

Cox Vs. United States

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Appellant : Cox

Respondent : United States

Judgement :

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Cox v. United States

31 U.S. (6 Pet.) 172

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

The United States instituted a suit in the District Court of the United States for the Eastern District of Louisiana, according to the practice of that state, upon a joint and several bond given by a navy agent and his sureties, and a verdict and

judgment were entered in favor of the plaintiffs against the three defendants, which entry stated the sums for which the defendants were jointly and severally liable to the United States according to the judgment. On the trial, one of the defendants took a separate defense, and he afterwards prosecuted a writ of error to this Court, without joining the

other two defendants in the writ. The other defendants also issued a separate writ of error, and the plaintiffs in error in each writ gave several appeal bonds. The Court overruled a motion to dismiss the cause, the ground of the motion being that but one writ of error could be sued out and that all the defendants should have united in the same.

The petition by which the suit on the bond was instituted states the debt to be \$15,555.18. The verdict of jury was for \$20,000, and upon this a judgment was entered up against the estate of two of the obligors in the bond, jointly and severally for \$20,000, and a judgment against two of the legal representatives of one of the obligors for \$10,000 each. "Upon no possible ground can this judgment be sustained."

The principles which have been established by the decisions of this Court relative to the admission of Treasury transcripts in evidence in suits by the United States against public officers.

A bond was given by the navy agent at New Orleans and his sureties to the United States, conditioned that he should faithfully account for all public moneys received by him, &c.; The sureties to the bond having been sued on the same, after his insolvency and decease, claimed that the United States was bound to divide its action, and take judgment against each surety for his proportion of the sum due according to the law of Louisiana, considering it a contract made there and to be governed in this respect by the law of that state. *Held* that the liability of the sureties must be governed by the rules of the common law, the accountability of the principal being at the City of Washington, to the Treasury of the United States, and the bond being joint and several, each is bound for the whole, and that the contribution between the sureties is a matter with which the United States has no

concern.

The general rule of law is well settled that the law of the place where the contract is made, and not where the action is brought, is to govern in enforcing and expounding the contract unless the parties have a view to its being executed elsewhere, in which case it is to be governed according to the law of the place where it is to be executed.

Admitting the bond to have been signed at New Orleans, it is very clear that the obligation imposed upon the parties thereby looked for its execution to the City of Washington. It is immaterial where the services as navy agent were

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to be performed; his accountability for, nonperformance was to be at the seat of government. He was bound to account, and the sureties undertook that he should account for all public moneys received by him, with such officers of the government of the United States as are duly authorized to settle and adjust his accounts. The bond is given with reference to the laws of the United States on that subject, and such accounting is required to be with the Treasury Department at the seat of government, and the navy agent is bound by the terms of the bond to pay over such sum as may be found due to the United States on such settlement, and such paying over must be to the Treasury Department

or in such manner as shall be directed by the Secretary. The bond is therefore, in every point of view in which it can be considered, a contract to be executed at Washington, and the liability of the parties must be governed by the rules of the common law.

On 19 October, 1825, the district attorney of the United States filed, in the District Court of the United States for the District of Louisiana, the following petition, and a copy of a bond, on which the case of action stated in the petition was founded.

"The petition of the United States, by its attorney, prosecuting within and for said district, respectfully states that Joseph H. Hawkins, late of New Orleans, navy

agent of the United States, now deceased, John Dick, late of New Orleans, now deceased, and Nathaniel Cox, of the same place, on 10 March in the year of our Lord 1821, were indebted to the United States in the sum of \$20,000, for the amount of their obligation in writing, sealed with their seals, for the said sum, bearing date the said day and year, and payable, jointly and severally by them, their heirs, executors, and administrators, as will appear by a certified copy thereof hereunto annexed. To which said obligation a condition was annexed wherein it was provided that if the said Joseph H. Hawkins should regularly account, when thereunto required, for all public moneys that might be received by him from time to time and for all public property committed to his care, with such person or persons, officer or officers of the general government of the United States as should be duly authorized to settle and adjust his accounts, and should moreover pay over as he might be directed any sum or sums that might be found due to the United States upon any such settlement or settlements, and should also faithfully discharge in

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every respect the trust reposed in him, then the said obligation should be void, else it should remain in force."

