITED STATES. [*169

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.)

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Sthreshley, with O'Bannon as his surety, dated the 13th of September 1796, the condition of which was, "that whereas, the said Thomas Sthreshley is appointed, under the acts of congress laying duties upon spirits distilled within the United States, and upon stills, a collector of the revenue which shall or may arise, by virtue of the several acts of congress; to be computed from the first day of July 1796, and to continue until revoked by the supervisor within the counties of Fayette and Clarke, being the first division of the first survey of the district of Ohio. Now, if the said Thomas Sthreshley, his heirs, executors or administrators, shall well and truly superintend the several distilleries and stills, and collect all other duties by law required of him, as mentioned in his said commission, in his division; shall do and perform all the several duties which by law is, or shall be, required to be done at or within the same; shall collect the duties arising thereon according to law, and duly account for and pay the same to the supervisor of the said district, or some other officer of the United States duly authorized; then this obligation to be void, or else to remain in full force and virtue."

The defendants pleaded, 1st. General performance; and 2d. That the appointment of Sthreshley was revoked on the 1st of July 1797, and that he faithfully executed and discharged all the duties of his said office, according to law, accruing from the said 1st day of July 1796, until the 1st day of July 1797, inclusive, and all things relative thereto.

The breach assigned in the replication was, that Sthreshley "did not *170] well and truly account for and pay *to the supervisor of the district in his said obligation mentioned, or to any other officer of the United States duly authorized to receive the same, the several duties arising and accruing within his said division, during his continuance in office, under the laws of the United States and his said commission, and which, by virtue of the said obligation and commission, the said laws of the United States did require him to account for and pay over; but hath failed therein, and is in arrear to the said United States in the sum of \$2171.29 $\frac{3}{4}$;" upon which breach, an issue was tendered and joined; upon the trial whereof, a bill of exceptions was taken by the defendants to the refusal of the court to admit evidence, that at the time of the revocation of his commission, there were outstanding and uncollected by him duties to the amount of \$2285.83, which had accrued during his continuance in office, and which constituted part of the account charged against him, and for the balance whereof the present suit was brought; and that the defendant had delivered over to his successor in office true accounts of the said outstanding duties, for collection. This evidence was rejected, under the opinion, that the defendant, although his commission was revoked, had authority, and was in law bound, to collect all the outstanding duties which had accrued during his continuance in office.

The verdict and judgment in the court below being in favor of the United States, the defendants brought their writ of error.

H. Marshall, for the plaintiffs in error, suggested a doubt, whether the bond was not void, inasmuch as there was no law of the United States which authorized the supervisor to demand it, or required the officer to give it.

JOHNSON, J.—How can that question arise upon the plea of performance?

Marshall v. Currie.

H. Marshall.—If the bond is totally void, it will not support a judgment, under any form of pleading. He did not, however, mean to press the objection.

*The principal question, viz., whether the power of the officer to collect the outstanding duties which had accrued while he was in office, ceased with his removal, was submitted without argument. [*171]

Rodney (Attorney-General) referred the court to the laws of the United States, vol. 1, p. 304, §§ 5, 6, 16; vol. 2, p. 82; vol. 3, p. 80, 421; and vol. 4, p. 191.

February 28th, 1807.—MARSHALL, Ch. J., delivered the unanimous opinion of the court, that the power of the officer to collect the outstanding duties ceased upon his removal from office, and devolved upon his successor. A contrary construction would be extremely injurious to the revenues of the United States, and could not have been intended by the legislature. The officer can only be liable to pay over the money he has collected, unless he is charged with a neglect of duty in not collecting.

In the present case, the breach assigned is for not paying, and no breach is assigned in not collecting, the duties. The bill of exceptions shows that the defendant Sthreshley had paid over and accounted for all the duties he had collected.

Judgment reversed.

*HUMPHREY MARSHALL and wife v. JAMES CURRIE. [*172]

Land law of Kentucky.

Loose and vague expressions in an entry of land, in Kentucky, may be rendered sufficiently certain, by the reference to natural objects mentioned in the entry, and by comparing the courses and distances of the lines with those natural objects.

ERROR to the District Court of Kentucky, in a suit in chancery, in which the plaintiffs in error were the original complainants. The bill complained that the defendant had obtained an elder patent for land covered by the complainants' elder entry, and prayed that the defendant might be compelled to convey to them the legal title. The only question was, whether the entry under which the complainants claimed, described the land with sufficient certainty. It was in these words:

“Number two hundred and forty one, Thomas Marshall enters two thousand acres of land on part of a military warrant, number one thousand three hundred and forty-nine, beginning on the bank of Green River, two hundred poles above a beech tree, marked D. L., standing on the bank of the river, a few poles below the mouth of a branch, and a small distance above the place called Glover's, upon the opposite side of the river, thence, running south, seventy-five degrees east, one thousand poles, thence, north, twenty-five degrees west, and from the beginning, up the meanders of the river, and binding thereon so far that a line parallel to the first shall include the quantity. Entered, August the sixth, one thousand seven hundred and eighty-four.”

The material facts found by the jury, according to the practice of Kentucky, were, that the complainants' entry was made on the 6th of August 1784, and the defendant's, on the day following. That the defendant's