

Case No. 6,432.

HERTZ ET AL. V. MAXWELL.

{3 Blatchf. 137.}<sup>1</sup>

Circuit Court, S. D. New York.

Dec., 1853.

CUSTOMS DUTIES—VALUATION OF APPRAISERS—PROTEST.

1. Where a protest against the imposition of duties after appraisal, protested “against the payment of 15 per cent. advance, and the penalty therefore accruing on velvets contained in the entries, because we are fully satisfied that they are fully invoiced by the manufacturers:” *Held*, that the price fixed by the appraisers was conclusive as to the dutiable value of the goods (Act Aug. 30, 1842; 5 Stat. 564, § 17), and that no evidence could be given against it.

{See *Bailey v. Goodrich*, Case No. 735.}

2. Requisites of a protest against the imposition of duties, stated.

This was an action [by Theodore Hertz and others] to recover back an excess of duties, and a penalty of 20 per cent, exacted by the defendant [Hugh Maxwell], as collector of the port of New York, on several importations of Westphalia velvets, in the year 1850. Protests were filed on various grounds, but, upon the argument of the cause, all the protests were abandoned except those “against the payment of 15 per cent advance, and the penalty therefore accruing on velvets contained in the entries, because we are fully satisfied that they are fully invoiced by the manufacturers.”

Before NELSON, Circuit Justice, and BETTS, District Judge.

BETTS, District Judge. The case before the court is complicated by the accumulation of documents attached to it, and by testimony taken abroad on commission; and it appears to the court that facts are disclosed which, had they been made grounds of protest, might have entitled the plaintiffs to judgment—such as, that the plaintiffs were manufacturers of the goods, and did not procure them by purchase; and that the invoice was not raised on entry by the importer; and that the collector had not, under either the act of August 30, 1842 (5 Stat. 548), or the act of July 30, 1846 (9 Stat. 42), any authority to impose a penalty of 20 per cent, in addition to the duty on the appraised valuation of the goods.

Upon the specific point presented by the protest, we are of opinion that the price fixed by the appraisers is conclusive as to the dutiable value of the goods (section 17 of the act of August 30, 1842; 5 Stat. 564), and that the plaintiffs have no right to give evidence against it. If such right could be exercised, the exception taken to the protest, that it does not point out the particulars in which there was an overvaluation, comes within the principles repeatedly ruled on that head at the present and previous terms of this court Judgment for defendant.

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