

This statute does not provide that every railway company shall fence its track. It imposes no positive or imperative duty to do so. It is a statute plainly intended to protect the owner of live-stock running at large, and this purpose is sought to be accomplished, not by imposing the duty of fencing upon the railway companies, but by providing that if they shall fail to fence, they shall be liable to the owner of any stock killed or injured for the want of a fence, unless occasioned by the willful act of the owner, and that in case such owner is not paid the amount of his damages within 30 days from the time he shall give notice of his loss to the company, and prove the amount thereof by affidavit, he may recover double damages. Under the statute the railway company is not bound to fence its road, but is subject to a certain liability if it fail to do so. If the company chooses to run the risk of leaving its road unfenced, and to assume the pecuniary liability imposed by the statute as a consequence of so doing, it has a right to do so. It cannot, therefore, be said that the statute imposed upon the company the absolute duty of fencing; and as negligence can only be imputed to the company in consequence of a failure to discharge a duty imposed by law, the defendant cannot be held liable upon the facts stated in the petition. The demurrer to the petition is accordingly sustained.

I am authorized to say that LOVE, J., concurs in this opinion.

UNITED STATES *v.* SIX HUNDRED TONS IRON ORE, etc.¹

(District Court, D. New Jersey.)

FORFEITURE FOR UNDERVALUATION OF IMPORTS—EXCEPTIONS TO COMMISSIONER'S REPORT—ACT JUNE 22, 1874, §§ 17 AND 18.

Exceptions to the report of a United States commissioner, to whom a case has been referred for summary investigation under the provisions of sections 17 and 18 of the act of congress of June 22, 1874, to ascertain the amount of freight due the owners of a vessel on importations forfeited by reason of undervaluation, should not be passed upon by the court, but go with the report to the secretary of the treasury, and be considered by him in making up his judgment in the case; and an expression of the commissioner as to the law of the case should be stricken from the report as not coming within the reference.

On Petition for Remission, etc.

A. O. Keasbey, U. S. Atty., for the United States.

Henry T. Wing, for petitioners Henderson and others.

B. F. Lee, for petitioner Wells.

NIXON, J. Six hundred tons of iron ore, imported into this country from Spain by the steam-ship Italia, have been forfeited for under-

¹Sec S. C. 9 FED. REP. 595.

valuation. Since the forfeiture, Thomas Henderson and others, owners of the steamer, have presented a petition to me, pursuant to the provisions of sections 17 and 18 of the act of June 22, 1874, praying for an allowance of freight from the proceeds of the sale, and one Joseph Wells has also petitioned to be reimbursed for certain advances of money made by him on the purchase of the property without knowledge of the violations of the revenue laws by the importer.

Under the provisions of the eighteenth section I directed the summary investigation, provided for by the act, to be made by William Muirheid, Esq., one of the United States commissioners for the district, ordering him to state and annex to the petition the facts appearing from the evidence, together with a certified copy of the evidence, in order that the same might be transmitted to the honorable secretary of the treasury for adjudication.

The commissioner has made his report, finding the facts which he was ordered to do, and also finding the law, which was not within the reference. The counsel for the petitioners, Henderson and others, have filed exceptions to the report of the commissioner, and asking that numerous changes should be made by the judge.

I think the fair construction of the act is that these exceptions should go with the report to the secretary of the treasury, and should be considered by him in making up his judgment in the case. I have accordingly declined to pass upon them. I should direct all expressions of opinion by the commissioner, as to the law of the case, to be stricken from the report, as not coming within the reference, if I supposed they would tend to prejudice the judgment of the secretary of the treasury.

In re ACCOUNTS OF THE SHIPPING COMMISSIONER OF THE PORT OF NEW YORK.

(Circuit Court, S. D. New York. June 8, 1883.)

SHIPPING COMMISSIONER OF PORT OF NEW YORK—SALARIES OF DEPUTIES—REFERENCE TO MASTER.

While, on the facts before the court, it cannot assume that the salaries of \$3,648, paid by the shipping commissioner of the port of New York to his three sons, whom he has appointed as his deputies, are excessive and should not be allowed, it is ordered that the accounts be referred to the master to take proof and report explicitly upon the reasonableness of the salaries paid by the shipping commissioner to his deputies, upon notice to the United States attorney, and with leave to the United States attorney to introduce testimony.

Objections to Master's Report.

H. E. Duncan, on part of shipping commissioner.

Elihu Root, U. S. Atty., *contra*.

WALLACE, J. Upon the presentation of the report of the master, to whom it was referred to examine the annual account of Mr.