

UNITED STATES v. FIFTEEN HOGSHEADS
OF BRANDY.

{5 Blatchf. 106.}¹

Circuit Court, N. D. New York. Nov., 1862.

APPEAL—FORFEITURE CASE—TRIAL WITHOUT
JURY.

1. A seizure case, triable by a jury in the district court, cannot be reviewed in this court on an appeal, but can be reviewed only on a writ of error.
2. Where such a case is, by agreement of parties, tried by the district court without a jury, the record should be made up in form, as in the case of a writ of error, with the proper exceptions to the admission or rejection of testimony, or to the instructions of the court to the jury.

{Cited in *Town of Lyons v. Lyons Nat. Bank*, 8 Fed. 373; *Boyd v. Clark*, 13 Fed. 909; *Doty v. Jewett*, 19 Fed. 338; *Rogers v. U. S.*, 12 Sup. Ct. 94.]

{Appeal from the district court of the United States for the Northern district of New York.}

In this case a libel of information was filed in the district court, for the forfeiture of fifteen hogsheads of brandy, for undervaluation. The case was tried in the district court, by the court without a jury [case unreported], under an agreement between the parties that the court should determine the law and render a verdict and judgment. This was done, and the court gave judgment for the libellants, and the claimants took an appeal to this court. The libellants now moved to dismiss the appeal.

NELSON, Circuit Justice. A seizure case, such as the present one is, in which the parties are entitled to a trial by jury, can only be reviewed on a writ of error. And, if a writ of error had been taken in this case, this court could not have entertained it, because there is no bill of exceptions; and there could have been none, as the court below was made the judge of both the law

and the fact. The record should have been made up in form, as in the case of a writ of error, with the proper exceptions to the admission or rejection of testimony, or to the instructions of the court to the jury.

The appeal is dismissed for want of jurisdiction, but without costs.

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

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