"And the United States further states that the said Joseph H. Hawkins did not in his lifetime regularly account as aforesaid for all public moneys received by him from time to time and for all public property committed to his care, and did not pay over as aforesaid any sum or sums of money due to the United States as aforesaid, and did not faithfully discharge in every respect the trust reposed in him as aforesaid, but did at his death remain indebted to the United States in a large balance of money, to-wit, the sum of \$15,553.18 for moneys from time to time, since the date of the said obligation, received from the United States as navy agent as aforesaid, by reason of all which the condition of the said obligation hath become broken, and the said debt become due; wherefore they pray process of summons against the legal representatives of the said Joseph H. Hawkins, deceased, and of the said John Dick, deceased, and against the said Nathaniel Cox, and after due proceedings had, that judgment may be rendered against them

for the said debt, with interest and costs."

"J. W. SMITH, Attorney U.S."

Copy of bond annexed to the petition.

"Know all men by these presents that we, Joseph H. Hawkins, as principal, and John Dick and Nathaniel Cox, as securities, are held and firmly bound unto the United States of America, in the sum of \$20,000, current money of the United States, to be paid to the said United States, for which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, in the whole and for the whole, jointly and severally, firmly by these presents. Sealed with our seals and dated this 10 March, Anno Domini 1821."

"The condition of the above obligation is such that if the above bonded Joseph H. Hawkins shall regularly account when thereunto required for all public moneys received by him from time to time and for all public property committed to his care with such person or persons, officer or officers of the government of the United States as shall be duly authorized to settle and adjust his accounts, and shall moreover pay

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over as he may be directed any sum or sums that may be found due to the United States upon any such settlement or settlements, and shall also faithfully discharge in every respect the trust reposed in him, then the above obligation to be void and of no effect, otherwise to remain in full force and virtue."

The bond was duly executed by the obligors and then approved by the District Attorney of the United States for the Louisiana District. The copy was regularly certified from the Navy Department.

Citations were issued from the office of the clerk of the court on 20 October, 1827, &c., to "the legal representatives of J. H. Hawkins, deceased," "the legal representatives of John Dick, deceased," "and to Nathaniel Cox," to appear and

answer, &c.; The marshal returned " *non est inventus* as to the legal representatives of J. H. Hawkins," and "served on the legal representatives of John Dick, deceased," and on "Nathaniel Cox." The separate answer of Nathaniel Cox, filed on 11 December, 1825, stated that he did sign the bond sued upon as surety of the late J. H. Hawkins, navy agent, but he denies that the sum of \$15,553.18 is due by the sureties, as stated in the petition, but only \$12,682.46, for this that since the decease of the said J. H. Hawkins, he has paid on his account, and been allowed in credits at the Treasury of the United States the sum of \$7,317.54, deducting which from the amount of said bond, \$20,000, leaves the aforesaid sum of \$12,682.46.

And that as between himself and his co-surety, he is entitled to a credit for this sum, \$7,317.54, deducting which from the amount of \$10,000, or one-half the penalty of said bond, there will remain due by him the sum of \$2,682.46, and by his co-surety the remainder of the sum, *viz.*, \$10,000, which apportionment he prayed may be made and allowed to him as against his co-surety, with all other and further relief which he may be entitled to.

On 27 February, 1828, on motion of the district attorney and on giving the court to understand that Mrs. Todd, a surviving sister and one of the heirs of John Dick, deceased, resided out of the district in the State of Virginia, the court

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ordered that Levi Peirce, Esq., attorney of Nathaniel and John Dick, two of the heirs of John Dick, deceased, be appointed curator *ad hoc* of Mrs. Todd herein.

On 3 March, 1820, Nathaniel Cox filed a supplemental answer representing that the succession of his co-security, John Dick, was solvent and able to pay the debt claimed. He demanded that the United States divide its action, reducing its demand to the amount of the share and proportion due by each surety.

