

## Statement of the case.

on certain checks, similar in all respects, in form and inception, to the check issued to Julius Sax, and mentioned more particularly *supra*, p. 472. The checks now sued on had been pledged as collateral security for a loan of less amount than the checks pledged, and were sold soon after being pledged, and before the loan fell due; the transaction being effected by the chairman of the finance committee of the city council without other authority. Such at least was the tendency of the evidence, and the judge charged substantially as in the preceding case of Ray.

Mr. Justice BRADLEY announced the judgment of this court,  
REVERSING THE JUDGMENT BELOW, with directions to award a

VENIRE DE NOVO.

UNITED STATES *v.* ARWO.

Under the act of March 3d, 1825, § 22, by which an assault on a person upon the high seas with a dangerous weapon is made an offence against the United States, and the trial of the offence is to be "in the district where the offender is apprehended, OR into which he may first be brought," a person is triable in the Southern District of New York who, on a vessel owned by citizens of the United States, has committed on the high seas the offence specified; has been then put in irons for safe-keeping has, on the arrival of the vessel at anchorage at the lower quarantine in the Eastern District of New York, been delivered to officers of the State of New York, in order that he may be forthcoming, &c.; and has been by them carried into the Southern District and there delivered to the marshal of the United States for that district, to whom a warrant to apprehend and bring him to justice was first issued.

ON certificate of division in opinion from the Southern District of New York.

A statute of March 3d, 1825,\* makes an assault committed on the high seas with a deadly weapon a crime against the United States, and the act is made cognizable in virtue of prior law,† "in the district where the offender is apprehended OR into which he may first be brought."

\* 4 Stat. at Large, 115, § 22.

† Act of April 30th, 1790, § 8; 1 Id. 113.

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This statute being in force, Arwo was indicted in the *Southern District* of New York, for an assault of the kind just spoken of, committed on a vessel alleged to have belonged to citizens of the United States. He pleaded to the jurisdiction, alleging that, immediately upon the commission of the assault, he had been placed in irons on board ship, for custody and to be forthcoming to answer any charge therefor, and was so kept until the vessel reached the *lower quarantine* anchorage in New York harbor, within the *Eastern District* of that State; that the vessel lay at anchor at such station for five days, during which he, being still in such custody, was delivered to the harbor police, officers of the State of New York, in order that he might be forthcoming, &c.; and that they without process or warrant from any court carried him to the city of New York, where he was delivered over to the marshal of the United States for the *Southern District* of New York; and that a warrant for his arrest (being the first issued in this case) was afterwards duly issued to the said marshal; so that, upon the whole, he had been apprehended and brought first into the *Eastern*, and not into the *Southern District*, and, therefore, could be tried only in the former district, &c.

Upon demurrer, the following questions occurred, and the court certified a division upon them.

“1. Whether the prisoner, having been taken into custody by the master of an American vessel, while on her voyage, upon a charge of having, during the voyage, committed an offence against the United States on board such ship, upon the high seas and out of the limits of any State or district, and first brought, in such custody, into the *Eastern District* of New York, can be tried for such offence in the *Southern District* of New York.

“2. Whether the facts stated in the plea, show that the *Southern District* of New York is not the district in which the defendant was apprehended, within the meaning of the act of March 3d, 1825.

“3. Whether the plea discloses that, within the meaning of the act of March 3d, 1825, the apprehension of the defendant

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occurred either upon the high seas, or in the Eastern District of New York, and not in the Southern District of New York.

"4. Whether the act of March 3d, 1825, confers jurisdiction in the alternative, and enables this court to assume jurisdiction to try an indictment by reason of the fact that the defendant has been arrested in this district, upon the charge in the indictment contained, by an officer of the United States, as stated in the plea, notwithstanding it appears that the defendant was first brought into the Eastern District of New York."

The Eastern District of New York consists of the counties of Richmond, Queens, Kings, and Suffolk;\* and by an act of 1865, establishing it,† the jurisdiction of the court thereof over "the waters" of such counties, excepting the county of Richmond, and "all matters made or done on such waters," is concurrent with that of the court of the Southern District.

