UNITED STATES v. STEWART ET AL.

Case No. 16,399.
{2 Biss. 412.}[1]

District Court, N. D. Illinois. Jan., 1871.

DISTILLER'S TRANSPORTATION BOND—DEFENSES—SEIZURE OF GOODS IN TRANSIT—PLEADING—REPLICATION.

1. To a suit upon a bond for the transportation of highwines, it is a sufficient defense that during the act of transportation the officers of the government seized them, and that the collector of the district to which they were consigned refuses to grant a certificate of delivery to him.
2. The government having by its own act prevented the performance of the condition of the bond, is estopped from recovering upon such a breach.
3. The fact that the seizure was made by reason of the wrongful act of the persons having the highwines in charge makes no difference. The government had the election to seize them in transit or await their delivery; but if it does the former, it cannot afterwards sue for the breach of the bond.
4. To a plea setting up the above facts it is not a good replication that the seizure was properly made for a violation of the internal revenue laws, for which the wines were afterwards duly forfeited in the district court.

This was an action of debt on behalf of the United States against Stewart and his sureties upon his transportation bond.

J. O. Glover, U. S. Dist. Atty.

Goudy & Chandler, for defendants.

BLODGETT, District Judge. This is a suit upon a distiller's bond for the transportation of 100 barrels of highwines from Keithsburg, Ill., to St Louis, Mo., and the delivery thereof to Barton Able, collector of the First district of Missouri. The third plea of the defendants sets forth in substance that said wines were duly transported to St. Louis and landed upon the levee there, and were then, immediately after their arrival, seized by an officer of the United States, and while in the exclusive possession and control of such officer, seven barrels of said wines were, without the consent, fault or neglect of defendants or either of them, carried away to some place unknown by some person or persons unknown; and that the remaining 93 barrels of said wines were afterwards by the said officer removed from said levee, and delivered to Barton Able, collector of the First district of Missouri, who received the same and placed them in a warehouse in St Louis, where they have ever since remained. Defendants also aver that such seizure was without their privity or consent, and that said Barton Able hath ever since refused to make and deliver to defendants a certificate showing that said highwines or any part thereof have ever been delivered to him.

To this plea a replication was filed, setting up in substance that 93 barrels of said wines were seized upon an information filed in the United States district court for the Eastern district of Missouri for an alleged violation of the internal revenue laws, and that

afterwards such proceedings were had in said court on said information that a degree of forfeiture was entered against said highwines for said violation of the internal revenue laws; and to this replication a demurrer is interposed by the defendants.

Some technical objections to the form of this replication were made in the demurrer, but as no stress was laid upon them in the argument I shall proceed at once to consider the main question raised by the pleadings, which is, whether the replication is a sufficient answer to the plea, and whether said plea is a sufficient answer to the declaration.

The condition of the bond is that the said 100 barrels of highwines shall be transported from the bonded warehouse of said Stewart at Keithsburg, in the Fourth district of Illinois, to the city of St. Louis, and there delivered to Barton Able, collector of the First district of Missouri, within ten days from the date of said bond; and that within ten days thereafter a certificate of said Able, or his successor as such collector, showing that said wines had been so delivered to him, and by him placed in a bonded warehouse in his district, should be produced to the collector of the Fourth district of Illinois. The effect of the defense thus set up is that while the obligors in the bond were in the act of performing said condition, said highwines were seized by the revenue officers of the United States, and while so held seven barrels were taken away by some person unknown, and the replication avers that the remaining 93 barrels were afterwards libelled and condemned for alleged violation of the internal revenue laws. By the conceded facts, then, performance of the condition of this bond has been prevented by the acts of the agents of the obligee. In other words, the plaintiff has, through the agency of its officers, rendered the performance of the condition of the bond impossible. True, the seizure which made it impossible for the defendants to fulfill the condition of the bond, was made by reason of the wrongful act of some one having said wines in charge. But does that make any difference? The government had its election to seize them in transit, or await the performance of the condition of the bond and seize them afterwards. The wines could not be in two places at once. If the government interposed to prevent their delivery under the bond, is it not estopped from recovering for a breach of the bond caused by its own act?

No direct authorities upon bonds of this character have been cited, nor have I been able to find any. But the case seems analogous in all essential principles to the case of People v. Bartlett. 3 Hill, 570. In that case a recognizance had been entered into for the appearance of the principal to answer a criminal charge. Default was made, and to a sci.

fa. on the recognizance it was pleaded that the principal had, after giving said recognizance, been arrested, and was then held in confinement in state's prison under another criminal charge. The court held the plea sufficient, and Nelson, Chief Justice, said "I am of opinion that the plea is a good answer to the action. It is a general principle of law that when the performance of the condition of a bond or recognizance has been rendered impossible by the act of God, or of the law, or of the obligee, the default is excused." The principle enunciated in this authority is certainly broad enough in its fair, logical application to support the defense to the bond set up by the plea, and the replication, instead of answering the plea, only goes more into the detail of the same proceedings on the part of the government which the plea relies upon. It certainly does not answer the plea to say that the goods were not only seized, but were afterwards condemned by the same judicial proceedings initiated by the seizure. The replication only makes it more certain that the performance of the condition of the bond has been rendered impossible by the act of the obligee.

The demurrer to the replication is sustained.

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