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BY JOHN M. COULD,

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[OVER.]

Great care has been taken in collecting and classifying the later statutes, which have been repeatedly verified.

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This collection of statutes alone, referred to as they are by abundant cross references and annotated with the decisions, will be of great service to those wishing to know the present law upon any topic.

~~Re~~ Nearly 30,000 decisions are cited. Throughout the work the aim has been to compress as much information as possible in a single volume.

Many of the topics, such as the Indians, Territories, Pensions, etc., are not, it is believed, discussed in any other work.

By the acts of 1866 (14 St. 74) and of 1877 (19 St. 286), all pertinent decisions were to be cited in the margin. The present volume, however, contains many decisions prior to 1878 not to be found in the marginal references of the Revision, or of the later Edition, while all decisions for the last eleven years have been added, and all laws of the last Congress are also included.

Where there has been occasion to doubt whether a law was general or special in its application, it has been quoted for safety.

Decisions upon Inspector's, Admiralty, and Supreme Court rules, and upon regulations, like those of the Treasury, are given when these rules and regulations involve the construction of a statute.

The more important of the Treasury Decisions, only, have been cited. These are chiefly under "Duties upon Imports," "Collection of Duties," and "Commerce and Navigation."

After a decision of the United States Supreme Court, the decision of the same case in an inferior tribunal is sometimes given, generally, however, without stating whether the decision of the inferior court was reversed or sustained, as the adjudications of the highest court of appeal are, of course, conclusive and binding.

At the outset, the work was found to be so vast, and likely to be so protracted, that able assistants were employed. Mr. Gould, assisted by Mr. Tucker, exercised a general supervision of all the work. The editorial force employed upon it has also included Messrs. Charles N. Harris, A. A. Wyman, S. H. Emery, Jr., Edward W. McClure, and Thomas T. Woodruff. Assistance has also been derived from notes which had been prepared for a similar work by Mr. John R. Berryman and Mr. A. L. Sanborn, of Wisconsin.

~~Re~~ The pages of the volume are larger than those of the Revised Statutes, as they embrace the space devoted in the former to marginal references.

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CHAPTER XVII.

EVIDENCE.

St. Feb. 3, 1879, ch. 40 (20 St. 278), provides for taking testimony by masters in chancery, to be used before Congress, in cases of private claims against the United States. Prior to the repeal of the bankrupt law, the bankrupt and any party to the proceedings were made competent witnesses by 18 St. 178, ch. 390, § 8; *Re Campbell*, 3 Hughes, 276, 285. By § 8 of St. 1887, ch. 359 (24 St. 506), providing for the bringing of suits against the United States (see note, ch. 21, *post*), interested parties may testify, and any plaintiff or party in interest may be examined as a witness on the part of the government. The anti-polygamy act of 1887 (24 St. 635) allows the accused, with the consent of the husband or wife, to testify as to communications not deemed confidential at common law. 20 St. 30, ch. 37, provides—

"That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offences, and misdemeanors, in the United States courts, Territorial courts, and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him."

SECT. 858.—See notes, §§ 1079, 1977. This section does not apply to courts of a Territory, as such courts are not courts of the United States (*Clinton v. Englebrecht*, 13 Wall. 434; *Hornbuckle v. Toombs*, 18 Id. 648; *Good v. Martin*, 95 U. S. 90; *Bridges v. Armour*, 5 How. 91), but does apply to the District of Columbia. *Noerr v. Brewer*, 1 McArthur, 507; *Page v. Burnstine*, 102 U. S. 664. It does not apply to the Court of Claims. *Jones v. United States*, 1 Ct. Cl. 383. There is no ground for the suggestion that §§ 721, 858, and 914 relate to the competency of a witness rather than to the nature and principles of evidence. *Insurance Co. v. Trust Co.*, 112 U. S. 255. This section applies to trials in which the United States is a party. *Green v. United States*, 9 Wall. 655; but see *Jones v. United States*, 1 Ct. Cl. 383. It is remedial, and its language should be construed accordingly. *Texas v. Chiles*, 21 Wall. 488. A party may testify either orally or by deposition. *Cornett v. Williams*, 20 Wall. 226. This section applies where a party offers to testify in his own behalf. *Texas v. Chiles*, 21 Wall. 488; *Railroad Co. v. Pollard*, 22 Id. 341. A bill in equity for a discovery merely is unnecessary, as a party may be examined as a witness. *Heath v. Erie R. Co.*, 9 Blatch. 316. This statute has not changed the rule by which the admissions of a party may be given in evidence as independent testimony, though he was sworn as a witness, and no impeaching questions were put. *The Stranger*, Brown's Adm. 281. It does not allow a wife to testify in favor of her husband (*Wooster v. Hill*, 22 F. R. 830; *Lucas v. Brooks*, 18 Wall. 453), except where a State statute allows it. *Packet Co. v. Clough*, 20 Wall. 537. In an action in which husband and wife are defendants, she not being a necessary party, he may testify in favor of any interest of hers, but not against it. *Green v. Taylor*, 3 Hughes, 400. This section allows a husband to testify for his wife (*Re Campbell*, 3 Hughes, 276), unless State laws forbid it. *Witters v. Sowles*, 24 Blatch. 87; 28 F. R. 218. A lawyer cannot testify as to confidential communications, although a State statute allows it. *Life Ins. Co. v. Schaefer*, 94 U. S. 457. But see *Packet Co. v. Clough*, 20 Wall. 537; *Insurance Co. v. Trust Co.*, 112 U. S. 255; *Rice v. Martin*, 8 F. R. 476. It does not allow persons convicted of an infamous crime to testify where the State law does not allow it. *United States v. Barefield*, 23 F. R. 136. It does not adopt State laws as to the examination of witnesses in suits in equity (*Pennsylvania R. Co. v.*

