

James Alexander Hamilton to Andrew Jackson, July 28, 1831, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.

COLONEL JAMES A. HAMILTON TO JACKSON.

New York, July 28, 1831.

. . . . I presume you will without difficu[l]ty find a lawyer in Charleston who as Atty for the US will commence suits on Revenue Bonds and if you can depend upon The Dist Judge (which by the way I doubt) These suits may be conducted to Judgt without the intervention of a Jury, such is our practice. By the 65 § of the act of Congress passed 2d March 1799, vol 3 US Laws Gordon p 289 §1758, The Court is required to give Judgt *at the Return time of the suit* : unless the deft shall make affidavit then [that?] error has been committed in the liquidation of the Amt. of the duties, specifying such error and stating that it had been redr[e]ssed in writing to the Collector. Under this act our practise is at the Return of the suit the Deft being in Custody or having given special Bail (and to avoid any difficulty as to that I would advise that in cases of undoubted solvency the Marshal should be authorised to permit the deft to indorse his appearance on the back of the writ) for the Dist atty to file his Declaration in open Court and on doing so to move for a Rule that the Deft plead instanter and no plea being put in an affidavit (as pointed out by statute) instantly to move the Court that the Defts Default in not pleading be entered and for a Rule for Judgt which the Court grants immediately. The Record is then signed and filed, the Judgt is for the Penalty of the Bond and the Costs which are taxed by the Court, And The execution issues with directions to the Marshal endorsed on the back to collect the amount of Duties actually due with Int and Costs. There can be no difference in any Court in any part of the US as to the practice under this act. It gives a rule of proceeding for them all which they must adopt notwithstanding it may be wholly different or repugnant to the rules of practice in the

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different states. It will be attempted to get the Cause to a Jury by pleading *non est factum*. I would however insert under the same law that the Court ought not to receive such a plea unless the deft would swear that he had not executed the Bond and if such an affidavit was made I would move the Court to impanel the Jury immediately and proceed to prove the execution of the Bond by the subscribing witness and that being done The Court would reject all other evidence except as to the main fact, did the deft *sign seal* and [*deliver*] and the Jury could not hesitate to give a verdict [and wou]ld then move for the Committal of the Deft for Perjury.

If the Judge would do his duty he would make short work of the Cause in this manner. He could not legally allow any testimony to be given under the General issue in relation to the purpose for which the Bond was given and no address to the Jury (not a word) beyond the Question whether the deft executed *that* paper or not.

I cannot hold up my head longer to write and must therefore close by subscribing myself with the truest attachment your friend