THE UNITED STATES *V.* HARRILL *ET AL.*

Circuit Court, U. S., *August Term,* 1857.

CONGRESS, in derogation of the common law, have made transcripts from the departments at Washington, evidence against public debtors.

Their mode of authentication, as prescribed by law, must be strictly pursued.

They are, when so authenticated, *prima facie* evidence of indebtedness to the United States.

Held, that the omission to give in the account the disallowed credits, under the circumstances of this case, did not render the transcript incompetent as evidence under the post-office act of July 2, 1836.

MCALLISTER, J.—This action was brought upon a postmaster's bond. A jury trial was waived by the respective parties, and the case submitted upon the law and facts to the court, with the stipulation that the determination of the court should

be entered as its judgment, not only in this case, but similar judgments entered in the case of the *United States* v. *D. D. Harrill,* and in the case of the *United States* v. *David Jobson,* pending in this court. Two bonds were given in evidence on the trial, and certain transcripts of statements of accounts from the post-office department were proffered. These latter were objected to, on the ground that they were incompetent and insufficient. No evidence was given by the defendants.

The question is as to the competency of these transcripts, and whether they are sufficient to sustain the present action.

The acts of congress which make transcripts from the departments at Washington evidence against public debtors, introduced a new rule of evidence; but it has long since been decided by the Supreme Court that the legislature had the power to establish new rules of evidence, in derogation of the common law, by making such documents evidence. All that is required is that the mode of authenticating them, as prescribed by law, must be strictly pursued.

It is objected to the authentication of the account, that the certificate annexed does not declare the account to which it is annexed to be a "statement" of the account. The law which makes the statement of the account evidence, prescribes no form of certificate. In its 8th section it directs that the auditor of the treasury for the post-office department, shall credit and settle all accounts arising in his department, and certify the same to the postmaster general; and in the 15th section it declares that in every case of delinquency a statement of the account so certified shall be admitted.

In this case, the auditor certifies "the above to be a true and correct copy of the account of Drury D. Harrill, late postmaster at Shasta, California, as audited and adjusted at this office." A certificate that it is a true and correct copy of the

account as audited and adjusted, is more specific than one would have been had it certified generally it was a statement of the account. There is no defect in the mode of authentication.

The principal ground of objection is that the account does not exhibit on its face the items of credit which had been allowed to the party. In the case of *The United States* v. *Hodge* (13 Howard, 478), it is decided that the fact that the items of credit *disallowed* were not set forth on the face of the account, did not invalidate it as competent and legal testimony. It is difficult to ascertain why the omission of *allowed* credits should have that effect. The omission to set forth, item by item, each item of either class of credits, would not render less competent the accounts as evidence, though the omission might interfere with their sufficiency as testimony in the face of counter-evidence. They still are statements properly certified by the proper officer, and as such are competent testimony under the law. Not only such statements duly certified are made evidence, but so are all other papers pertaining to the account, certified in like manner. Each in itself, and independently of all others pertaining to the account, is competent evidence. They are not less so because unaccompanied by other documents. In the case of *The Postmaster General* v. *Rice et al.* (Gilpin, 554), an account was given in evidence, the action being on a postmaster's bond. In relation to the former, the court say, "That shows the various balances due and owing at the end of each quarter. It was the only evidence offered on the part of the United States. It was objected to; and the court charged the jury that in giving their verdict they were to consider the document as legal evidence of the facts it contained, and as such, it established *prima facie* the debt as due to the United States. (*Ibid.* 562.) That case is more conclusive, as Judge

Hopkins, who made the charge, had previously excluded as evidence a transcript from the treasury under the act of March 3, 1797. This was done in the case of *The United States* v. *Patterson et al.* (Gilpin, 44). The learned judge placed his decision on the language of that act, which requires "a transcript from the books and proceedings of the treasury," certified, &, which language he considered intended a certificate of the whole accounts as they appear in the books of the treasury, together with all the proceedings which have been had concerning them. In the subsequent case of *The Postmaster General* v. *Rice,* the judge, in view of the difference between the phraseology of the act of March 3, 1797, and the 31st section of the post-office act of 1825, says of the latter: "It certainly was the intention of that act to substitute a statement of the settled account instead of copies of the accounts current," &c.

