

UNITED STATES *v.* THOMPSON *et al.*

(District Court, D. Kentucky. March 24, 1891.)

INTERNAL REVENUE—RECOVERY OF FINE ON DISTILLER'S BOND.

The defendants, being distillers, having been indicted, tried, found guilty, and fined for a violation of section 3279, Rev. St. U. S., and execution issued thereon having been returned *nulla bona*, this action was instituted on the bond executed by the defendants to the United States, containing a covenant that the defendants "shall in all respects faithfully comply with all the provisions of law and regulations in relation to the duties and business of distillers, * * * and shall pay all penalties incurred or fines imposed on him for a violation of any of said provisions." *Held*, on demurrer to the petition, that the action was maintainable.

Action at Law on Distiller's Bond.

Geo. W. Jolly, U. S. Atty.

Samuel McKee, for defendant.

BARR, J. The defendant John S. Thompson was indicted under section 3279 of the Compilation Internal Revenue Laws, 1889, for not keeping the proper sign upon his distillery, and was found guilty, and fined by the court \$500 and costs. This is the penalty fixed by the statute. The fine remains unpaid, and the present action is on his distiller's bond, to recover the amount thereof from Thompson and his sureties. The defendants have filed a general demurrer, and insist no recovery can be had on the bond. The penalty of the bond is \$800, and its condition is that if said Thompsons (there are two of them) "shall in all respects faithfully comply with all the provisions of law in relation to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions, * * * then this obligation shall be void; otherwise it shall remain in full force." The petition alleges the indictment of J. S. Thompson, his trial and conviction, and his sentence to a fine of \$500 and costs, and that it was because of a violation of the law in regard to the distillery mentioned in the bond and within the period covered by it. The question presented is new, and undecided, as far as known to counsel or the court. The counsel for the defendants insists that this action will not lie, because of the conviction and sentence under the indictment, and that a recovery on the bond would be punishing Thompson twice for the same offense. It is evidently not the intention of the United States to collect the \$500 fine heretofore imposed and also another \$500 on the bond, but the purpose is to collect the \$500 fine already imposed. There is, therefore, no question of putting Thompson twice in jeopardy for the same offense. There is a most instructive opinion upon the meaning of "twice in jeopardy" by Judge BLATCHFORD in *Re Leszynsky*, 16 Blatchf. 9, which clearly shows that the present case is not within the fifth amendment of the constitution or the common-law rule as to "twice in jeopardy." The real question is, we apprehend, whether the plaintiff, having proceeded by indictment, and having obtained a sentence thereunder of \$500 fine, which may, under the law, be enforced against Thompson by a *capias*

pro fine as well as by an execution against his property, it can now recover on this bond. Section 1041, Rev. St. The penalty declared under section 3279 of the internal revenue laws could have been recovered in a civil action, (see section 3213,) and in that event we presume the penalty could have been enforced against the property of Thompson only, and not by a *causas pro fine*; but we do not think such a judgment could be enforced by a suit on the bond, if a judgment under an indictment could not be. The difference in enforcing the judgments in these two proceedings can make no difference in the question of liability on the bond. The inquiry in each case is the fine or penalty covered by the bond. The bond provides that if Thompson "shall pay all penalties incurred or fines imposed on him, * * * then this obligation shall be void; otherwise it shall remain in full force." The only limitation is that the penalties incurred or fines imposed on him shall be for a violation of a provision of law in relation to his duty and business as a distiller at the place designated in the bond. It may be claimed that the "penalties incurred or the fines imposed" are only those which may be declared by a court in a suit on the bond in which the sureties have a right to appear and contest, but such a contention is answered by the language of the bond. The bond is a guaranty of the principal's conduct, and an obligation that they shall pay all penalties incurred or fines imposed. The fines must be imposed, and a non-payment by the principals, before the sureties are liable on the bond. I do not see why, upon general principles, the defendants are not bound on their bond. The demurrer should be overruled, and it is so ordered.

In re WYMAN et al.

(Circuit Court, E. D. Missouri, E. D. March 7, 1891.)

CUSTOMS DUTIES—APPEAL FROM APPRAISEMENT.

The administrative customs law of June 10, 1890, (26 St. 137, 138,) § 14, provides for an appeal from the decision of the collector of the port of entry as to the rate and amount of duties to the board of general appraisers in New York, or to some other board constituted by the secretary of the treasury at some other port than New York. Section 15 provides that either party, if dissatisfied with the decision of the appraisers, may within 30 days apply to the circuit court in the district in which the matter arises for a review of the questions of law and fact. *Held*, that the jurisdiction here indicated is vested in the circuit court for the district where the port of entry is situated, and not in that of the district where the board of appraisers meets.

At Law.

This is a proceeding under the fourteenth and fifteenth sections of the "Administrative Customs Law," approved June 10, 1890, *vide* 26 St. U. S. 137, 138. Petitioners filed in this court, on January 19, 1891, an application, as contemplated by the fifteenth section of the act, for a review of a decision of the board of general appraisers sitting in New York, concerning the rate of duty on certain breech and muzzle loading guns, there-