

Case No. 16,159. UNITED STATES v. RICKETTS.
[2 Cranch, C. C. 553.]¹

Circuit Court, District of Columbia.

April Term, 1825.

ADMINISTRATORS—DEVASTAVIT—SURETY ON COLLECTOR'S
BOND—JUDGMENT.

1. If the administrator of the surety in a collector's bond pay away the assets of his intestate in payment of the intestate's debts, before notice of the claim of the United States, such payment is not a devastavit.
2. The United States, in an action upon a collector's bond, cannot obtain judgment against the surety for more than the penalty of the bond.

Debt upon the official bond of C. Simms, late collector for the port of Alexandria, in the penalty of \$10,000, and in which bond the defendant's intestate, J. T. Ricketts, was a surety. The defendant had paid away the assets of the estate of his intestate, J. T. Ricketts, in the payment of his debts, before notice of the claim of the United States for the balance due by the collector to them, amounting to \$17,000.

Mr. Hewitt, for defendant, contended that the payment of the debts of the intestate, by his administrator, the defendant, was not a devastavit, and cited the case of *U. S. v. Fisher*, 2 Cranch [6 U. S.] 390, where Chief Justice Marshall, in a note, gives his own opinion that such a payment, without notice, is not a devastavit.

The question being submitted, this court was unanimously of the same opinion, and also that in this action the judgment could not exceed the penalty of the bond.

Mr. Swann, U. S. Dist. Atty.

Hewitt, Mason & Taylor, for defendant.

¹ [Reported by Hon. William Cranch, Chief Judge.]