

UNITED STATES *v.* LOEB and others.*(Circuit Court, S. D. New York.)***DISTILLER'S BOND—JUDGMENT ON.**

In an action on a distiller's bond, a verdict was rendered for the full amount of the bond, subject to the opinion of the court upon the question whether the sureties were entitled to a deduction from the verdict of the amount realized from the sale of the distiller's personal property. *Held*, on a motion for judgment on the verdict, that the judgment should be entered for the full amount of the bond, the sum realized from the personal property not being a legal off-set.

Mr. Hill, Asst. Dist. Atty., for the United States.

Mr. Ellis, for defendant Conklin.

COXE, D. J. This is an action on a leaseholder's (distiller's) bond. On the trial a verdict was rendered for the full amount of the bond and interest, subject to opinion of the court. The plaintiff now moves for judgment on the verdict. The defendant Conklin, one of the sureties, insists that there should be deducted from the verdict the amount realized from the sale of the distiller's personal property, which was forfeited for various violations of the statute, and sold according to law. This position cannot be successfully maintained. It was the evident intention of congress that in cases of fraud, not only the personal property but the real estate should be forfeited. The bond in this case was given pursuant to section 3262 of the Revised Statutes, as a substitute for the real estate; the distiller holding simply a leasehold interest therein. The act provides, in substance, that if the distiller is not the owner of the fee, he must obtain the consent of the owner and incumbancers to the effect "that in case of the forfeiture of the distillery premises, or of any part thereof, the title of the same shall vest in the United States." In lieu of this consent the distiller may give a bond—the bond in this case—conditioned "that in case the distillery, distilling apparatus, or any part thereof, shall by final judgment be forfeited for the violation of any of the provisions of law, the obligors shall pay *the amount stated in said bond.*"

In order to establish the liability of the obligors, proof is necessary that the distillery, distilling apparatus, or some part thereof, has, by final judgment, been forfeited. This proof was produced on the trial, Nothing further was required. The bond is not intended as security simply; it is enforced as a penalty—as a punishment for fraud. *U. S. v. Distillery at Spring Valley*, 11 Blatchf. 255. If the position of

defendant is a correct one, no action at all could be maintained if the sale of the personalty aggregated the penal sum of the bond. The obligors bound themselves to pay to the United States the sum of \$16,000, in case the distillery, etc., described in the bond, should, by final judgment, be forfeited for the violation of law. The distillery was so forfeited, and the obligors are now called upon to make good their covenant. The law is undoubtedly harsh, but defendants entered into this obligation with full knowledge of its provisions, and have now no reason to complain.

The motion for judgment is granted.

HUBBARD v. THOMPSON.*

(Circuit Court, E. D. Missouri. December 14, 1882.)

COPYRIGHT—INFRINGEMENT—PRELIMINARY INJUNCTION—ACCOUNT.

Where a bill for the infringement of a copyright stated that the copyright claimed to have been infringed had been assigned to the complainant by the defendant, and charged the defendant with having infringed said copyright by the publication of a book therein described, and in the prayer asked for a preliminary injunction, an accounting, etc., and where affidavits were filed against the injunction, which tended to prove that the contract which complainant claimed had operated as an assignment of said copyright had not been intended to so operate; that the agreements therein, to be performed by complainant, had not been performed by him; that said contract had been abrogated before the book complained of had been published; and that the publication of said book had not infringed said copyright,—*held*, that an injunction *simpliciter* should be refused, but that defendant should be required to give a bond to answer to any damages that might be adjudged against him in the case, and that he should be required to preserve an account of all the copies of said book which he had disposed of, and keep an account of all of said books which he might thereafter dispose of.

In Equity. Motion for a provisional injunction.

The bill in this case charges the defendant with having infringed the copyright of a book entitled the "Illustrated Stock-Doctor and Live-Stock Encyclopedia," alleged to have been assigned by him to the complainant. The alleged infringement consists in the publication by defendant of a book entitled "The American Farmers' Pictorial Cyclopedia of Live-Stock." The prayer of the bill asks for an accounting and damages, and that defendant be first preliminarily

*Reported by B. F. Rex, Esq., of the St. Louis bar.