On 20 May, 1828, Nathaniel and James Dick filed their answer to the petition of the United States that no amicable demand has been made according to law, and that they are therefore not bound for any expenses of this suit, and they further

answer that they are two of three heirs of J. Dick, who has accepted the succession of said J. Dick with benefit of inventory, the third heir being Sarah Dick, wife of J. Todd, of the State of Virginia, citizen, and that therefore they are in no event bound for more than two-thirds of any debt of said J. Dick; that the debt now claimed they deny is in any manner due by the estate of John Dick, but should the same be proved, they say that they have not received more than \$4,000 of the estate of J. Dick, and are liable for no more than \$2,000 each, of which they pray judgment and trial by jury, and that they may be dismissed with, &c.;

The court, on 19 December, 1829, on the plea of Nathaniel Cox for a division of the action, overruled the same.

The cause came on for trial before a jury on 2 January, 1830, when a "verdict for plaintiffs for \$20,000, being the amount of the bond," was rendered.

Bills of exceptions were tendered and sealed by the court on the trial which stated, that

"Nathaniel Cox offered to prove, under the prayer of his answer, that his co-surety should be decreed to contribute in payment according to their respective shares; that certain payments had been made in diminution of the balance of said Hawkins since his death and before the date of the transcript, produced in evidence by the district attorney, by the said Cox, and for this purpose offered in evidence a certain transcript from the Treasury books, duly certified; the introduction of said testimony was opposed

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by the counsel for the heirs of John Dick, his co-surety, on the ground that in this suit there could be no examination of the rights of the sureties as between themselves, which objection being sustained by the court, the testimony was rejected."

And

"That Nathaniel Cox also offered in evidence another transcript from the books of the Treasury, duly authenticated, purporting to be a list of payments made and receipts taken, and passed at the Treasury of the United States in the name of said Joseph H. Hawkins, since 30 September, 1823 (it having been previously shown that the said Hawkins died 1 October, 1823) in support of the allegations in his answer, that he had paid the sum of \$7,317.54, since the decease of said Hawkins, in his capacity of surety; the introduction of said testimony was opposed by the attorney of the United States on the ground that no credits could be allowed but such as had been presented at the Treasury, and refused, which objection being sustained by the court, the evidence was refused, and the same defendant having further offered in evidence the account of said Joseph H. Hawkins as navy agent with the Bank of the United States, in this city during the months of August and September, immediately preceding his death, in support of his said plea, the attorney for the United States objected to the introduction of the same on the ground that the same could not be evidence against the United States; the court sustained also this objection, and overruled the testimony."

On 11 January, 1830, Nathaniel Dick and James Dick filed a motion in arrest of judgment, stating that there was not in the case the number of parties required by law, the other heir not having filed any answer or not being in court by judgment by default; that the judgment cannot be against two heirs for the whole amount due by John Dick, when it is on record, by motion of the United States district attorney, that there is another heir, to-wit, Sarah Todd, the motion of the said attorney being on 27 February, 1828, as extracted from the record book:

"On motion of the district attorney and on giving the court to understand that Mrs. Todd, a surviving sister and one of the heirs of John Dick, deceased, resident out of the district, to-wit, in the State of Virginia, ordered that Levi Peirce, Esq., attorney of Nathaniel Dick and

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James Dick, two of the heirs of John Dick, deceased, be appointed curator *ad hoc* of the said Mrs. Todd herein."

The motion in arrest of judgment was overruled by the court, and on 18 January, 1830, judgment was entered in favor of the United States in the following terms:

"The United States v. Representatives of Hawkins *et al.* -- The court, having maturely considered the motion in arrest of judgment, now orders that judgment be entered up, as of the 15th instant, against the estate of John Dick and Nathaniel Cox, jointly and severally, for the sum of \$20,000, with six percent interest from 2 January, 1830, until paid, and costs of suit, and that judgment be entered up against Nathaniel Dick and James Dick for the sum of \$10,000 each, with six percent interest from 2 January, 1830, until paid, and the costs."

"SAMUEL H. HARPER, Judge U.S."

The defendants, on 20 January, 1830, paid into court the sum of \$12,682.46 on account of the judgment.

Nathaniel Cox, on 21 January, 1830, issued a writ of error to this Court, and on the same day he filed an appeal bond, conditioned to prosecute the same with effect. The bond recited that he had filed a petition praying that a writ of error may be allowed to him from a certain final judgment rendered against him in the suit of the United States against the heirs and representatives of Joseph H. Hawkins, the heirs and representatives of John Dick, and Nathaniel Cox, in the District Court of the United States in and for the Eastern District of Louisiana.

