

Co. v. McCarthy, 96 U. S. 267, Mr. Justice SWAYNE, in speaking of an attempt of the railway company on the hearing in the supreme court to excuse itself for the non-performance of a contract to carry certain cattle on the ground that the act would have been a violation of the Sunday law of West Virginia, when it appeared that on the trial in the court below it had relied on the fact that it was impossible to forward the cattle on Sunday for the want of cars, said:

"This point was an after-thought, suggested by the pressure and exigencies of the case. Where a party gives a reason for his conduct and decision touching anything involved in a controversy, he cannot, after litigation has begun, change his ground, and put his conduct upon another and different consideration. He is not permitted thus to mend his hold. He is estopped from so doing by a settled principle of law."

On the whole, I am of the opinion that the demurrer to this reply is not well taken, and should be overruled; and it is so ordered.

HUGHES v. DUNDEE MORTGAGE & TRUST INVESTMENT Co. (Three Cases. Nos. 1,066, 1,069, 1,197.)

(Circuit Court, D. Oregon. July 12, 1886.)

DEADY, J. These three cases were argued and submitted with the foregoing one. In No. 1,066 the plaintiff claims \$5,651.03, with interest from January 1, 1882, for making 347 other certificates of title for said trust company.

In 1,069 he claims \$5,890, with interest from the same date, for making 297 certificates of title for the defendant.

In 1,197 he claims \$8,839, with interest from January 30, 1880, for services in paying out and delivering for said trust company \$262,866, on 322 loans made by it before that time.

In each of these cases the defendant pleads the judgment in the former action between the parties as a bar, to which the plaintiff makes the same replies. The questions arising on the motion to strike out portions of the replication, and the demurrers to the replies therein, are the same as in 1,056, and are disposed of accordingly for the reasons therein given.

UNITED STATES v. MORGAN and others.

(District Court, S. D. New York. June, 1886.)

1. OFFICIAL BOND—SURETIES—DISBURSING OFFICERS—SPECIFIC APPROPRIATIONS—UNAUTHORIZED PAYMENTS—MINGLING ACCOUNTS—DEBITS CANCELED.

Disbursing officers of the treasury are not authorized to draw, nor the treasurer to pay, from the specific appropriations, any other sums than those authorized by law on account of the appropriations respectively.

2. SAME—CASE STATED.

M. was disbursing officer, as chief of the bureau of accounts, in the department of state. As such, he gave a bond, with the defendants as sureties, for the faithful discharge of his duties. Moneys for specific purposes, appropriated by congress, were placed to his credit by the treasurer, during several years. M., during the same time, received considerable moneys monthly for issuing passports, which was not a part of his official duty as disbursing officer, and for which the sureties were not liable. M. was in the habit of using current receipts from passport moneys to pay current claims upon his treasury account, and at the end of the month he drew upon his treasury account in order to pay to the treasury the amounts due to the government for passport moneys. Upon M.'s death, in January, 1884, his treasury account was found about \$17,000 short, and during the period covered by these accounts he had drawn from it about \$29,000 for paying into the treasury his passport moneys. Each draft, and a letter accompanying it, stated that purpose, and the treasurer accordingly debited the appropriations account, and credited the same to M. in the passport account. *Held*, that the drafts on the appropriations account to pay passport moneys were unauthorized, illegal, and void; and no change in the actual money in the treasury appearing, *held*, that the debits charged against the appropriations account were unauthorized; that the sureties were entitled to have them canceled, and the accounts being readjusted accordingly, and there being no deficit in the appropriations account, a verdict was directed for the defendants

Suit on an Official Bond.

G. E. P. Howard, Asst. U. S. Atty., for plaintiff.

Geo. Bliss, Jr., for defendants.

In directing a verdict for the defendants, the court ruled substantially as follows:

BROWN, J. The defendants in this action, who are the sureties in Mr. Morgan's bond for "the faithful discharge of his duties," are answerable only for his acts as a disbursing agent, as chief of the bureau of accounts in the department of state. Besides performing this duty, Mr. Morgan, at the same time, by the direction of the secretary of state, received moneys for the issuing of passports, to the amount of from eleven to fifteen hundred dollars per month. His acts in the latter capacity, it is conceded, were independent of his duties as disbursing clerk, and the sureties in his bond are in no way answerable for any misappropriation of the passport moneys.

As disbursing clerk, he had charge of, and disbursed, certain funds appropriated by congress, from time to time, for specific purposes. For the amounts thus appropriated warrants were drawn by the secretary of the treasury upon the treasurer of the United States, directing that the amounts appropriated on account of these particular funds be placed to the credit of Mr. Morgan, for that purpose, on