

deed. Now, his right of entry would be barred in 10 years. Being thus barred, and his right of possession having thereby passed to the adverse occupant, how could the wife maintain an action of ejectment during the coverture? If the husband is in her right—that is, through her title and by virtue of the marriage—solely seised of the right to the possession, it is clear that she could not sue; and, if it be true that a disseisin of both, and that a suit for the recovery of the wife's lands from one who holds them in adverse possession, must be brought in the joint names of husband and wife, and that neither can sue alone, as is maintained by some authorities, how can an action be maintained by them after the husband has been barred by the ten years' adverse possession?"

And in the later case the supreme court expressly declares that it adopts the views in the dissenting opinion of Judge HOUGH in the earlier case. It is unnecessary to add more. The law of the state of Missouri is thus clearly disclosed in the quotation above made, and, being the law of the state court, is the law of this. The motion to strike out that part of the reply will be sustained. I deem it unnecessary to consider the other questions presented by counsel in their motions and demurrer, for this is fatal to plaintiffs' action.

UNITED STATES v. STARNES.

(District Court, D. South Carolina. February 7, 1889.)

1. INTERNAL REVENUE LAWS—OFFENSES—RETAIL LIQUOR DEALER—MEDICINAL PREPARATIONS.

One who sells a medicinal preparation, knowing that it contains an intoxicating quality, to be used as a beverage, or with the knowledge that it was purchased to be used as a beverage, is a retail liquor dealer, within the meaning of the United States statutes providing for the punishment of persons carrying on the business of retail liquor dealers without payment of the special tax.

2. SAME.

Where the dealer, after having sold such preparation to a customer, who, in his presence, or with his knowledge, used it as a beverage, continues to sell it to the customer, the jury may find him guilty of such offense.

3. SAME.

So, also, if the preparation is but a disguised form of spirituous liquors, intended for use as a beverage.

Indictment for Carrying on the Business of a Retail Liquor Dealer Without Having Paid the Special Tax.

L. F. Youmans, U. S. Dist. Atty.

W. J. Cherry and *I. B. Bell*, for defendant.

SIMONTON, J., (*charging jury*.) The defendant, a merchant of Lancaster, is indicted for carrying on the business of a retail liquor dealer without having paid the special tax. He sold by the bottle a compound known as "Burton's Bitters," not having paid the special tax as a retail liquor dealer. The jury, from the evidence, must

answer these questions: Burton's Bitters, are they a genuine medicine, designed solely for medicinal purposes, or were they, as charged by the government, a disguised form of spirituous liquors, intended for use as a beverage? If Burton's Bitters were intended as a medicine, did they contain enough alcoholic material to give an intoxicating quality? Did the defendant sell them as a medicine, for medicinal purposes, and none other? Did he sell them as a beverage, or did he know that they were purchased from him to be used as a beverage? Were they used by purchasers in his presence, and with his knowledge, as a beverage; and did he continue to sell them to such purchasers after that knowledge was acquired? If the bitters are simply an intoxicating drink in disguise, and defendant knew this, you can find him guilty. If the bitters contain an intoxicating quality and are really a medicine, or are intended for medicinal purposes, and defendant, knowing that they could intoxicate, sold them to be used as a beverage, or with the knowledge that they were purchased to be used as a beverage, you may find him guilty. If he sold the bitters to any of his customers, and they, in his presence, or with his knowledge, used the bitters as a beverage, and with the knowledge thus acquired he continued to sell to them, you may find him guilty.

UNITED STATES v. HOWARD.¹

(District Court, S. D. Alabama. February 13, 1889.)

1. PERJURY—AFFIDAVIT FOR COMMUTATION OF HOMESTEAD ENTRY.

Defendant entered a homestead claim, and on application to commute his entry to a cash entry he made affidavit, July 30, 1887, that he had actually moved on the said land in December, 1886; that his actual residence had been on the land up to taking said oath; that his residence thereon had been continuous; and that he had not resided or boarded elsewhere than on said land since commencing his residence thereon. Defendant's oath was made before a judge of probate. *Held*, that the statements sworn to were not such as are required or authorized by law to be made by an applicant for a pre-emption, homestead, or a homestead commutation entry, under Rev. St. U. S. §§ 2282, 2289-2291. They were irrelevant and immaterial, and perjury could not be predicated on them.

2. SAME—COMPETENCY OF TRIBUNAL—PROBATE JUDGE.

Under Rev. St. U. S. § 5392, denouncing the crime of perjury, and declaring that the oath must be taken before some "competent tribunal, officer, or person," as the judge of probate had no authority to administer such oath, an indictment for perjury will not lie.

Demurrer to Indictment for Perjury.

Defendant entered a quarter section of land in Escambia county, Ala., under Rev. St. U. S. § 2289, and afterwards, under section 2301, commuted his homestead entry into a cash entry. The willfully false declarations or statements which the defendant is charged to have made are con-

¹Reported by P. J. Hamilton, Esq., of the Mobile bar.