

The plaintiff relies upon the act of first March, 1879, § 21, (20 St. 351,) which enacted that "the word 'gallon,' whenever used in the internal-revenue law, relating to beer, ale, porter, or other similar fermented liquors, shall be held and taken to mean a wine gallon, the liquid measure containing 231 cubic inches." But this act was plainly declaratory of the law as it then existed, and was not intended to establish a new standard of measurement in the customs and excise departments. Its object was to put a stop to an erroneous practice then prevailing in the internal-revenue department, of estimating domestic malt liquors by beer measure, and to require it to conform to the reorganized standard of the customs service and of the mercantile community. We are of opinion that the collector was right in estimating the plaintiff's importation by the wine gallon, and assessing the duty thereon accordingly.

The point was determined in the same way by Mr. Attorney General DEVENS, whose learned opinion is reported in 16 Op. Atty. Gen. 359. We fully concur both in his reasoning and conclusion.

Judgment for the defendant.

UNION NAT. BANK OF CHICAGO, ILLINOIS, *v.* CARR and others.

(Circuit Court, S. D. Iowa, U. D. 1883.)

OPTION CONTRACTS—VALIDITY OF.

Option contracts are not necessarily illegal, and the incident of putting up margins amounts to nothing unless the contract itself is illegal. The validity of such contracts depends upon the mutual intention of the parties as to the actual sale and delivery of the property, or a pretended and fictitious sale, to be settled upon differences.

On Exceptions to Master's Report.

Lehmann & Park, for complainants.

E. J. Goode, for defendants.

LOVE, J. There seems to be no serious question made in this case, except that of the legality of the contracts, which lie at the basis of the controversy. It is insisted that the contracts in question were illegal because they were "option" contracts, and because the defendant was charged with certain losses, by reason of his failure to put up "margins," etc. The evidence, however, falls far short of what is necessary to establish illegality in contracts of this kind. All "option" contracts are not illegal, and the incident of putting up

margins amounts to nothing, unless the contract itself is illegal. The validity of "option" contracts depends upon the mutual intentions of the parties. If it be not their intention in making the contract that any property shall be delivered or paid for, but that the pretended and fictitious sale shall be settled upon differences, the agreement amounts to a mere gambling upon the fluctuations of prices, and the contract is utterly void. But if it is the *bona fide* intention of the seller to deliver or the buyer to pay, and the option consists merely in the time of delivery within a given time, the contract is valid.

If the contract itself is lawful, the putting up of margins to cover losses which may accrue from the fluctuation of prices, and the final settlement of the transaction according to the usages and rules of the board of trade, are entirely legitimate and proper.

Nothing whatever appears in the present case to impeach the validity of the transactions in question, except that the defendant was dealing in options through his broker on the board of trade; that he failed to put up required margins; and that his transactions were settled at heavy losses, which were charged to him. This is entirely insufficient to invalidate the charges made in the account against him.

The exceptions to the master's report will be overruled and a decree entered for the complainant.

There is, at least, serious doubt whether a decree can be entered till the next term. Let the cause, therefore, stand over till that time.

THE "IOLANTHE" CASE.

CARTE v. FORD and another.

(Circuit Court, D. Maryland. February 21, 1883.)

1. DEDICATION OF OPERA BY PUBLICATION OF UNCOPYRIGHTED SCORE AND LIBRETTO.

The non-resident alien authors of the comic opera of "Iolanthe," having sanctioned the publication in the United States of the libretto and vocal score, with a piano accompaniment, and having kept the orchestration in manuscript, *held*, that a person who had independently arranged a new orchestration, using for that purpose only the published vocal and piano-forte scores, could not be enjoined from publicly performing the opera with the new orchestration.