

Case No. 4,317. EIGHTEEN THOUSAND GALLONS OF DISTILLED SPIRITS.  
[3 Ben. 4.]<sup>1</sup>

District Court, S. D. New York.

Feb., 1871.

PLEADING—INTERNAL REVENUE FORFEITURE.

1. Under rules 22 and 23 of the supreme court in admiralty, and rules 179 and 184 of this court, a libel of information to obtain the forfeiture of property for alleged violations of the internal revenue laws, must state in distinct allegations the matters relied on as grounds of forfeiture. If it does not, the remedy of the claimant is by motion to make the pleading more definite.
2. The government will not be compelled to elect which of the several allegations in a libel of information will be relied on to sustain the forfeiture prayed for.

In this case an information was filed containing twenty-two different causes of forfeiture under different sections of the internal revenue laws. The claimant applied to the court, on motion, praying that the district attorney might be compelled to elect upon which of the allegations of the information he would proceed for a forfeiture; that all other allegations might be stricken out; and that the allegations might be rendered more definite by the insertion of allegations of time, place, quantity, &c.

D. Field, for claimants.

B. K. Phelps, for the United States.

BLATCHFORD, District Judge. By rule 22 of the rules in admiralty prescribed by the supreme court of the United States, it is provided that a libel of information on a seizure for a breach of a law of the United States must propound in distinct articles the matters relied on as grounds or causes of forfeiture. Rule 179 of this court provides that an information on a seizure shall set forth the gravamen of the suit by plain and issuable allegation, and that it is subject to the same general rules, as to its structure and amendment, as an ordinary libel. An ordinary libel must, by rule 23 of the rules in admiralty prescribed by the supreme court, propound the various allegations of fact upon which the libellant relies in support of his suit. Rule 184 of this court provides that if the information is ambiguous or does not supply plain allegations upon which issue can be taken, the defendant or claimant may move the court to have it reformed. Under these rules some of the articles in the information in this case are wanting in the plain allegations of fact which they ought to contain, and some are ambiguous.

The motion, so far as it asks that the grounds of forfeiture may be more fully and distinctly stated in the information, is granted. The rest of the motion is denied.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]