The writ of error alleged that in the proceedings in the case in the District Court of Louisiana, "manifest error had intervened to the great damage of the said Nathaniel Cox."

Afterwards, on 22 January, 1830, "Nathaniel Dick and James Dick, two of the heirs of John Dick deceased," prayed a writ of error to this Court which was awarded, and an appeal bond was given by them on 25 January, 1830, which recited that they

"had filed a petition, praying that a writ of error may be allowed to them from a certain final judgment rendered against them in the suit wherein the United States

are plaintiffs against the heirs and legal representatives

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of Joseph H. Hawkins, the heirs and legal representatives of John Dick, and Nathaniel Cox, defendants, in the District Court of the United States for the Eastern District of Louisiana."

This writ of error stated that the court was informed that in giving the judgment in the case, "manifest error had intervened" "to the great damage of Nathaniel Dick and James Dick, two of the heirs of said John Dick."

Separate citations were issued upon each writ of error. Upon the first, the citation required the United States "to show cause why the judgment rendered against Nathaniel Cox should not be reversed." On the second, the defendants in error were required to show cause "why the judgment rendered against Nathaniel Dick and James Dick should not be reversed."

The case, at an early day of the term, on the motion of Mr. Taney, Attorney General of the United States, was dismissed, no appearance having been entered for the plaintiffs. It was afterwards reinstated on motion of Mr. Johnston, who appeared as the plaintiffs' counsel.

Afterwards, the Attorney General of the United States moved the Court

"to quash the writ of error in the cause, because all the parties had not joined in the writ of error, the judgment in the court below being joint and several, but had sued out several writs of error."

Before proceeding to argue the motion, Mr. Taney asked the Court if his having, on a former day, appeared in the case for the purpose of moving to dismiss the writs of error was to be considered as a general appearance. The Court stated that it considered it a special appearance for the purpose of the motion only.

For the United States it was contended, that all the defendants should have united in the same writ of error. The judgment being joint and several, it must stand

against all unless it should be reversed against all.

The defendant, Nathaniel Cox, made a separate application for a writ of error, gave a separate bond, and issued a separate citation calling on the United States to sustain the validity of the judgment of the district court against himself only. The

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other plaintiffs in error, Nathaniel and James Dick, also proceeded separately by writ of error, bond, and citation, and they require the defendants in error "to show cause why the judgment against them shall not be reversed."

Thus, therefore, the whole character of the case is changed when brought to this Court. Here, the proceedings are separate and distinct; the parties are different from those in the joint proceedings below; they came here by different writs of error, and call upon the United States to appear in this Court by different citations and for separate purposes.

It is absolutely necessary in proceedings at the common law that all the parties to a judgment shall unite in the writ of error to the superior court unless by regular process they have been severed. The writs of error by which the case is brought up are not in the proper form. They state a separate judgment to have been rendered in Louisiana, and the record shows a joint and several judgment. Cited 9 Petersdorf's Ab. 10, note; [24 U. S. 11](#) Wheat. 414.

If the case can be brought up separately, one party may present it to this Court at one time and the other at another time.

The question is unimportant in the final disposition of the case unless, if the writs of error are erroneous, the security which is given in the court below will thereby be released, and thus the United States be deprived of the benefit of the appeal bond, the writs of error being a supersedeas.

Although the proceedings in the court of Louisiana are not according to the common law while in that district, yet when these proceedings are brought to this Court, they must go on according to the common law rule, and so the act of

Congress considers the subject. Nor can the parties in such a case be without remedy. If the usual forms of the common law in cases of writs of error will not apply to such a case as this, and the proceedings in the courts of Louisiana, being according to the civil law, require a different form of a writ of error to meet the actual situation of the parties, this Court has full authority by law to frame the proper and competent process.

For the plaintiffs in error, Mr. Johnston of Louisiana stated that he felt no particular interest in this question except as a general rule of practice, inasmuch as the dismissal would not

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preclude the plaintiffs from bringing up the writ of error in any form that might be prescribed within the time allowed by law. The law of Congress does not prescribe the manner of suing out a writ of error. It is therefore left to the rules of practice which the court may adopt to facilitate the uniform regular administration of justice. No rule has been established in this case.

