

Case No. 4,760.

FIEDLER v. MAXWELL.

{2 Blatchf. 552.}<sup>1</sup>

Circuit Court, S. D. New York.

Feb. 1853.

CUSTOMS DUTIES—UNDERVALUATION—SPECIE AND PAPER  
CURRENCY—UNLAWFUL DETENTION OF GOODS BY  
COLLECTOR—TROVER—DEFENSE.

1. Where an invoice sets forth the prices of goods in a foreign paper currency, and also carries them out reduced to a specie standard, and the importer makes the entry in the specie value, and, on appraisement, the value is returned at the invoice paper currency prices, which is greater by 10 per cent, that the specie value—It seems, this is not such an excess of appraised value over the value declared in the entry as to warrant the imposition of a penalty of 20 per cent, for undervaluation.
2. Trover will lie against a collector who unlawfully detains the goods of an importer, and it is no defence that the collector acts under the instructions of the secretary of the treasury.

This was an action of trover against [Hugh Maxwell] the collector of the port of New York, for the conversion of certain merchandize imported by the plaintiff [Ernest Fiedler]. The merchandize in question was invoiced at Trieste and imported thence. The invoices, two in number, set forth the prices of the goods in Austrian paper florins, and carried them out reduced to the specie standard. The entry on both invoices was made in specie value only. The invoice charges were raised by the appraisers, or rather confined to the nominal value stated in paper currency, and the custom house appraisers, and also merchant appraisers on a re-appraisement, returned the goods to have been charged at proper prices in that currency. The plaintiff made his entry at the specie value of the importations, and this being more than 10 per cent, below the paper denomination, a duty was charged on the difference, and also a penal duty of 20 per cent. The invoices on entry were accompanied by the certificate of the American consul at Trieste, that the paper currency at the time was depreciated 17½ per cent. Oral proof of the same fact was given before the jury on the trial, and it was not controverted by the defendant. The plaintiff made due protest in writing against the exaction of the additional and penal duties, tendered to the collector in specie the legal duties, and demanded the delivery of his goods. This being refused, he brought an action of trover against the collector in the supreme court of the state, and the cause was removed by the defendant, by certiorari, into this court. On the trial, a verdict was taken by consent for \$901, subject to adjustment at the custom house and to the opinion of the court on a case to be made.

John S. McCulloh, for plaintiff.

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

BETTS, District Judge. This case embraces several questions which have been passed upon by this court. The law thus settled must be considered as the law governing the

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subject until it is changed by the supreme court or by congress. The plaintiff was entitled to enter his goods at the specie value of the Austrian florin, on payment of the legal duties chargeable upon that amount *Grant v. Maxwell* [Case No. 5,699]. The defendant therefore, had no authority in law to impose duties on any other valuation.

It is exceedingly doubtful whether, if these goods had been subject to duty on a paper valuation, the collector could have also imposed a penal duty because of a difference of more than 10 per cent between silver and paper currency. This could hardly, in any reasonable acceptance, be considered an excess of appraised value over the value declared in the entry; because, the invoice accompanies the entry, and the transcription of the summation of its charges into the entry does not without the presentation of the invoice, constitute the proceeding known to the law or in practice as an entry made. Under such circumstances, when the valuation insisted upon by the government and that claimed by the importer are both of them on the face of the invoice, placing the latter alone upon the scrip called the entry, could not except under the severest interpretation of the language of the act, subject the goods to a penal duty.

Be that as it may, it is clear, upon the main point, that the plaintiff was entitled to enter his importations at their specie value in the Austrian market.

The only point not covered by previous decisions of this court relates to the form of the action. There are two cases decided by

the supreme court (*Conard v. Pacific Ins. Co.*, 6 Pet [31 U. S.] 262, and *Tracy v. Swartwout*, 10 Pet [35 U. S.] 80), which recognize it as a clear principle of law, that an importer can maintain trespass or trover against a United States officer for the detention of his goods on the ground that they are subject to a lien on behalf of the government, if no such lien is given by law. A collector of the customs cannot defend himself against such an action by showing that he acted under the instructions of the secretary of the treasury in enforcing the payment of duties or obtaining due security therefor. If his acts are not warranted by law, the owner of the goods can assert his right by an action of trover, and will be entitled to full remuneration for the injury done him.

Judgment must be rendered for the plaintiff upon the verdict, according to the stipulation in the case, with costs.

End of Cases in Book 8.

<sup>1</sup> [Reported by Samuel Blatchford, Esq., and here reprinted by permission.]