

United States Vs. Buzzo

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SooperKanoon Citation : sooperkanoon.com/82430

Court : US Supreme Court

Decided On : 1873

Appeal No. : 85 U.S. 125

Appellant : United States

Respondent : Buzzo

Judgement :

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United States v. Buzzo

85 U.S. (18 Wall.) 125

ON CERTIFICATE OF DIVISION OF OPINION BETWEEN THE JUDGES

OF THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

SYLLABUS

1. When, on a view of the record, it appears that from some fatal defect in the proceedings, no judgment can be entered against the defendant in the court below on a suit there pending, this Court will decline to answer a question certified to it

on division of opinion between the judges of the circuit court upon a contrary assumption.

2. On an information under the ninth section of the Internal Revenue Act of July 13, 1866, which enacts that any person who shall issue any instrument

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&c.;, for the payment of money, without the same's being duly stamped, "with intent to evade the provisions of this act, shall forfeit and pay," &c.;, an intent to evade is of the essence of the offense, and no judgment can be entered on a special verdict which, finding other things, does not find such intent.

An Internal Revenue Act [[Footnote 1](#)] of 1866 enacts

"That any person who shall make . . . or issue any instrument, document, or paper, of any kind or description whatsoever, . . . for the payment of money, without the same being duly stamped, . . . *with intent to evade the provisions of this act*, shall for every such offense forfeit the sum of \$50,"

&c.;

Under this act, an information was filed against one Buzzo charging him, as clerk of the Calumet Mining Company, with making and issuing a certain written and printed evidence of money to be paid without the same being duly stamped and with intent to evade the provisions of the act. The form of the paper was as follows, to-wit:

image:a

The defendant pleaded not guilty, and the jury found a special verdict, setting forth the circumstances under which he issued the draft in question, and others of the same character, which he did on behalf of the Calument Mining Company (a corporate body), at its mines in Michigan, in

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payment for labor and other things, the defendant being superintendent of the mines, and Seabury, the drawee of the draft, being the treasurer of the company at Boston, where the drafts were redeemed. The special verdict stated that the drafts were issued without being stamped, but it did not state that this was done *with intent to evade the provisions of the act*.

Upon the special verdict as thus found, the district attorney of the United States moved for judgment, and thereupon the question arose whether, upon the facts stated in the verdict (and under certain provisions of the Internal Revenue Act, not necessary, in view of the point adjudged in the case by this Court, here to be stated), [[Footnote 2](#)] the instrument set forth in the information was subject to a stamp when issued. Which question, the judges being divided in opinion upon it, was certified to this Court for decision.

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MR. JUSTICE BRADLEY delivered the opinion of the Court.

As in this case the intent is the essence of the crime, [[Footnote 3](#)] and is not found, no judgment can be entered on the verdict,

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whether the facts disclosed therein required a stamp to be affixed to the draft or not. To decide the question proposed, therefore, would avail nothing. An imperfect verdict, or one on which no judgment can be rendered, must be set aside, and a *venire de novo* awarded. [[Footnote 4](#)] The case must therefore be dismissed.

It is proper to observe that in the case of *United States v. Isham*, [[Footnote 5](#)] recently decided by this Court, we held that no stamp is required on drafts of the kind above described, when not exceeding ten dollars in amount.

Case dismissed.

[[Footnote 1](#)]

Act of July 13, 1866 (9, 14 Stat. at Large 142), amendatory of the 158th section of the Act of June 30, 1864, 13 *id.* 293.

[[Footnote 2](#)]

They may be seen in [United States v. Isham](#), 17 Wall. 496.

[[Footnote 3](#)]

1 Bishop's Criminal Procedure, 280, or 2d edition, 523; *People v. Lehman*, 2 Barbour 218, 219.

[[Footnote 4](#)]

Bacon's Abridgment, title "Verdict" (M.); Tidd's Practice, 992, 9th ed.; *Holland v. Fisher*, Orlando Bridgman 187, 188.

[[Footnote 5](#)]

[84 U. S. 17](#) Wall. 496. [The case had not been decided when the present one was argued -- REP.]