

have accrued within the time specified in the act. In *Railroad Co. v. U. S.*, 8 Sup. Ct. Rep. 319, it is decided that the earnings of the year 1871, and used in constructing new works, are not taxable under this law, because not embraced in the language of this act. The act of 1870 was part of the general system of income taxation, and it fixes the time within which the tax should cease, hence the reason for limiting the tax on interest to that which is *paid* during the year 1871. Another section of this act (seventeenth) repealed the law which authorized the levying and collecting income tax after August 1, 1870, on interest paid. The saving of all rights, etc., which had or might accrue, as is done in this and other acts repealing previous laws, can have no effect on the interest which became payable during and prior to the year 1871, but was not paid as alleged until 1872, because, if we are correct in our views, no right of taxation has accrued to the United States under either the act of 1862, 1864, as amended by the act of 1866, or the act of 1870.

The demurrer of the defendant to the petition, as amended, should be sustained; and it is so ordered.

UNITED STATES v. BURGESS.

(District Court, W. D. South Carolina. February 1, 1888.)

INTERNAL REVENUE—ILLICIT DISTILLING—REV. ST. U. S. § 3279.

One who erects a "shanty" in which is put up an illicit still, does not come under Rev. St. U. S. § 3279, which provides that "every person who works in any distillery * * * on which no sign is placed and kept, * * * shall be fined," etc.

Indictment for Working in an Illicit Distillery, in violation of Rev. St. U. S. § 3279.

C. M. Furman, Asst. Dist. Atty., for the United States.

A. Blythe, for defendant.

SIMONTON, J. The evidence in this case is that the defendant erected for one Sessions a shanty in which was put up an illicit still. There is no evidence that he ever worked in or about the distillery after the still was set up. The defendant asks that the jury be instructed to find a verdict of not guilty. The section of the Revised Statutes punishes "every person who works in any distillery * * * on which no sign is placed and kept." Section 3279. Evidently this means, working in any establishment or place in which distilled liquors are made. The fact that no sign is placed and kept on the distillery is the gist of the offense. The first part of this section requires the sign to be put up by a person engaged in distilling. The work that defendant did in putting up the shanty is not the work in a distillery forbidden by this section. The jury will find a verdict of not guilty.

UNITED STATES v. DURHAM.

(District Court, W. D. South Carolina. February, 1888.)

INTERNAL REVENUE—SPECIAL LICENSE—TO RETAIL AT DISTILLERY—SALES COVERED BY.

If persons dealing in liquor have paid the special retail tax for retailing at the distillery, they may receive and fill orders at their place of business, and send the liquor to persons residing at a distance. But they cannot make sales in small quantities from barrels to persons along the road, who pay them on receipt of the liquor.

Indictment for carrying on the business of retail liquor dealer, without having paid the special tax.

C. M. Furman, Asst. U. S. Atty., for plaintiff.

A. Blythe, for defendant.

SIMONTON, J., (*charging the jury*.) The defendant is indicted for carrying on the business of a retail liquor dealer, and not having paid the special tax. Some witnesses swear to purchases of whisky from defendant at various times. You are to decide whether they are credible witnesses. If you believe them, this will form your verdict. But the defendant, testifying in his own behalf, gives this account of the matter: He says that he and two other persons were the owners of a licensed distillery, near the North Carolina line, in this state; that they also had paid the special tax for retailing liquor at the distillery; that they received, in due course of business, orders for whisky, and, filling these orders, they sent their wagon, containing whisky in barrels, to different parts of the state, 20, 30, and 50 miles from their distillery; that all the liquor which he delivered had been ordered in this way. When defendant was arrested he was in charge of a wagon in which were three barrels,—two full of whisky, and one nearly empty. I am requested to charge you, on this point. If parties dealing in liquor, who have paid the special tax, receive orders for whisky at their place of business, and fill the orders so that the sale is consummated at their place of business,—so consummated that the property in the liquor passes to the purchaser,—this is no violation of the law, although they may sell and may send the liquor to parties residing at a distance.

If, however, they receive orders from persons at a distance, and in consequence of such orders they send out whisky in barrels, and, going through the country, they draw from the barrels, and deliver in small quantities,—say a pint, quart, or gallon,—to parties who pay them on receipt of the liquor, this is a violation of the law; the property in the whisky in the barrels remains in the sellers until it is delivered to the purchaser. The sale is consummated upon the delivery of the whisky, and it is not protected by the tax paid for sales at the distillery.