SECT. 3324. — St. March 1, 1879, ch. 125, §§ 12, 13 (20 St. 342), as amended by St. May 28, 1880, ch. 108, §§ 12, 13 (21 St. 145), provides: —

“SEC. 12. That every person who empties or draws off, or causes to be emptied or drawn off, the contents of any package of imported liquors stamped as above required, shall, at the time of such emptying, efface, obliterate, and destroy the stamp thereon, and also all other marks or brands which shall have been placed thereon in accordance with the law or regulations concerning imported liquors. Every cask or other package from which the stamp for imported liquors required by this act to be placed thereon shall not be effaced, obliterated, or destroyed, on emptying such package, shall be forfeited, and the same may be seized by any officer of internal revenue wherever found; and all the provisions and penalties of Rev. Stats. § 3324, relating to empty casks or packages from which the marks, brands, or stamps have not been effaced or obliterated, and relating to the removal of stamps from packages, and to having in possession any stamps so removed, shall apply to the stamps for imported spirits herein provided for, and to the casks or other packages on which such stamps shall have been used.

“SEC. 13. That if any person shall purchase or sell, with the imported-liquor stamp herein required remaining thereon, or any of the marks or brands which shall have been placed thereon in accordance with the laws or regulations concerning imported liquors remaining thereon, any cask or other package, after the same has been once used to contain imported liquors and has been emptied; or if any person shall use or have in possession such cask or package, with any imitation of such marks or brands, for the purpose of placing domestic distilled spirits therein for sale; every such cask or package, with its contents, if any, shall be forfeited to the United States. And every such person who shall violate any of the provisions of this section shall be liable to a penalty of \$200 for every such cask or package so purchased, sold, used, or had in possession.”

Upon an indictment under the clauses beginning “Every person who empties or draws off” in the first line and “or who has in his possession” in the twenty-fifth line, proof of intent is unnecessary. Under the clause beginning “And every railroad company it is. United States *v.* Ulrici, 3 Dillon, 532. The omission or neglect, however, must be knowing and wilful; the obliteration must be made at the time the contents of the barrel are emptied out, and the offender must be both fined and imprisoned. A Quantity of Distilled Spirits, 3 Ben. 552; 3 Am. L. T. (U. S. Cts.) 10. See also note, § 3456. The provisions of this section are applicable to both foreign and domestic spirits, and an indictment need not specify which they are. The offence is complete whether the spirits be the product of a licensed or an illicit distillery, and whether the stamp was lawfully affixed or not. The indictment need not set out the stamp *verbatim*, or state its contents, if it describes it by its statutory designation, nor need it charge an intent to use the stamp again, or an intent to defraud the United States, or knowledge on the part of the accused that the cask contained distilled spirits. An indictment under this section will lie against two persons jointly. United States *v.* Bayaud, 21 Blatch. 287; 16 F. R. 376; 15 Rep. 520. As to evidence insufficient to sustain an indictment under this section, see United States *v.* Buchanan, 4 Hughes, 487; 9 F. R. 689. A principal who causes a package of spirits to be emptied by an employé is bound to see that the marks, stamps, or brands thereon are obliterated at the time the package is emptied. If he entrusts this duty to the employé, he does so at his peril; and if the employé fails to do his duty, such failure is equally the failure of the principal. United States *v.* Adler, 21 Int. Rev. Rec. 316; 1 N. Y. Weekly Dig. 182. A carrier is bound to know that there were unobliterated stamps upon the barrels which it transports, and it is no defence that by the exercise of reasonable care and ordinary observation it did not discover them. United States *v.* Goodrich Transportation Co., 8 Biss. 224. St. March 1, 1879, ch. 125, § 12, does not define the offence of removing stamps from packages of imported liquors, or of having in possession stamps so removed, except by adopting the provisions of § 3324, Rev. Stats., defining such offences in relation to stamps upon packages of domestic spirits and applying them in the case of imported liquors. In doing this its language is that of reference merely and not of definition. Having in possession a stamp once in use which has accidentally fallen off the package, is an offence under § 3324, Rev. Stats., but not under this