

Syllabus.

Both contingencies on which an appeal rest had occurred. When the first appeal was taken the judgment had passed and the decree had been rendered; all that remained to be done was to make up the amount,—a merely clerical operation.

Messrs. Goodrich and Wheeler, contra, argued that in view of the whole case, if either appeal was to be dismissed it should be the first.

The CHIEF JUSTICE:

It is quite true that two appeals are not allowed in the same case on the same question. We must determine which one of the two should be dismissed. It may be that the first appeal was from a decree which might be taken as final, if the second decree had not been rendered.* But it is obvious that the circuit judge did not regard it as final, and it was certainly defective. The second decree was rendered, not by inadvertence, but in view of the rendition of the first decree; and, in order to settle the practice in the Circuit Court for the Southern District of New York, that a decree of affirmance, without taxation of costs and without specifying the sum for which it is rendered, is not to be regarded as a final decree.

We think this the better practice, and therefore hold that the first appeal must be

DISMISSED AS IRREGULAR.

BEVANS, RECEIVER, *v.* UNITED STATES.

1. Where a receiver of public moneys has such moneys in his hands, which would not have been in his hands at all, if he had paid them over with the promptness that the acts of Congress and the Treasury Regulations made in pursuance of them, prescribing the duties of receivers, in this respect made it his duty to do, and which therefore—inasmuch as

* *Rubber Company v. Goodyear*, 6 Wallace, 153; *Silsby v. Foote*, 20 Howard, 290.

Statement of the case.

the duties of receivers under their official bonds are defined by those acts and Treasury Regulations—it was also his duty under his official bond to do,—evidence that the moneys were forcibly taken from him by the agents of the so-called “Confederate States,” usurping the authority of the rightful government, and compelling obedience to itself exclusively throughout the State in which the receiver was, *held* to have been rightly refused in a suit by the government on the official bond of such receiver, as short of meeting the necessity of the case; it having been owing to the default of the receiver in not paying over promptly and at the right times, that the moneys were exposed to seizure, at all, by the rebel usurping government.

2. Where there are no disputed facts in the case, the court may properly tell the jury in an absolute form how they should find.

ERROR to the Circuit Court for the Eastern District of Arkansas; the case being this:

Prior to February, 1860, Bevans had been appointed a receiver of public money for the district of lands, subject to sale at Balesville, Arkansas, and gave bond conditioned that he “should have truly and faithfully executed and discharged, and should continue truly and faithfully to execute and discharge all the duties of the said office.”

These duties are defined by acts of Congress and by Treasury Regulations enacted in pursuance of them.

The 6th section of the act of May 10th, 1800, made it the duty of all such receivers to transmit to the Secretary of the Treasury accounts of all public moneys by them received, within thirty days in case of public sale, and quarterly in case of private sales, and to transmit the money received by them within three months after its receipt. The act of August 6th, 1846,* however, and subsequent acts made it the duty of such receivers† “to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by the act, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper department or officer of the government, to be transferred, or paid out, and when such orders for transfer, or payment, are received, faithfully and promptly to make the same as

* 9 Stat. at Large, 59.

† Section 6.

Statement of the case.

directed." Following these acts were the Treasury Regulations of July 18th, 1854 (in force when this receiver was in office), which required all receivers to deposit in the treasury all public money in their hands, as follows:

1. When their weekly receipts exceed \$10,000, they were required to deposit at the termination of each week.
2. When the weekly receipts were less than \$10,000, but exceeded \$5000, they were required to deposit at the close of each period of two weeks.
3. When the monthly receipts were more than \$2000, and less than \$20,000, they were required to deposit at the end of each month.
4. When the monthly receipts were less than \$2000, they were required to deposit at the end of each quarter.

