

RILEY V. MAXWELL.

[4 Blatchf. 237.]¹

Circuit Court, S. D. New York.

Dec. 3, 1858.

INTEREST—RECEIPT FOR PRINCIPAL—ACTION FOR INTEREST.

Where an excess of duties, which had been exacted by a collector, was repaid, but without interest and the payment was accepted, *held*, that a separate suit for the interest on the excess could not afterwards be maintained, even though the party, at the time of receiving the principal, claimed to reserve his right to the interest.

This was an action [by Theodore W. Riley] against [Hugh Maxwell,] the collector of the port of New York, to recover interest on an excess of duties paid. The excess, after having been exacted, was repaid to the plaintiff, but without interest and its payment was acknowledged by him in a receipt, which stated that he asked payment of the interest on the excess, and reserved his legal rights. At the trial, a verdict was taken for the plaintiff, subject to the opinion of the court.

John S. McCulloh, for plaintiff.

John McKeon, Dist. Atty., for defendant

NELSON, Circuit Justice. The plaintiff precluded himself from bringing a separate suit for the interest, after accepting the principal, even though he, at the time, claimed to reserve the right to do so. There must be a judgment for the defendant.

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

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