

SCHLESINGER and others v. BEARD.* (No. 1546.)

UNITED STATES v. SCHLESINGER and others.* (No. 1548.)

(Circuit Court, D. Massachusetts. December 29, 1882.)

DUTIES ON IMPORTS—WROUGHT SCRAP-IRON.

The punchings and clippings of wrought-iron boiler-plates and wrought sheet-iron, left after the manufacture of the boiler-plates into boilers, though it is waste iron, fit only to be manufactured, cannot be deemed scrap-iron for dutiable purposes, because it has not been in actual use.

George P. Sanger, U. S. Atty., for the United States.

L. S. Dabney and *W. S. Hall*, for Schlesinger and others.

LOWELL, C. J. These cases are submitted on agreed facts, which require me to decide whether the punchings and clippings of wrought-iron boiler-plates and wrought sheet-iron, left after the manufacture of the boiler-plates into boilers was completed, is dutiable at eight dollars a ton as wrought scrap-iron. If so, the importers are right; if not, the duty charged by the collector is rightly charged. The statute is Rev. St. § 2504, Schedule E, p. 466: "Wrought scrap-iron of every description, eight dollars per ton. But nothing shall be deemed scrap-iron except waste or refuse iron that has been in actual use, and is fit only to be remanufactured."

It is agreed that this is waste iron, fit only to be remanufactured. The only question is whether it has been in actual use. I do not find any recognized meaning of the words "actual use" which can be fairly applied to this new scrap-iron. The plates from which it was punched or clipped were new, and had been in no actual use, and I cannot discover any use to which the clippings have been put, any more than I can any to which they may be put hereafter until they they are remanufactured.

The statute seems irrational and harsh, but plain. The subject is thoroughly considered, and the various statutes, down to the Revised Statutes, are compared by Judge DEVENS in his opinion on one of these cases, in 16 Op. Atty. Gen. 445, with which I concur. The orders will be:

In No. 1546, judgment for the defendants for costs.

In No. 1548, judgment for the plaintiffs for \$1,611.92, and interest and costs.

*Reversed. See 7 Sup. Ct. Rep. 543.

UNITED STATES v. LOEB and others.

*(Circuit Court, S. D. New York.)***DISTILLER'S BOND—JUDGMENT ON.**

In an action on a distiller's bond, a verdict was rendered for the full amount of the bond, subject to the opinion of the court upon the question whether the sureties were entitled to a deduction from the verdict of the amount realized from the sale of the distiller's personal property. *Held*, on a motion for judgment on the verdict, that the judgment should be entered for the full amount of the bond, the sum realized from the personal property not being a legal off-set.

Mr. Hill, Asst. Dist. Atty., for the United States.

Mr. Ellis, for defendant Conklin.

COXE, D. J. This is an action on a leaseholder's (distiller's) bond. On the trial a verdict was rendered for the full amount of the bond and interest, subject to opinion of the court. The plaintiff now moves for judgment on the verdict. The defendant Conklin, one of the sureties, insists that there should be deducted from the verdict the amount realized from the sale of the distiller's personal property, which was forfeited for various violations of the statute, and sold according to law. This position cannot be successfully maintained. It was the evident intention of congress that in cases of fraud, not only the personal property but the real estate should be forfeited. The bond in this case was given pursuant to section 3262 of the Revised Statutes, as a substitute for the real estate; the distiller holding simply a leasehold interest therein. The act provides, in substance, that if the distiller is not the owner of the fee, he must obtain the consent of the owner and incumbrancers to the effect "that in case of the forfeiture of the distillery premises, or of any part thereof, the title of the same shall vest in the United States." In lieu of this consent the distiller may give a bond—the bond in this case—conditioned "that in case the distillery, distilling apparatus, or any part thereof, shall by final judgment be forfeited for the violation of any of the provisions of law, the obligors shall pay the amount stated in said bond."

In order to establish the liability of the obligors, proof is necessary that the distillery, distilling apparatus, or some part thereof, has, by final judgment, been forfeited. This proof was produced on the trial, Nothing further was required. The bond is not intended as security simply; it is enforced as a penalty—as a punishment for fraud. *U. S. v. Distillery at Spring Valley*, 11 Blatchf. 255. If the position of