*Mr. S. F. Phillips, Solicitor-General, for the United States.*

I. The bringing of Arwo within the waters of the Eastern District is a "matter done" therein.

The first question certified does not define the place to which Arwo was brought as being within that part of the Eastern District over which the Southern has no jurisdiction. The division here is as to a "matter done" *in any part* of the Eastern District, and, therefore, is to be settled by the act of 1865. There is nothing stated in the question to affect a concurrence of jurisdiction in the Southern District and the Eastern District over this offence.

As regards the remaining three questions, the only fact as to the place contained in them additional to those in the first question, is as regards "lower quarantine." Now this court has no judicial knowledge as to where lower quarantine is, except so far as its situation is fixed by the plea and the corresponding admission in the demurrer;‡ that is to

\* Richmond County is Staten Island. Queens, Kings, and Suffolk compose Long Island; Kings being the easternmost of the three; the county which is separated from Richmond chiefly by "the Narrows."

† Act of February 25th, 1865, 13 Stat. at Large, 438.

‡ 1 Taylor's Evidence, 25.

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say, that it is within the Eastern District, but within which one of the four counties it is, there is nothing in the law or the record to show. If the present matter of first bringing Arwo was so done as to confer jurisdiction upon the courts of the Eastern District, then, by the act of 1865, it did so equally upon the Southern, unless it occurred within Richmond County. It was the business of the plea to draw this distinction. It has not drawn the required distinction. The plea is one of a class which must be "certain to every intent;" "that is, must have such technical accuracy as is not liable to the most subtle and scrupulous objection."\*

Because of the *concurrence* of jurisdiction above specified, the first question is to be answered affirmatively; and the others are to be met by a general objection that under the statements of the plea they are merely abstract.

II. It may be, however, that the court will feel at liberty to express an opinion upon all the questions intended to be raised; and so we discuss their merits.

Some courts hold that in cases presenting *both* of the local features described in that part of the act given above (p. 486) in *italics* (viz., *two* districts, one of *apprehension*, and another, that into which the accused was *first brought*), the prosecutors have a choice, and may institute proceedings in either indifferently. Others, that, in such cases, there is but one place for trial, to wit, the district into which the accused is first brought; that the other district is mentioned as a place of trial only where there is in the case no district into which the accused has been brought, *i. e.*, *ex gr.*, in cases where, having come voluntarily into the United States, he is afterwards apprehended, &c. In these latter cases, the apprehension spoken of is plainly an apprehension under Federal authority. But there was no such apprehension here. Arwo was apprehended under ordinary ship police on board of a private vessel. There was no Federal color or element in his apprehension until that by the marshal of the Southern District.

But if this were otherwise, then, upon general principles,

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\* 1 Chitty on Pleading (edition of 1840), pp. 457, 234, and 663.

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Syllabus.

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there is no reason for holding in such cases, that the act of 1790 does not give to the prosecution an unrestricted choice of districts.

As regards the defendant, the provision, in any sense, is merely *positive*.

On the other hand, it seems unreasonable to say that the statute meant to compel prosecutor and witnesses, and perhaps the ship besides, to lay up, at a quarantine anchorage as here, or as the case might make it, at a port of refuge or of repair, merely because they were so unfortunate as accidentally to be on a ship with a felon.

We, therefore, suggest, under this branch of the argument, that the first and fourth questions certified be answered in the *affirmative*, and the second and third, in the *negative*.

*No opposing counsel.*

Mr. Justice CLIFFORD delivered the opinion of the court.

Instead of answering separately the questions certified here, I am instructed to say, that the court, upon the facts alleged in the plea, is of the opinion, that the Circuit Court for the Southern District of New York had jurisdiction in this case, and that the court directs that this statement be certified to the Circuit Court as the only answer required to the several questions presented on the record.

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#### TAPPAN, COLLECTOR, *v.* MERCHANTS' NATIONAL BANK.

1. Shares of stock in the National banks are personal property, and though they are a species of personal property which, in one sense, is intangible and incorporeal, the law which created them could separate them from the person of their owner for the purpose of taxation, and give them a *situs* of their own.
2. The forty-first section of the National Banking Act of June 3d, 1864—which in effect provided that all shares in such banks, held by any person or body corporate, may be included in the valuation of the personal property of such person or corporation in the assessment of taxes im-