

UNITED STATES v. VAN VLIET.

(District Court, E. D. Michigan. February 23, 1885.)

1. CRIMINAL LAW—TAKING EXCESSIVE PENSION FEE—U. S. v. VAN VLIET, 22 FED. REP. 641, REVERSED.

The right to prosecute for a violation of Rev. St. , 5485, in demanding and receiving a greater compensation for services in procuring a pension than is allowed by law, when the offense was committed prior to the act of July 4, 1884, is saved by section 13 of the Revised Statutes. The case of *U. S. v. Van Vliet*, 22 FED. REP. 641, reversed.

2. SAME—DEMURRER TO INFORMATION—MISTAKE OF LAW.

If a demurrer to a valid information be sustained under a mistaken view of the law, and the judgment is afterwards reversed, the defendant may be rearrested, and put upon his plea to the merits.

On Rehearing of Demurrer to Information.

Defendant was prosecuted by information of the district attorney for a violation of Rev. St. § 5485, in demanding and receiving a greater compensation for his services and instrumentality in prosecuting certain claims for pensions than was allowed by law. A demurrer was interposed, upon the ground that the law fixing the compensation for such services had been repealed, and hence that there could be no conviction. This demurrer was sustained, and the district attorney moved for a rehearing.

S. M. Cutcheon, Dist. Atty., for the United States.

I. T. Cowles, for defendant.

BROWN, J. Upon the original argument I sustained this demurrer, upon the ground that the act of 1878, fixing the amount which pension agents were entitled to charge for their services, had been repealed by the act of July 4, 1884, without saving the right to prosecute for offenses committed prior to the repealing act. *U. S. v. Van Vliet*, 22 FED. REP. 641. Since then my attention has been called to section 13 of the Revised Statutes, which enacts that "the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide; and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability." This section escaped the notice both of court and counsel. I consider it a complete answer to the demurrer. It was at one time doubted whether it applied to criminal prosecutions, but the case of *U. S. v. Ulrici*, 3 Dill. 532, and *U. S. v. Barr*, 4 Sawy. 254, have apparently put the question at rest. The case of *U. S. v. Tynen*, 11 Wall. 88, was decided in view of the law in force before the act of February 25, 1871, which first contained this section, was passed.

There is no legal objection to the rearrest of the defendant. The constitutional provision, that no person shall "be subject for the same offense to be twice put in jeopardy," has no application until a jury

has been impaneled and sworn. 1 Bish. Crim. Law, (5th Ed.) §§ 1014-1016. The very case presented by the record here is thus stated by Mr. Bishop, (section 1027:)

"For example, if, without a trial, the court quashes a valid indictment, or gives the defendant judgment on demurrer, under the erroneous belief that it is invalid, a trial may be had after the prosecutor has procured the reversal of this judgment, because, as we have already seen, the prisoner is not in jeopardy until the jury is impaneled and sworn."

The motion of the district attorney for a *capias* is therefore granted.

GOODYEAR and another v. HARTFORD SPRING AXLE Co.

(Circuit Court, D. Connecticut. February 27, 1885.)

PATENTS FOR INVENTIONS—NOVELTY—STEELE SAND-BOX FOR CARRIAGE AXLES.
Letters patent No. 62,231, granted to John S. Steele, February 19, 1867, for an improved sand-box upon carriage axles, examined, and held void for want of novelty.

In Equity.

Henry T. Blake, for plaintiffs.

Wm. Edgar Simonds, for defendant.

SHIPMAN, J. This is a bill in equity to prevent the alleged infringement of letters patent granted to John S. Steele, February 19, 1867, for an improved sand-box upon carriage axles. The patentee says in his specification:

"My invention consists in a light, extra sand collar, C, placed upon a common axle a short distance from the wearing collar, A. The chamber, E, thus formed by the collar, A, collar, C, and covering, D, prevents the mud and dust from coming in contact with the wearing collar, A. The housing or covering, D, is formed by an expansion and continuation of the pipe-box, F."

The claim was for "the sand collar, C, and chamber, E, in combination with the extended pipe-box, F, for the purpose set forth."

The question in the case is that of patentable novelty.

A "common axle" is an axle that has a single nut in front, with a solid collar, or collar "shrunk on," at the inside end. The collar at the back forms a bearing surface, which receives the endwise play of the hub or of the edge of the axle-box, which is driven through the hub. The advantages of the axle were that it was "easily made and convenient to oil;" its disadvantage was that sand would find its way to the inside end, so that the surface at the collar was liable to be rapidly worn away. The "half-patent axle" was the common axle with the axle-box enlarged at the inner end, and projecting over and inclosing the collar. This was a slight improvement upon the common axle, but obviously did not exclude the sand from the surface of the wearing collar.