In this state of things the United States, on the 27th September, 1867, brought suit against Bevans, and his sureties on his official bond, as above mentioned, conditioned for the faithful performance of all the duties of the office of receiver according to law. The breaches assigned were that the principal obligor had failed to account for the money he had received, in his official capacity, on behalf of the United States, from the time of his appointment, January 17th, 1860, to the 30th of April, 1861, and that he had failed to pay over such money, although required by law to account for the same and to pay it over. At the trial the plaintiffs gave in evidence duly certified transcripts of official settlements of the receiver's accounts, from which it appeared that he had in hand of public money, received by him between the 17th of January, 1860, and the 31st of March, 1861, the sum of \$19,737.26; that on the 31st day of March, 1860, he held an unpaid balance of \$4116.05; that on the 30th of June, 1860, the balance against him was \$6535.26; on the 30th of September, 1860, \$8346.34; on the 31st of December, 1860, \$19,662.66; and on the 30th of April, 1861, \$19,737.26, the unpaid balances at the end of each quarter being carried forward into the account of the next succeeding quarter. No attempt was made to impeach the correctness of these official settlements; but the defendants offered to prove that

Statement of the case.

on the 6th day of May, 1861, Bevans, the receiver, was residing at Independence, in the State of Arkansas; that on that day the people of the State, legally assembled in convention, passed "a secession ordinance," whereby the State of Arkansas was withdrawn from the Union; that such ordinance became of force and effect, and was binding on all the citizens of the State; that the convention then passed an ordinance prohibiting all officers of the United States from paying out any money of the United States in their hands, and requiring them to hold such money subject to the further order of the convention, and that immediately after the passage of this second ordinance he was notified thereof before he had time to account to the United States, or to remit the money in his hands as receiver. In connection with this the defendants further offered to prove that subsequently the State of Arkansas was attached to what was called the "Southern Confederacy," and that in order to insure performance of her duties as a member of said confederacy, the convention aforesaid, and the legislature of the State made provision for seizing, and did actually seize the money in the hands of the said Bevans, as receiver; that under the said acts and ordinances he paid to the agents of the State all the money he had in his possession belonging to the United States, as he was forced and compelled to do, the State being organized as a member of the confederacy, she and the confederacy having armed troops in her territory to compel him to pay, the acts and ordinances being compulsory, and the agents and officers of the State threatening that if he declined to pay they would punish him by imprisonment, or otherwise, and that in consequence of such menaces he did, on the 1st day of January, 1862, pay over to such agents and officers all the money he had in his hands as a receiver, which was placed in the treasury of the State in aid of the war against the United States, at a time when he could not remit the same to the Treasury Department at Washington. These facts had been pleaded in bar.

The evidence thus offered by the defendants the Circuit Court refused to receive, being of opinion that if all the

Opinion of the court.

facts which it tended to prove were proved, they would not amount to a defence, and the court accordingly directed the jury to find for the plaintiffs the amount claimed, in and by the papers read in evidence by the plaintiffs, viz.: \$19,737, with interest from October 4th, 1861.

Verdict and judgment having gone accordingly for the United States, Bevans and the sureties brought the case here; the decision of the court upon the evidence offered, and which it refused to receive, being the principal error assigned; the absolute form of the direction to the jury as to their finding being also a matter excepted to.

The case was twice argued.

Mr. A. H. Garland, for the plaintiff in error, on the first point went into an able and learned argument, citing various adjudged cases, to show that where the condition of a bond became impossible to be performed by great overpowering force and fear, then the obligation was saved.

On the second point he submitted that the direction of the court to the jury, unqualified as it was, took out of their hands all that there was for them to do, and was thus erroneous; that the instruction should have been, "if the jury believe," &c.

Mr. B. H. Bristow, Solicitor-General, and Mr. W. A. Field and Mr. C. H. Hill, Assistant Attorneys-General, contra.

Mr. Justice STRONG delivered the opinion of the court.

It is to be observed that the defence attempted in this case, was not a denial of the receiver's obligation to pay all the public money in his hands to the United States, according to the condition of his bond and the requirements of the acts of Congress, nor was it an assertion of performance of his obligation, but it was setting up an excuse for non-performance. Was the receiver then in a condition to avail himself of the excuse which he presented? It may be a grave question whether the forcible taking of money belonging to the United States from the possession of one of her

Opinion of the court.

