

Case No. 4,235.

[1 U. S. Law J. 545.]

EAKEN v. UNITED STATES.

District Court, S. D. New York.

1822.

REFERENCES—FOLLOWING STATE LAWS—ACCOUNTS.

Under the thirty-fourth section of the act of congress to establish the judicial courts of the United States—2 Bior. & D. Laws, 70 [1 Stat. 92]—the district judge of the United States for the southern district of New York has power to refer cases, involving long accounts, to referees, in conformity to the practice of the supreme court of judicature of the state of New York, under the second section of the statute of the state of New York for the amendment of the law, and the better advancement of justice (1 Rev. Laws, 516, § 2).

A suit was commenced in the district court of the United States for the southern district of New York, against Samuel H. Eaken, in favor of the United States. The defendant, it seems, had been a district paymaster during the late war between the United States and Great Britain, for the military district embracing a portion of the states of New York, New Jersey, and Connecticut; and, in the discharge of his duty, had disbursed between two and three millions of dollars. In the settlement of his accounts at Washington, a controversy arose in relation to certain charges, and items which he preferred against the government. The United States claimed a balance in their favor, and the district paymaster also considered himself entitled to a balance against the United States. A suit on behalf of the government was commenced; and when the case was reached on the calendar, in the district court, the counsel for the defendant, on reading an affidavit, which stated that the case involved long and intricate accounts, moved the court that the same be submitted to referees. His honor, Judge Van Ness, remarked that the application was new, and he should order the motion to be argued on a future day, which was done.

On a subsequent day of the term, the motion was argued by the counsel for the defendant and the counsel for the United States. The counsel for the defendant read the thirty-fourth section of the judiciary act (2 Bior. & D. Laws, 70 [1 Stat. 92]), and the second section of the statute of New York (1 Rev. Laws, 516), under which the supreme court of that state has proceeded to order causes to be submitted to referees, and also referred to the 55th rule of the district court, adopting the practice of the supreme court of the state of New York in cases where the district court has not adopted special rules for itself. They also cited [Brown v. Van Braam] 3 Dall. [3 U. S.] 344; [Hamilton v. Moore] Id. 373; [Inglee v. Coolidge] 2 Wheat. [15 U. S.] 363; [Sturges v. Crowninshield] 4 Wheat. [17 U. S.] 129; U. S. v. Wonson [Case No. 16,750]; Craig's Case [Id. 3,325]; Golden v. Prince [Id. 5,509].

The counsel for the United States read the seventh article of the amendments of the constitution of the United States, and cited [M'Culloch v. State of Maryland] 4 Wheat

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{17 U. S.} 344; U. S. v. Wonson {supra}; Van Reimsdyk v. Kane {Case No. 16,872}; Campbell v. Claudius {Id. 2,356}.

J. O. Hoffman, J. Anthon, and C. G. Haines, for defendant.

R. Tillotson, Dist. Atty., for the United States.

VAN NESS, District Judge, in consequence of severe indisposition and a pressure of business, did not deliver an opinion in extenso. He said that he should grant the motion, and go into the state practice. He conceived that the thirty-fourth section of the judiciary act of the United States placed the case within the second section of the New York statute for the amendment of the law, and the better advancement of justice; and, while he thought the practice of submitting cases involving long and intricate accounts legal, he viewed it as highly conducive to the administration of justice. From the affidavit on which the motion in the case was grounded, it appeared that between two and three millions of dollars had been disbursed for the United States by the defendant, and that it might take a jury several days to give a full and perfect examination to the great mass of accounts and vouchers involved in the suit. Referees were accordingly appointed, and a rule duly entered by the clerk of the court.