

8FED.CAS.—8

Case No. 4,187.

DURAND ET AL. V. LAWRENCE.

{2 Blatchf. 396.}¹

Circuit Court, S. D. New York.

July 1, 1852.

CUSTOMS DUTIES—ACTION TO RECOVER
BACK—PROTEST—APPRAISEMENT—PENALTIES.

1. In an action to recover back duties as having been illegally exacted, no ground of objection to the payment of the duties can be taken, which was not specifically and distinctly stated in a protest made at the time of paying the duties.

{Cited in *Muser v. Robertson*, 17 Fed. 502.}

2. Where the protest merely protested against the payment of the duty, but stated no ground of objection: *Held* that, on the trial of an action to recover back the duty paid, the plaintiff could not question the validity or accuracy of the appraisement on which the duties were paid.

{Commissioners of Sinking Fund of *Louisville v. Buckner*, 48 Fed. 539.}

3. Where the invoice valuation of goods imported by the manufacturer is increased on appraisement by more than ten per cent., the collector has no authority to impose the penalty prescribed by the 8th section of the act of July 30, 1840 (9 Stat. 43).

{See *Belcher v. Lawrason*, 21 How. (62 U. S.) 123.}

This was an action [at law by Francis Durand] against [Cornelius W. Lawrence] the late collector of the port of New York, to recover back duties paid on an entry of wines, and also the amount of a penalty which had been imposed at the custom-house. On the trial in November, 1850, a verdict was taken by consent for the plaintiffs for \$4,803.48, subject to the opinion of the court upon a case to be made, “with liberty to either party to turn the same into a bill of exceptions or special verdict, and also subject to adjustment.” There was no stipulation that the court might adjudge the facts of the case.

The plaintiffs took the owners’ oath to the invoice in France, and consigned the wines to Messrs. Aymar, of New York, who entered them, as consignees, for the plaintiffs. The oath did not state that the plaintiffs were the manufacturers of the wines. It only stated that the wines were invoiced at their fair market value in Perpignan at the time the same were manufactured, and the oath of their agent there, (Richards,) appended to the invoice, stated that the wines were purchased for account of the plaintiffs.

Three separate warehouse entries were made by the consignees on the 16th of October, 1848, and, the invoice prices of the wines having been raised by appraisement more than ten per cent., duties were laid on the increased valuation, and a penalty of 20 per cent thereon was imposed. A protest was made, in writing, on each of the entries, by the consignees. On one, the protest was this: “The additional duty and penalty we claim to be paid under protest against the justice of the demand, and hold you responsible.” On another, it was this: “We protest against the additional duty and penalty hereon, and shall

pay the same from time to time as required, under this our protest.” On the third, it was this: “We protest against the additional duty and penalty charged hereon, and shall pay any amount from time to time under protest.” Ten withdrawal entries were afterwards made, as the wines were taken from the warehouses, and on each one a protest in some of the following forms was written by the consignees: “We hereby protest against the payment of the additional duty and penalty charged on this entry, and shall hold you responsible for the same;” “We protest against the payment of the amount charged in this entry for additional duty and penalty, and hold you responsible for the same.”

Robert J. Dillon, for plaintiffs.

J. Prescott Hall, Dist Atty., for defendant.

BETTS, District Judge. The same points discussed in the case of Thomson v. Maxwell [Case No. 13,983], were raised in this case. The counsel on both sides regarded the wines as having been manufactured by the owners and importers, the evidence being that the raw wines were purchased from the producers and then brought to a state for exportation by some process of preparation or manufacture on the part of the owners.

But, whether the wines were procured by the plaintiffs as purchasers or as manufacturers, the court is not informed by the case, nor whether the invoice or the appraisement represents their true value in the foreign market. This question should have been submitted to the jury, and although; in reviewing the testimony on that point, we may have no doubt as to what the finding of the jury ought to have been, we are not authorized to decide the fact ourselves. If the object of the plaintiffs was to try the question of fact as to the market value of the wines in the foreign market, they could have proposed giving evidence in regard to it, and, if the defendant objected to the proof on the ground of the insufficiency of the protests to that end, the court could have been properly applied to, to determine the scope and effect of the protests in that respect.

The cause was tried, on both sides, obviously with the intent to ascertain the validity of the appraisement and proceedings under the revenue laws, and not to settle, as between the report of the appraisers and the judgment and knowledge of witnesses, the true value of the wines in France. If such an inquiry be an open one (Rankin v. Hoyt, 4 How. [45 U. S.] 327), it is one exclusively for the jury to determine.

But, if it were competent for the court to pass upon that point, the plaintiffs have not stated, in any of their protests, specifically or distinctly, the ground of objection now urged. Whether the payment of the additional

duty is objected to for this cause, or for other causes of a different character, is not specified in the protests. If the protests authorize this inquiry, they would clearly also permit the regularity of the proceedings of the appraisers and the collector, both in the steps preliminary to an appraisement and in the conduct of the appraisement, to be examined and determined. We considered this latter question in the case of Thomson v. Maxwell, before cited, and decided that the protest must point out specifically the particulars constituting the invalidity of the appraisement, and that the importer will not be permitted to raise that question under a general protest.

Both parties submit this case to the court as one coming within the facts and principles involved in that of Thomson v. Maxwell, except only as to the tenor of the protests. Assuming, therefore, that the importation was made by the manufacturer of the wines, we decide in this case, as we did in the one referred to, that the plaintiffs are not entitled, under their protests, to contest the validity or accuracy of the appraisement, and also that the collector had no authority to impose a penalty, because of undervaluation in the invoices, on goods imported by the manufacturer and not by a purchaser.

It is important to merchants and to the government that it be understood that this court will hold the merchant, in his objections to the payment of duties, to strict proof that his protest apprised the collector of the exact nature of his objections.

Judgment must be entered for the plaintiffs for the amount of the penalty exacted from them, with interest from the time of its payment, and for the defendant on the claim for the repayment of additional duties imposed.

¹ [Reported by Samuel Blatchford, Esq., and here reprinted by permission.]