The Court in general refers to the laws and practice in England not as law, but as a guide as the evidence of what enlightened men have considered, in the country from which we borrow our terms of law, as the best rules of practice.

It is true by the laws of England that all persons who may be damnified by a judgment may sue out a writ of error, even those indirectly and remotely interested. It is true also as a general rule that all parties must join in a writ of error. But if the parties do not or will not join, the court orders a summons and severance, and that proceeding authorizes any party to proceed in the writ. If the court therefore adopts the rule that all must join, they must also adopt the remedy of ordering, in all proper cases, a severance of the parties, and this makes the whole affair a mere matter of form.

It must be obvious that in many cases all the parties will not join in the appeal; sometimes they are satisfied with the judgment; often they have no interest in reversing it. It will sometimes occur that the judgment is favorable to one

defendant and unfavorable to the other, and in suits against several, the chief question may be among the defendants; and in the case now pending, the question was whether a payment made by one should go to his credit or to the credit of all, and by the laws of Louisiana, where the defendants may pray judgment against the plaintiff, a judgment may be rendered against one defendant while the other defendant may have judgment against the plaintiff; in all these cases, the defendants have a different and adverse interest, when there would be no motion to appeal, and when even their own interest might be compromised. The party interested in reversing the judgment only will sue out a writ of error. The court cannot compel the other party to join, and justice could not be done if either party could defeat the other of their legal rights. The aggrieved party must be allowed to bring up the case, and if it is necessary

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to comply with obsolete forms, the court must decree a severance.

But in this case, all the parties are before the Court. They had separate grounds of defense, the court below allowed them to sever in their answer; judgment was rendered against all *in solido*, and separately for the whole amount against two of the defendants. They have both sued out a writ of error, so that the only motion here should be to consolidate. The parties have distinct grounds of error and claim distinct remedies, but the judgment may be reversed in whole or in part; it may be good against one defendant and erroneous as to the others.

The case of *Williams v. Bank* in 11 Cranch is not applicable, because Williams alone took up the case, but even then, I understand the Court would have granted summons and severance.

The reason assigned for the English rule why all parties must join is that a writ of error suspends execution, which is not so here, where execution goes in all cases against all those who have not joined in the writ of error and given bond.

This must be a very important principle in practice, and ought to be settled. It is extraordinary that no such case has heretofore occurred.

The object must be to have a reasonable rule, a practicable and convenient rule, that will facilitate the administration of justice, that will advance the remedy by writ of error, and not one calculated to defeat or obstruct the course of the laws by objections merely technical as to the forms of proceeding.

It will be found more convenient to adapt our proceedings upon writ of error to the general practice of the state courts. They are more consonant to our system and better known to the bench and the bar.

The court overruled the motion to dismiss the writ of error.

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

This cause comes up by writ of error from the District Court of Louisiana District. The suit was instituted according to the practice of that court by petition, which states that Joseph H. Hawkins, late of New Orleans, navy agent of the United States, now deceased, John Dick, late of the same place, deceased, and Nathaniel Cox, of the same place, on 10 March, 1821, by their bond, became jointly and severally bound to the United States in the penalty of \$20,000. To which obligation a condition was annexed by which it was provided that if the said Joseph H. Hawkins shall regularly account, when thereunto required, for all public moneys received by him from time to time and for all public property committed to his care with such person or persons, officer, or officers of the government of the United States as shall be duly authorized to settle and adjust his accounts, and shall pay over as he may be directed any sum or sums that may be found due to the United States upon any such settlement, and shall faithfully discharge in every respect

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the trust reposed in him, then the obligation to be void, otherwise to remain in full force and virtue, and the petition further states that the said Hawkins did not account for all public moneys received by him and did not pay over the sums due

from him to the United States, but at his death remained indebted to the United States in the sum of \$15,553.18 for moneys received by him from the United States since the date of the said bond as navy agent, by reason whereof the condition of the said bond had become broken and the said debt become due, and prayed process of summons against the legal representatives of Hawkins and Dick, deceased, and against Nathaniel Cox, and that judgment may be rendered against them for the said debt with interest and cost. A copy of the bond, duly authenticated, is annexed to the petition, and citations were issued against the legal representatives of J. H. Hawkins, deceased, and of John Dick, deceased (without naming or designating them in any other manner), and against Nathaniel Cox.

