

right to the tax did not accrue, because the tax could not be demanded before the repeal of the act. *Mason v. Sargent, supra.*

It follows, therefore, that the judgment of the court below was right, and it is accordingly affirmed.

UNITED STATES *v.* TRUCK'S ADM'X.¹

(*Circuit Court, E. D. Pennsylvania.* October 16, 1886.)

INTERNAL REVENUE — LEGACY AND SUCCESSION TAXES — ACT OF CONGRESS OF JUNE 30, 1864.

A common-law action cannot be maintained to enforce the payment of legacy and succession taxes imposed by the act of congress of June 30, 1864. That act provides a remedy which the United States must pursue where the tax has not been paid.

Writ of Error to the District Court. See 27 Fed. Rep. 541.

This was an action brought by the United States to recover legacy taxes imposed by the act of congress of June 30, 1864.

John K. Valentine, Dist. Atty., for the United States.

Bernard Gilpin, for defendant in error.

McKENNAN, J. The long delay which has attended the assertion of the claim set up in this case, and the apparent injustice of subjecting a trustee to personal liability for it, who has long since paid out the trust fund in her hands, under a judicial decree, ought to protect her from such liability, unless the right of the government to recover is entirely clear.

The only question which it is necessary to consider is the primary one, can the United States, in view of the provisions of the act of congress imposing the tax claimed, maintain an action at common law to recover it from the defendant? It was decided by the court below that it could not. It is a rule of the common law, that where a statute creates a right, and provides a particular remedy for its enforcement, the remedy is generally exclusive of all common-law remedies. But it has been held that this rule is not applicable to the United States, unless it is expressly made so by the statute under which the claim is made. *Savings Bank v. U. S.*, 19 Wall. 237. By the act of 1862, and its supplements and substitutes a tax was imposed upon successions. This tax was made a lien or charge upon the property bequeathed or to be distributed, and it was made the duty of the executor, administrator, or trustee to pay it; and, in case of his refusal or neglect to pay it, it is provided that "proceedings shall be commenced before any court of the United States, in the

¹Reported by C. B. Taylor, Esq., of the Philadelphia bar.

name of the United States, against such person or persons as may have the actual or constructive custody or possession of such personal estate or property, or any part thereof; and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court."

The language of the act is imperative that this remedy shall be pursued if payment of the tax is not made, and that it shall be in the name of the United States. This could not be expressed in clearer or more explicit language. If it is plain, then, that congress intended that the proceedings prescribed by the statute should be the remedy pursued by the United States when the tax was not paid, then the common-law rule above stated applies, and a common-law action cannot be maintained. This is decisive of the case against the United States, and the judgment of the district court is affirmed.

UNITED STATES v. RENNECKE and another.

(District Court, W. D. South Carolina. 1886.)

1. INTERNAL REVENUE—VIOLATION OF LAWS—RETAIL LIQUOR DEALER.

One is engaged in the business of a retail liquor dealer, within the meaning of Rev. St. U. S. § 3242, if he has liquor on hand to be sold to any one who applies for it.

2. SAME—SINGLE ACT.

Evidence of a single act of selling may be sufficient for conviction. The absence of a bar and other appliances should not weigh much in defense.

3. SAME—CARRYING ON RETAIL LIQUOR BUSINESS.

Supplying a friend as a matter of accommodation merely, from liquor on hand for private use, is not carrying on the business, although money is received for it.

Indictment for Carrying on Retail Liquor Business without License.

Mr. Youmans, Dist. Atty., for the United States.

Mr. Cooke, for defendants.

SIMONTON, J., (*charging jury*.) The defendants are indicted for the violation of section 3242 of the Revised Statutes, in that they carried on the business of retail liquor dealers without having paid the special tax. The question you must answer by your verdict is, did they *carry on the business* of retail liquor dealers? The sale of liquor on more than one occasion has been testified to by several witnesses. In answering this question regard must be had to the circumstances attending the sale. If the sale was under such circumstances as indicated that the defendants had the liquor on hand to be sold to any one who applied for it, then they may be said to have been engaged in the business, although but one act of selling has been proved. On the other hand, if they permitted a neighbor or friend to have a part