

## Case No. 14,302.

## TWO THOUSAND BOTTLES OF LIQUORS.

[5 Ben. 265.]<sup>1</sup>

District Court, N. D. New York.

June, 1871.

INTERNAL, REVENUE—WHOLESALE LIQUOR  
DEALER—RECTIFIER AND DISTILLER.

Under the 44th section of the internal revenue act of July 20, 1868 (15 Stat. 142), the wine and distilled spirits owned by a wholesale liquor dealer, are not forfeited by reason of his not having paid the special tax. That forfeiture is applicable to the wines and spirits of distillers and rectifiers only.

This was an application for a new trial. The action was brought to forfeit the property under the 44th section of the internal revenue act of July 20, 1868. The proof showed that the claimant had carried on the business of a wholesale liquor dealer without having paid the tax required by law. A decree of forfeiture having been made, a motion was made for a new trial.

BENEDICT, District Judge. I am of the opinion that the 44th section of the act of July 20, 1868 (15 Stat. 142), cannot be held to forfeit the wines and distilled spirits owned by a wholesale liquor dealer wherever found, by reason of the fact that the dealer has carried on the business of a wholesale liquor dealer without having paid the special tax as required by law.

The words of the section “and all distilled spirits or wines, and all stills or other apparatus fit or intended to be used for the distillation or rectification of spirits, or for the compounding of spirits, or owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment shall be forfeited,” must be held applicable to distillers and rectifiers only. The section, taken as a whole, does not indicate an intention to inflict upon a wholesale liquor dealer a

forfeiture of his whole stock for an omission to pay the special tax as required by law; and the words "such person," are intended to refer to those classes, and not to all the classes of persons previously mentioned.

The proof that the claimant was a wholesale liquor dealer was not, therefore, sufficient to warrant the direction of a verdict, and there must be a new trial.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]

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