As to the representatives of Hawkins the citation was returned not found, and as to the representatives of John Dick it was returned served, and the like return as to Cox.

Cox appeared and answered, denying that the sum of \$15,553.18 is due from the sureties, as stated in the petition, alleging that he has paid, since the decease of Hawkins, \$7,317.54, which had been allowed at the Treasury of the United States, leaving a balance only of \$8,235.64. And according to the course of practice in Louisiana, he represents that the succession of his co-surety John Dick, is solvent, and demands that the United States divide their action by reducing their demand to the amount of the share and proportion due by each surety, which was overruled by the court.

Nathaniel Dick and James Dick appear and answer that they are two of three heirs of John Dick, and in no event bound for more than two-thirds of any debt of John Dick, and deny that the debt is in any manner due by the estate of John Dick, but should the same be proved, they say they have received

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no more than \$4,000 of the estate of John Dick, and are liable for no more than \$2,000 each, and pray judgment and trial by jury. The cause was tried by a jury,

and a general verdict for \$20,000 found for the plaintiffs, being the amount of the penalty in the bond. Upon which the court gave judgment against the estate of John Dick and Nathaniel Cox, jointly and severally, for the sum of \$20,000, with six percent interest from 2 January, 1830, until paid, and also gave judgment against Nathaniel Dick and James Dick for the sum of \$10,000 each, with interest, &c.;

In the course of the trial, a bill of exceptions was taken to the opinion of the court in rejecting evidence offered on the part of Cox in support of his answer setting up the payment of \$7,317.54, made by him after the death of Hawkins.

It is deemed unnecessary to notice the numerous and palpable errors contained in this record; that which arises from the entry of the judgment is insuperable. It is difficult to conceive, unless through mistake, how such a judgment could be entered. The demand in the petition is only \$15,553.18. The verdict of the jury is \$20,000, and upon this a judgment is entered up against the estate of John Dick and Nathaniel Cox jointly and severally for \$20,000, and a judgment also against Nathaniel Dick and James Dick for \$10,000 each. Upon no possible grounds, therefore, can this judgment be sustained.

There are, however, one or two questions arising upon this record which have been supposed at the bar to have a more general bearing which it may be proper briefly to notice.

Upon the trial, the defendant N. Cox offered in evidence a transcript from the books of the Treasury, duly authenticated, purporting to be a list of payments made and receipts taken and passed at the Treasury of the United States in the name of Joseph H. Hawkins since 3 September, 1823, it having been previously shown that Hawkins died on 1 October of that year. This evidence was offered in support of the allegation in Cox's answer that he had paid

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\$7,317.54 since the decease of Hawkins in his capacity of surety. This testimony was objected to by the attorney of the United States on the ground that no credits could be allowed but such as had been presented at the Treasury and refused.

The objection was sustained by the court and the evidence rejected.

This was supposed in the court below to come within the Act of Congress, 2 Laws U.S. 595, which declares that in suits between the United States and individuals, no claim for a credit shall be admitted upon the trial (except under certain specified circumstances, not applicable to this case) but such as shall appear to have been presented to the accounting officers of the Treasury for their examination and by them disallowed.

This transcript is not set out in the record, and we can only judge of it from what is stated in the bill of exceptions; and from this it does not appear to be a case coming at all within the act of Congress. It was not offered as evidence of any new claim for a credit which had not been presented to the accounting officers of the Treasury. All the credits claimed had been given at the Treasury, and the only purpose for which it was offered was to show that such credits were given after the death of Hawkins, and although standing in his name, the payments could not have been made by him, and to let in evidence to show that they were in fact made by the surety. There is no evidence in the cause showing the course of keeping the accounts at the Treasury in such cases. But it is believed that new accounts are never opened with the sureties. The accounting officers have no means of deciding whether the money is paid out of the funds of the sureties or out of those of the principal. That is a question entirely between the sureties and the representatives of the principal. If application had been made at the Treasury and the accounting officers had transferred the payments and given credit to Cox instead of Hawkins, it would not have changed the state of the case as between the United States and the parties in the bond, and as between the sureties themselves, it would have decided nothing, even if that was an inquiry that could have been gone into upon this trial. But nothing done at the Treasury which did not fall within the scope of the authority of the accounting officers in settling accounts could have been received in evidence.