In *Jones* v. *The United States* (7 Howard, 681), an account, the debit side of which was similar to the one before us, was given in evidence. With the exception of dates and amounts, the debit side of the account exhibited only the quarterly balances, and was in every particular like the account offered in evidence in this case. Although elaborately argued for the defendant, no objection was made to the mode of stating the account. It is true, as urged by counsel, that Mr. Justice Daniel, in the case of *The United States* v. *Hodge* (13 Howard, 485), uses the following language: "It is true that the cases above mentioned did not arise upon the statute regulating the post-office department; but they involved the construction of the act of 3d March, 1797, the import of which, and indeed the language thereof, *mutatis mutandis,* are identical with those of the act of 1836 regulating the post-office department." (*Ibid.* 485.) The learned judge was

endeavoring to show, by reference to decided cases under the act of March 3, 1797, the admissibility of the account before the court, in a post-office case; and to illustrate their applicability, made the above observation as to the similarity of the phraseology between the two statutes. The decision of the court was, that under the principles enunciated in the decisions under one act, a certified account was admissible in a post-office case. It is urged by counsel that the Supreme Court has fixed the identity of the language of the two acts. It cannot be considered that the readings of one of the judges *arguendo* is the decision of the court.

A comparison of the language of these two statutes, will exhibit a difference. The act of March 3, 1797, requires "a transcript from the books and proceedings of the treasury," to be certified. The 15th section of the post-office act of July 2, 1836, declares that in every case of delinquency "a statement of the account, certified as aforesaid, shall be evidence, and the court trying the same shall be thereupon authorized to enter judgment and award execution."

Judge Hopkinson recognized a clear distinction between the language of the act of March 3, 1797, the post-office act of 1810, and that of 1825; and acted upon such difference, as we have seen in the adverse decisions made by him and cited from Gilpin's Reports. The difference between the two first-mentioned acts of congress is quite as great as that which occurred between the act of March 3, 1797, and the post-office acts under his consideration; and it controlled his judicial action. There can be no doubt of the competency of the testimony offered in this case, if we look to the post-office act of 1836. But, if viewed under the decisions made by the Supreme Court in construing the act of March 3, 1797, its admissibility is almost equally free from doubt.

As this question is one of great practical importance in the transactions between the government and individuals, I deem it proper to refer to certain cases relied on by counsel for defendant; as an inaccurate analysis of them will obscure a subject which ought to be clearly understood.

Much stress is laid upon the language of Mr. Justice McLean in *United States* v. *Jones* (8 Peters, 375), that "the act of congress in making a transcript from the books and proceedings of the treasury evidence, does not mean the statement of an account in gross, but a statement of the items, both debits and credits, as they were acted upon by the accounting officers of the department." The extent of what was determined by this language is to be known by referring to the state of things to which it was intended to apply it. The item objected to was in these words: "To accounts transferred from the books of the second auditor for this sum, standing to his debit under the said contract on the books of the second auditor, transferred to his debit on those of this office, $45,000." Here is a gross amount of accounts, of what number or their several amounts does not appear, no debit nor credit items,—all thrown together in one office and transferred in the aggregate to another.

The United States v. *Patterson* (Gilpin, 44), another case relied on, was where the account offered and rejected contained charges of gross amounts, referring to certain reports of file in the department. In *The United States* v. *Edwards* (1 McLean, 467), the form of the account is not given. The court say, It was objected to "because several items in the account, amounting to more than the balance claimed, were charged as balances found due by the officers of the treasury." It was doubtless rejected on that ground. The principle is enunciated in *The United States* v. *Buford* (3 Peters, 12), and *The United States* v. *Jones* (8 Peters, 375), that an account stated at

the treasury department under the act of March 3, 1797, is evidence only of items disbursed through the ordinary channels known officially to the accounting officers, and appearing on their books. This is undoubtedly correct, and applies to either act,—that of March 3, 1797, or the post-office act of July 2, 1836. So, an account duly certified is no evidence against a collector or postmaster of the payments of moneys indirectly to him through the intervention of a third party, nor of a balance due on a former account, nor of items transferred from the account of any other person, nor of items re-charged which had been before credited.

We have adverted to all the restrictions upon the admissibility of a transcript as evidence, and now turn to the account offered in this case.

