

Case No. 10,214.

NEW YORK RECTIFYING CO. V. UNITED STATES.

[14 Blatchf. 549.]¹

Circuit Court, S. D. New York. June 27, 1878.

INTOXICATING LIQUORS—"WHOLESALE DEALERS."

Under section 3319 of the Revised Statutes, if a rectifier purchases from an authorized distiller, who is not an authorized rectifier or an authorized wholesale liquor dealer, distilled spirits, in quantities greater than 20 gallons, which were not produced by such authorized distiller, such purchaser is liable to the penalty imposed by said section 3319.

[In error to the district court of the United States for the Southern district of New York.]

Thomas Harland, for plaintiff in error.

Stewart L. Woodford, Dist Atty., for defendants in error.

WAITE, Circuit Justice. Section 3319 of the Revised Statutes is as follows: "It shall not be lawful for any rectifier of distilled spirits, or wholesale or retail liquor dealer, to purchase or receive any distilled spirits, in quantities greater than twenty gallons, from any person other than an authorized rectifier of distilled' spirits, distiller, or wholesale liquor dealer. Every person who violates this section shall forfeit and pay one thousand dollars: provided," &c. The plaintiff in error, a rectifier of distilled spirits, contracted with Fleischman & Co., authorized distillers, for twenty-five barrels of highwines, to be delivered August 14th, 1873. On the day named Fleischman & Co. delivered fifteen barrels of their own manufacture, and announced their inability to deliver more. The full number being insisted upon, Fleischman & Co. delivered, and the plaintiff in error received, under

the contract, the remaining ten barrels, stamped and marked in a manner to indicate that they had been made by some distiller other than Fleischman & Co. Fleischman & Co. were not authorized rectifiers, or authorized wholesale or retail liquor dealers. Upon this state of facts the district court properly gave judgment against the plaintiff in error, for the penalty imposed by the section just quoted. A distiller is only authorized, by virtue of his occupation as a distiller, to sell spirits of his own production. Every person who sells spirits, except as a distiller properly may, is a wholesale or retail liquor dealer, according to the quantity he sells. Rev. St. § 3244, par. 4. Fleischman & Co., in their sale and delivery of the ten barrels, acted as wholesale dealers and not as distillers. Not being authorized wholesale dealers, the plaintiff in error, a rectifier, was prohibited by the statute from receiving this delivery from them. Judgment affirmed.

¹ [Reported by Hon. Samuel Blatchford, Circuit Judge, and here reprinted by permission.]

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