officers, or agents lawfully holding it, by a government of paramount force, which at the time was usurping the authority of the rightful government, and compelling obedience to itself exclusively throughout a State, would not work a discharge of such officers or agents, if they were entirely free from fault, though they had given bond to pay the money to the United States. This question has been thoroughly argued, but we do not propose now to consider it, for its decision is not necessary to the case. The bond of a receiver of public money is given to insure the performance of all his duties, and those duties are defined by the acts of Congress and by Treasury Regulations made under the acts. [The learned justice here quoted the acts of Congress and the Treasury Regulations, in the language already given on page 58, setting out the duties of receivers of public moneys, to the performance of which they are bound by their official bonds, and continued:] In view of the fact that the duties of this receiver, to the performance of which he was bound by his bond, were thus prescribed, it is plain that it was not in consequence of the Arkansas ordinances and acts of assembly, or in consequence of any action of the usurping government alone, that the money in the receiver's hands was not paid to the United States. Hence the evidence offered by the defendants came short of meeting the case, for it was the default of the receiver that exposed the money to seizure by the usurping power which for a time excluded the authority of the government. The condition of the bond was broken long before the ordinance of secession was passed. It was the duty of Bevans to pay over the money in his hands, in large part, more than a year before any obstacle came in the way of his payment. Had he performed his duty, all of it would have been paid into the treasury by the 1st of April, 1861. He was, therefore, a defaulter when the alleged seizure was made, and it was his default which concurred with the acts of the public enemy, and contributed to, or facilitated, the wrong which was perpetrated, or, at least, rendered it possible. Since then his bond had become absolute by his failure to perform its conditions,

Opinion of the court.

and since the evidence offered tended to show at most an excuse for non-performance after May 6th, 1861, it is manifest that it presented an insufficient defence to the action. Seeking relief, which in its nature was equitable, as the receiver did, it was incumbent upon him to come with clean hands, and to place the obligees in the bond in as good a situation as they would have held had he made no default.

It is not to be overlooked that Bevans was not an ordinary bailee of the government. Bailee he was undoubtedly, but by his bond he had insured the safe-keeping and prompt payment of the public money which came to his hands. His obligation was, therefore, not less stringent than that of a common carrier, and in some respects it was greater. In *United States v. Prescott*,* it was said by this court: "Public policy requires that every depositary of public money should be held to a strict accountability. Not only that he should exercise the highest degree of vigilance, but that he should keep safely the moneys which come to his hands. Any relaxation of this condition would open the door for frauds which might be practiced with impunity." These observations apply in full force to the present case. It cannot be allowed that a depositary of public money, who has not only assumed the common obligations of a bailee, but has given bond to keep safely the money in his hands, and to pay it over promptly, as required by law, may, by making a default, throw upon the government the risk of loss of the money by the intervention of a public enemy. We are, therefore, of opinion that the evidence offered by the defendants in the court below tended to show no sufficient defence to the claim of the plaintiffs, and that it was properly rejected.

The objection that the jury was instructed to find for the plaintiffs the amount claimed by the papers given in evidence (viz., the official settlements), with interest thereon, is entirely without merit. There was no evidence to impeach the accounts stated, or to show set-off, release, or payment.

* 3 Howard, 588

Statement of the case.

The instruction was, therefore, in accordance with the legal effect of the evidence, and there were no disputed facts upon which the jury could pass.

JUDGMENT AFFIRMED.

The CHIEF JUSTICE and Mr. Justice CLIFFORD dissented from the judgment, because they thought that the plea in bar set up a valid defence.

NOTE.

At the same time, with the preceding case, was heard another, in its chief point identical with it, but embracing also a minor point of evidence. It was the case of

HALLIBURTON, MARSHAL, *v.* UNITED STATES.

1. The doctrine of the preceding case as to the accountability of the receivers of public moneys affirmed.
2. Evidence of alleged payments made or of set-off, on a suit on a marshal's official bond, *held* rightly excluded under the 4th section of the act of March 3d, 1797, there having been no evidence that what was excluded was a claim presented to the accounting officers of the Treasury, and by them disallowed; nor it being pretended that the defendants were at the trial in possession of vouchers not before in their power to procure.

THIS case, like the former, came here on error to the Circuit Court for the Eastern District of Arkansas.

The action was debt upon a marshal's bond, conditioned for faithful performance of all the duties of the office of marshal. The breaches assigned were that on the 1st day of April, 1861, Halliburton, the marshal, was indebted to the United States in the sum of \$3946.65 for money had and received by him for the use of the plaintiffs, and upon an account then stated, and for money which had previously come into his hands as marshal, which it was his duty to pay over, but which he had converted to his use. Among other defences set up, the defendants pleaded the ordinance of secession passed by the convention of Arkansas on the 6th of May, 1861; the ordinance of the same convention