

Case No. 4,774.

{3 Blatchf. 120.}¹

FIELDEN ET AL. V. LAWRENCE.

Circuit Court, S. D. New York.

Dec., 1853.

CUSTOMS DUTIES—UNDERVALUATION—PENALTY—TENDER OF FEES FOR REAPPRAISEMENT—PROTEST—ACT OF FEBRUARY 26, 1845.

1. Where the invoice value of iron was raised by the official appraisers, on appraisal, and duty on the increase in value and a penalty for under-valuation were imposed, and the importer, on making entry of the iron, served on the collector a written notice, protesting “against the said increased appraisement, and against the exaction of the said increased duty and penalty,” but was, at the same time, asked if he desired an appraisement by merchant appraisers, under section 17 of the act of August 30, 1842 (5 Stat. 564); and answered, that he did not or did not ask one, and did not offer the fees for such appraisement: *Held*, that if the protest might have amounted, to notice of dissatisfaction with the appraisement under that section, had the notice been delivered without qualification, yet the assertion of the importer at the time, that he did not ask a re-appraisement, took from it that effect.
2. The importer was bound to offer the appraisers’ fees for a re-appraisement, in order to put the collector in the wrong for not ordering one, and that, therefore, the appraisement by the official appraisers was conclusive as to value.

[Cited in *Hedden v. Iselin*, 31 Fed. 268.]

3. The protest did not comply with the act of February 26, 1845 (5 Stat. 727), and that, as it did not set forth distinctly the omission of the collector to order a re-appraisement, or that the appraisers valued the iron at the time of shipment and not at the time of purchase, as grounds of objection to the payment of the duties imposed, the importer could not raise those objections, in an action to recover back those duties.

This suit was brought [by Thomas Fielden and others] against [Cornelius W. Lawrence] the collector of the port of New York, to recover back penalties and increased duties imposed on importations of iron from Liverpool, upon which various entries were made, the additional duties amounting to \$672, and the penalties to \$2,264.60. The importations were made in 1847, and the appraisal was made under section 16 of the act of August 30, 1842 (5 Stat. 563). The plaintiffs, at the time of making their several entries, addressed to the collector the following notice, varied only so as to adapt the description of iron to the particular entry:—“Sir: The custom-house appraisers having appraised—bundles, &c., of iron at £——, thereby subjecting the iron to an increased duty, as well as a penalty of 20 per cent, which we are required to pay, in order to enter and obtain possession of the goods, we hereby protest against the said increased appraisement, and against the exaction of the said increased duty and penalty, and, in making payment, reserve to ourselves, or whom it may concern, the right to recover the same back by action or otherwise,”; &c. It was proved that, when the protest was made, the plaintiffs were asked by a deputy collector, if they desired an appraisement by merchant appraisers, pursuant to the act, and answered, that they did not or did not ask one. The points taken

for the plaintiffs on the argument were, that the letter was notice to the collector, within the meaning of the act, of the dissatisfaction of the plaintiffs with the appraisement, and that thereupon it became the duty of the collector to order a re-appraisement, without which the first appraisal was void; and that the appraisal was void for the further reason, that the appraisers took the market value of the iron at the time of exportation, and not at the time of purchase.

THE COURT held: 1. That if the protest might have amounted to notice of dissatisfaction with the appraisement, within the meaning of section 17 of the act of August 30, 1842 (5 Stat. 564), had the letter been delivered without qualification, yet the assertion of the plaintiffs, at the same time, to the collector, that they did not ask a re-appraisement, took from it that effect.

2. That a re-appraisement being at the expense of the importer, the plaintiffs were bound to offer the appraisers' fees, &c., in order to put the collector in the wrong for not ordering one; and that, as the plaintiffs did not take legal means to entitle themselves to a re-appraisal, the one made by the official appraisers was conclusive against them as to value.

3. That the protest did not comply with the requirements of the act of February 26, 1845 (5 Stat. 727), because it did not set forth, distinctly and specifically, the omission of the collector to order a re-appraisement, or that the appraisers valued the iron at the time of shipment and not at the time of purchase, as grounds of objection to the payment of the duties imposed; and that, therefore, the plaintiffs were not now entitled to raise those objections.

Judgment for defendant.

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