

also involved in other actions between different parties in the courts of the state.

Third. It is alleged that the act of 1881, c. 13, is unconstitutional, null and void, for the reason that section 8 provides that "Any and all pieces or parcels of land situated and embraced within the boundaries of the towns of Somerset, Newfane, Wilson, and Lewiston, * * * except such pieces or parcels of land as by law were taxable in other towns prior to the passage of the general railroad bonding act of 1869, * * * shall be assessed for all taxes levied in said towns for the purpose of paying and liquidating any and all obligations or indebtedness of the towns aforesaid, respectively." The answer alleges that—

"At the time of the issue of said bonds there were, and ever since have been, and still are, a large number of persons owning and occupying farms divided by the town lines between the town of Lewiston and towns adjoining thereto, the occupants whereof then, and ever since have continuously, resided and still reside in the said town of Lewiston."

The pleader may have had in mind some article of the constitution which he thought forbade this legislation, but it is not pointed out. No authority has been cited upholding such a proposition, and the entire subject is, with the exception of the brief paragraph of the answer quoted, left wholly to conjecture. This court, in any case, should hesitate long before pronouncing, in advance of the state courts, a state act unconstitutional; but here there is apparently no foundation for the allegation. It is difficult to see wherein the limits fixed by the constitution are transgressed, and why the subject-matter of the act does not come directly within the scope of legislative powers. It follows that the plaintiff is entitled to recover.

PORTER and others v. BEARD.

(Circuit Court, D. Massachusetts. March 5, 1883.)

DUTIES—ACTION TO RECOVER FOR ERRONEOUS ASSESSMENT.

Where, under decision 3633 of the secretary of the treasury for 1878, a merchant leaves a sum of money with the collector of duties instead of the goods, and an examination is made by the appraisers before delivery, and the importer binds himself to abide the results of the appraisement "the same as if the goods had been retained," held, that neither party can take advantage of the delivery as changing the rights of the other.

C. L. Woodbury and J. P. Tucker, for plaintiffs.

Chas. Almy, Jr., Asst. U. S. Atty., for defendant.

LOWELL, J. In this action against the collector to recover back duties, said to have been erroneously assessed, the parties have waived a trial by jury, and have agreed to most of the facts. The losing party is to have 20 days to file exceptions to my rulings of law.

The goods were 33 packages of dye-stuffs, imported from France, by way of Liverpool, entered and liquidated at a valuation, which the defendant afterwards raised by reliquidation. The regularity of the reappraisalment and reliquidation is denied. The plaintiffs had received their goods, excepting eight cases, before the controversy arose; and, when they paid the additional duty on all but these eight cases, the collector had no means of compelling the payment, and they cannot now recover the money from him, since the payment was voluntary. *U. S. v. Schlesinger*, 14 FED. REP. 682.

The eight packages were delivered after a reappraisalment had been begun, and upon what are known as special deposits, under decision 3633 of the secretary of the treasury for 1878, p. 578 of the printed synopsis for that year, by which a sum of money is left instead of the goods, and an examination is made by the merchant appraiser and general appraiser before delivery, and the importers bind themselves to abide the results of the appraisalment "the same as if all the goods had been retained." Where goods are received in this way, I hold that neither party can take advantage of the delivery, as changing the rights of the other. On the one hand, the collector cannot say that the payment was voluntary, because he had the power to appropriate the plaintiffs' money instead of their goods; and, on the other hand, the plaintiffs are estopped to contend that the new liquidation was made after the goods were delivered.

These eight packages were imported at four different times, but one will serve to illustrate the question which has been argued. Two cases of "Nicholson Blue, A," were imported by the Istrian, and entered January 15, 1878, at the invoice valuation, and the entry was liquidated accordingly, February 8, 1878. In March, 1879, the appraisers recalled the invoice and made a new report, April 9, 1879, increasing the value on these two cases. The plaintiffs asked for the appointment of a merchant appraiser, as provided by Rev. St. § 2930, and one was duly appointed and sworn. These two cases were sent to the appraiser's store, June 5, 1879, and were duly examined, and there were several hearings by the board, at which both parties ex-

amined witnesses, and at which counsel were heard. December 10, 1879, the board reported, sustaining the higher valuation of these Nicholson Blue, A, goods, and the defendant made a reliquidation of the entry, April 20, 1880. In the mean time the goods were delivered June 6, 1879, in the special manner already mentioned. The duties were assessed at this higher valuation, and were paid under protest, and due appeal was taken to the secretary of the treasury, who confirmed the doings of the collector.

The only point of protest and appeal now insisted on is that the reliquidation was made more than a year after the entry, the goods having been delivered and duties paid in the mean time, contrary to St. 1874, c. 391, § 21, (18 St. 190.)

To this contention there appear to be two answers: (1) In point of fact, the duties were not paid on these eight packages of goods until after the reliquidation. (2) If I am mistaken and the goods had been delivered, it was under a stipulation which treated them as still in the possession of the defendant, and bound the plaintiffs to abide the results of the reappraisement. The only result which it was important that they should abide, was the reliquidation which ensued, of course, when the value was increased by the board of appraisers.

My decision, therefore, is that the reliquidation of the eight packages was regular and binding, and that the plaintiffs cannot recover. When the bill of exceptions has been filed and allowed, there will be judgment for the defendant.

THE SARATOGA, etc.

(Circuit Court, S. D. New York. February 27, 1883.)

1. PENALTY—PROCEEDINGS TO RECOVER—VIOLATION OF REVENUE LAW.

Whenever a vessel, or the owner or master of a vessel, has become subject to a penalty for a violation of the revenue laws of the United States, such vessel shall be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel to recover such penalty.

Section 3088, Rev. St.

2. SAME—WHEN VESSEL NOT SUBJECT TO SEIZURE.

The act of congress of February 8, 1881, provides that no vessel shall be subject to seizure or forfeiture as above by reason of the penalty incurred under section 2873, Rev. St., unless it shall appear that the master, at the time of the alleged illegal act, was a consenting party or privy thereto.

Stewart L. Woodford, U. S. Atty., for appellant.

Goodrich, Deady & Platt, for claimants and appellees.