

Case No. 15,770.
[5 Biss. 128.]¹

UNITED STATES V. MILLER ET AL.

Circuit Court, N. D. Illinois.

June, 1870.

INTERNAL REVENUE—DISABLED DISTILLERY—INTENT TO DISTILL.

1. In an action on a distiller's bond, under the act of congress of July 20, 1868 [15 Stat 125]; a plea that the still blew up, of which the assessor was duly notified, whereupon he locked up and took control of the property, is a good plea as to the time the still was thus disabled.
2. If the partially manufactured material is duly turned over to the proper officers, the distiller should not be charged for spirits which he could not distill.

Action of debt on a distiller's bond, executed by defendants [John S. Miller and others], dated October 3, 1868, the bond being in the usual form, in the penal sum of \$27,000, and under the act of July 20, 1868, § 20 (2 Brightly's U. S. Dig. 322; 15 Stat. 125). Averment that Miller, the distiller, from October 6th to 31st, 1868, at Sterling, distilled a large quantity of spirits subject to tax, and returned to the assessor less than 80 per cent. of the producing capacity of the still. Defendants pleaded that on a certain day the still blew up, of which fact the assessor was notified, whereupon he put a lock upon the furnace and fastened up the fermenting tubs, in which condition the establishment remained until October 28, when, the repairs being completed, business was resumed. It is averred that all the wines distilled were duly returned. The government filed a demurrer to the plea.

BLODGETT, District Judge. There must be an intent to distill, and if the distiller was so circumstanced as to preclude the idea that he intended to distill, I don't think he can be charged. The statute does not provide for the stoppage or suspension of business by a casualty. It provides for a man's bringing his business to an end by some systematic arrangement on his part, but here is the interposition of an accident which utterly prevents him from going on. The question is, what shall be done with the partially manufactured material in the distillery? It seems to me if he gives it over to the custody of the proper officers of the government, so that it clearly appears that the work of distilling was suspended, he should not be charged with duties on spirits he did not distill, and which, under the circumstances, he could not distill.

The demurrer is overruled.

¹ [Reported by Josiah H. Bissell, Esq., and here reprinted by permission.]