

27FED.CAS.—81

Case No. 16,367.

UNITED STATES V. SPENCER ET AL.

{2 McLean, 265.}¹

Circuit Court, D. Indiana.

Nov., 1840.

OFFICIAL BONDS—RECEIVER, OF PUBLIC MONEY—LIABILITY OF SURETIES.

[The sureties on the bond of a receiver of public moneys are only liable for money which came into his hands during his term of office, and a declaration for money received on the day after the expiration of his term is bad on demurrer.]

At law.

Mr. Pettit, U. S. Dist. Atty.

Messrs. Cooper, Butler, and O. H. Smith, for defendants.

HOLMAN, District Judge. Declaration, on a receivers' bond, against the principal and his sureties. Breach assigned: That Spencer was appointed receiver of public moneys, for the term of four years, commencing on the 1st of January, 1835, and ending the 31st of December, 1839; and that divers large sums of money, arising from the sale of lands, came into, and were in, his possession, during his continuance in office—to wit: on the first day of January, 1840—which he failed and refused to pay, &c. General demurrer, by the sureties. The breach is insufficient, as respects the sureties. They are bound for the payment of all sums of money that come into the receiver's hands during his term of office, and no longer; and, as his office expired on the 31st of December, 1839, they are not bound for moneys that came into his hands on the 1st day of January, 1840, the day after his term of office expired. If the day alledged is material, and I am inclined to think it is, it can not be rejected as surplusage, and, therefore, the declaration is insufficient.

Plaintiff had leave to amend, and the cause was continued. [See Case No. 16,368.]

¹ [Reported by Hon. John McLean, Circuit Justice.]