In the case of [United States v. Buford](#), 3 Pet. 29, it was held by this Court that an account stated at the Treasury Department which does not arise in the ordinary mode of doing business in that department can derive no additional validity from being certified under the act of Congress. Such statements at the Treasury can only be regarded as establishing items for moneys disbursed through the ordinary channels of the department when the transactions are shown by its books. If then the accounting officers of the Treasury could have done nothing more than had already been done by giving credit on Hawkins' account for payments alleged to have been made by Cox after his death, whence the necessity of making any application to the Treasury? It would have been a nugatory act, and the law surely ought not to be so construed as to require of a party a mere idle ceremony. The law was intended for real and substantial purposes, that the United States should not be surprised by claims for credits which they might not be able to meet and explain in the hurry of a trial. But as no new credit was asked in this case, it would have been useless to make any application to the Treasury for the mere purpose of being refused.

The evidence offered of Hawkins' account as navy agent with the branch bank at New Orleans was properly rejected. It was not competent evidence in this cause in any point of view unless it was to show that there was a balance in favor of Hawkins which ought to go to the credit of his account with the government. But for this purpose it was not admissible, it not having been presented to the accounting officers of the Treasury for allowance. This was setting up a claim for a new credit, and could not be received according to the express provisions of the act of Congress.

The proceedings in this cause, and the manner in which the judgment is entered, have been considered at the bar as affording a proper occasion for the court to decide whether this contract and the liability of the parties thereupon are to be governed by the rules of the civil law which prevail in Louisiana or by the common law which prevails here.

It was contended on the part of the plaintiffs in error that the United States was bound to divide its action and take judgment against each surety only, for his

proportion of the

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sum due according to the law of Louisiana, considering it a contract made there and to be governed in this respect by the law of the state.

On the part of the United States it is claimed that the liability of the sureties must be governed by the rules of the common law, and the bond being joint and several, each is bound for the whole, and that the contribution between the co-sureties is a matter with which the United States has no concern.

The general rule on this subject is well settled -- that the law of the place where the contract is made, and not where the action is brought, is to govern in expounding and enforcing the contract unless the parties have a view to its being executed elsewhere, in which case it is to be governed according to the law of the place where it is to be executed. 2 Burr. 1077; 4 Term 182; 7 Term 242; 2 Johns. 241; 4 Johns. 285.

There is nothing appearing on the face of this bond indicating the place of its execution, nor is there any evidence in the case showing that fact. In the absence of all proof on that point, it being an official bond taken in pursuance of an act of Congress, it might well be assumed as having been executed at the seat of government. But it is most likely that in point of fact, for the convenience of parties, the bond was executed at New Orleans, particularly as the sufficiency of the sureties is approved by the District Attorney of Louisiana.

But admitting the bond to have been signed at New Orleans, it is very clear that the obligations imposed upon the parties thereby looked for its execution to the City of Washington. It is immaterial where the services as navy agent were to be performed by Hawkins. His accountability for nonperformance was to be at the seat of government. He was bound to account, and the sureties undertook that he should account for all public moneys received by him, with such officers of the government of the United States as are duly authorized to settle and adjust his accounts. The bond is given with reference to the laws of the United States on that

subject. And such accounting is required to be with the Treasury Department at the seat of government, and the navy agent is bound by the very terms of the bond to pay over such sum as may be found due to the United States on such settlement,

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and such paying over must be to the Treasury Department or in such manner as shall be directed by the Secretary. The bond is therefore, in every point of view in which it can be considered, a contract to be executed at the City of Washington, and the liability of the parties must be governed by the rules of the common law.

The judgment of the court below is reversed; and the cause sent back with directions to issue a venire de novo.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of East Louisiana and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court with directions to award a *venire facias de novo*.