It is precisely similar to the one which was before the court in the case of *Jones* v. *The United States* (7 Howard, 681), and not even objected to; and also in the case of *The Postmaster General* v. *Rice* (Gilpin, 559), where the court charged the jury they were to consider it "as legal evidence of the facts it contained, and as such, it established *prima facie* the debt as due to the United States." In the account offered in evidence, the balances both on credit and debit side are given at the end of each quarter, as due on the quarterly returns of the party as postmaster. The account is not obnoxious to the objection that there is a general balance stated. It is an account settled as it stood at the end of each quarter, and are items corresponding as to time of settlement with those which must appear on the books of the postmaster, and consequently are susceptible of comparison and correction. These several items of debit are on the debit side of the official returns of the postmaster, founded on his own quarterly returns rendered by him in pursuance of law.

The main objection to the account is, that in the adjustment of balances as due on the quarterly returns, each item of credit *allowed* should have been set forth, in order to enable the party to ascertain those credits which had been disallowed. Now, such knowledge (if it were necessary to insert the credits), would have been more directly afforded by setting forth the *disallowed* credits themselves. This, the Supreme Court have decided, it is unnecessary to do, in *The United States* v. *Hodge* (13 Howard, 478). If that tribunal did not consider the alleged necessity of inserting the *disallowed* items of credit so great as to invalidate the account as testimony if such credits were omitted, how can this court exclude it because the *allowed* items of credits are not inserted? In truth, no such necessity exists. The whole of the items are based upon the party's own quarterly returns. Under the law, the accounting officer adjusts them; and the party, if aggrieved, is allowed twelve months within which to appeal to the controller general from such adjustment. The quarterly returns themselves, where any items are disallowed, are, by the regulations of the department and the law, to be transmitted to the postmaster. It is to be presumed, in the absence of all testimony to the contrary, that the officer did his duty; that the benefit of the appeal was extended to the party in this as in every other case; and that the quarterly returns, if any credits had been disallowed, have been transmitted as adjusted to the party. Again, the debit side of this account is based upon quarterly returns made by the party himself, and furnished to the department. They are necessarily made at the end of each quarter, from the books of the post-office. If *he* does not know to what credits he is entitled, who does? Yet it is on this ground, viz., that this information should be conveyed to him, on the face of the account, that the court is

asked to exclude the testimony as incompetent. If there has been any error in the adjustment of his quarterly returns, and the party has omitted to avail himself of his right of appeal, or the exercise of it has proved fruitless, he could have compelled for correction the production of them by notice, as was done in the case of *Iloyt* v. *The United States* (10 Howard, 109). If not produced, he could have availed of his legal rights, and obtained any credit to which he was entitled, and which had been improperly disallowed; or prove error in any, item with which he had improperly charged himself in his quarterly returns; or, lastly, have established his claim to any credits not previously preferred for some reason, for which the act of congress dispensed with previous presentation. It has not been brought to the notice of the court that the officers of the department have been derelict in their duty; that the party has not been furnished with his adjusted quarterly returns; or to what items of credit the party is entitled which have been disallowed. Had such showing been made, this court, under the discretion confided to it by the act of congress, would have given such direction to this case as would have placed the defendant in the position the law presumes him now to occupy in the absence of any such showing.

If this testimony is competent, is it sufficient to sustain the present action? It would seem that where the law makes testimony competent, it is *prima facie* evidence of a fact, and becomes satisfactory in the absence of all other. Such evidence throws the burthen on the opposing party; and if no opposing evidence is offered, the jury are bound to decide in favor of the presumption. A contrary verdict would be set aside. (1 Greenleaf, Ev. § 33.) But the act of congress under which this evidence is admitted, distinctly defines its sufficiency: "A statement of the account, certified as aforesaid,

shall be admitted; and the court trying the same shall be thereupon authorized to give judgment and execution," &c. What statement is here meant? Certainly the statement previously mentioned.

Whether the admissibility of this transcript of account be viewed under the construction of the treasury act of March 3, 1797, or under the more stringent provisions of the post-office act of July 2, 1836, there can be no doubt upon the point. The objection to its competency and its satisfactory character, in the absence of all counter-testimony, must be overruled.

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