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

passed May 7th, 1861, requiring all persons having money of the United States in their hands to hold the same subject to future action of the convention, and a subsequent ordinance of June 1st, 1861, requiring all persons having money, as aforesaid, to pay the same over to the treasurer of Arkansas, under severe penalties of fine and long imprisonment. The plea further averred that the convention, and the government organized thereunder, had the physical power to enforce its laws and decrees, and did enforce them, as fully as any organized government might do for a long period of time, to wit, one year, and that the defendant, Halliburton, yielding to the force and compulsion of the said government, so organized, and having at that time no protection from the government of the United States, and not being able in anywise to resist the execution of the ordinance of the convention, did pay the money mentioned in the declaration mentioned to the treasurer of Arkansas on the 21st day of June, 1861. The plea still further averred that after the 7th of May, 1861, Halliburton had no opportunity to pay the money to the United States, and that he was prevented from paying the same by public hostilities. To this plea there was a demurrer, and judgment was given against the defendants, which was one error—the principal one—insisted on.

There was, however, another error assigned, to wit, that the Circuit Court refused to admit evidence of payments made and of an alleged set-off. This refusal of the court was apparently founded on the fourth section of the act of Congress of March 3d, 1797,* which enacts that in suits between the United States and individuals, no claim for a credit shall be admitted upon trial, but such as shall appear to have been presented to the accounting officers of the Treasury for their examination, and by them disallowed, in whole or in part, unless it shall be proved to the satisfaction of the court that the defendant is, at the time of trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or some unavoidable accident. It did not appear that the evidence offered and rejected came within the provision of this statute.

* 1 Stat. at Large, 515.

Judgment having been given for the United States, the marshal, Halliburton, and his sureties, brought the case here.

It was twice argued and by the same counsel and on the same briefs as the preceding one.

Mr. Justice STRONG delivered the opinion of the court.

What we have said in the case just decided leads to the conclusion that the judgment in this case must be affirmed.

Looking to the declaration and the plea it appears that the bond had become absolute more than a month before the ordinance of secession was passed, and that all that time Halliburton was in default. The plea does not aver that there was any obstacle in the way of payment at the time when by law the payment was required to be made, or for a considerable period thereafter. If, then, it were sufficiently averred that after the 1st of June, 1861, payment was prevented by public enemies, there would still appear a default of the obligors, for which no excuse is offered, a fault which led directly to the loss of the public money. All the reasons, therefore, which have been mentioned in the case of *Bevans* v. *United States*, why the evidence there offered was insufficient to establish a defence, concur in justifying the judgment given upon this demurrer.

This disposes of the principal error insisted on. To the other error assigned—namely, the refusal of the court to admit evidence of payments made and of an alleged set-off—the fourth section of the act of Congress of March 3d, 1797, is a sufficient answer. What was offered and rejected was not any claims presented to the accounting officers of the Treasury, and by them disallowed. And it was not pretended that the defendants were at the trial in possession of vouchers not before in their power to procure. The evidence was, therefore, properly rejected.

JUDGMENT AFFIRMED.

The CHIEF JUSTICE and Mr. Justice CLIFFORD dissented in this case, as in the former one, and for the same reason, to wit, that they thought the plea in bar set up a valid defence.

[See *supra*, p. 17, Boyden et al. *v.* United States]