

in favor of this claim. If you find that the articles imported were axles under the law, as I have stated, then your verdict should be for the defendant. If, taking these general principles, from a fair examination of the evidence you are satisfied that they were properly classified by the custom-house officers as axles, then your verdict should be in favor of the defendant, because then the collector had properly charged the duty. If you find from the evidence that they were not properly classed, then they would come under the class of "hammered iron," and your verdict should be for the plaintiff for the amount of the difference between the rates of duty before stated, with interest thereon from the time the sum of money was paid. I believe the sums were paid in two different installments. The petition states the amount. You will count interest on the amount to the first day of the present term of court.

Verdict for defendant. Motion for new trial overruled, and exceptions taken by plaintiff to the charge of the court, and refusal to instruct as requested by the plaintiff.

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UNITED STATES v. SEIDENBERG and others.

(Circuit Court, S. D. Florida. May, 1883.)

1. CUSTOMS DUTIES—RELIQUIDATION.

A reweighing of goods made by the collector and the regular weighers, at which a difference from the original weights in favor of the government was found, but of which no notice or order was given, and no record made, was not a reliquidation of the duties on said goods. See article 361 of the Treasury Regulations.

2. SAME—SECTION 21 OF ACT OF JUNE 22, 1874, (18 ST. 190.)—REV. ST. §§ 2785-2790.

The entry alluded to in section 21 of the act of congress approved twenty-second June, 1874, (18 St. 190.) is the original entry provided for, regulated, and defined by sections 2785 to 2790, inclusive, of the Revised Statutes.

On Writ of Error.

This was an action of debt in the district court, on five warehouse bonds, for the balance of duties alleged to be due the United States on tobacco imported by defendants. On two of the bonds there is no contest.

(1) On the eighth of October, 1877, 589 bales of tobacco were imported and entered for warehouse, the tobacco weighed, and bond No. 399 executed. Withdrawals of bales of tobacco covered by this bond were made in October, November, December, 1877; January, February, March, June, and July, 1878; and the duties paid on each with-

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

drawal according to weights ascertained October 8, 1877, the date of bond.

(2) On the twentieth of October, 1877, 184 bales were imported and entered for warehouse, and on the twenty-seventh of October, 1877, the tobacco was weighed and bond 402 executed. Withdrawals were made in October and November, 1877, and January, February, March, May, June, July, October, and December, 1878, and the duties paid on each withdrawal, according to weights, October 22, 1877.

(3) On the twenty-ninth of October, 1877, 71 bales of tobacco were imported and entered for warehouse, the tobacco was weighed, bond 403 executed, withdrawals were made October and November, 1877, January, March, May, June, and July, 1878, and the duties paid on each withdrawal according to weights ascertained October 29, 1877.

On the fourth day of May, 1878, there being in the bonded warehouse 34 bales covered by bond 399, 24 bales covered by bond 402, and 16 bales covered by bond 403, certain inspectors, the collector of customs, and the regular weighers, reweighed 19 bales—10 of 399, 3 of 402, and 6 of 403—of this tobacco, and found there was a difference in favor of the government, and estimated that on the whole of the tobacco covered by three bonds, between the tare originally allowed (at the date of entry for warehouse) and that found on reweighing, May 4, 1878, there was a difference of 1,812 pounds in favor of the government, the duties on which amounted to \$634.20. No record was made. Subsequently the remainder of the tobacco was all withdrawn, and the duties paid according to first weights, and the collector made no demand for the additional duties until a reliquidation was ordered by the secretary of the treasury, January 9, 1879, and on the twelfth of April, 1879, this suit was brought to recover the amount claimed.

The defendants pleaded payment of duties on original weights and delivery, and that no demand had been made for additional duties within one year from the date of entry.

On the trial of the case the following charges to the jury were requested:

(1) If the jury find from the evidence that if, at the time the balance of duties was found to be due the United States as alleged, all the merchandise covered by the bonds sued on had not been delivered to the agent, owner, or consignee, and all the duties had not been paid, they must find for the plaintiff; (2) that if the collector failed to properly enter up the duties, as found due May 4, 1878, the plaintiff should not be prejudiced thereby, for the government is not responsible for the laches of its officers; (3) that if the jury find from the evidence that the amounts claimed have not been paid, they must find for the plaintiff in the full amount claimed on each bond, with interest at 6 per cent. from May 4, 1878

Which said instructions were refused by the court, and the following instruction was given

“The only question is whether one year had elapsed from the date of entry contemplated by section 21, act of June 22, 1874, and the time of the

final determination or liquidation of duties upon which this suit is brought; and if whether, within that year, all the goods entered under bonds 399, 402, and 403 had been delivered to the importer, and the duties determined within that year had been paid.

"I instruct you that the dates of the entries contemplated in this case were the dates of original entry for warehousing, and the date of such subsequent liquidation, upon which this suit is brought, was the date of reliquidation by the collector, January 16, 1879. The time elapsing had been more than a year, and the goods had all been delivered, and the duties determined at that time paid.

"You will, therefore, not find for the plaintiff on the first three bonds; but as to the amounts due on the other two bonds, viz., 422 and 424, there has been no contest. You are, therefore, instructed to find for the plaintiff in the amount of \$477.05, claimed to be due on bonds 422 and 424, with interest at 6 per cent. per annum from January 16, 1879."

To which refusals to instruct, and to the instruction as given, exceptions were taken, and the case comes up on the correctness of the court's rulings.

*G. B. Patterson*, U. S. Atty., for plaintiff in error.

*Bethel & Allen*, for defendants in error.

PARDEE, C. J. Two questions are presented for answer:

(1) Was the reweighing of the tobacco, (remaining in the warehouse under the three bonds,) of date May 4, 1878, a reliquidation of the duties on the whole importation? (2) In this case, when did the year of limitation provided by section 21 of the act of congress, approved June 22, 1874, begin to run?

1. The proceedings on the fourth of May, 1878, amounted to no more than an investigation. There was no notice, no order, no record. See *Treas. Reg. art. 361*. The government was not bound by it, the collector did not act upon it, and that such proceedings were had is now shown, not by the collector's books, but by his personal recollection. On the back of each bond a reliquidation is indorsed, but that is of date January 16, 1879, and there is no reference there to May 4, 1878.

That the collector did not consider it a reliquidation appears conclusively from the fact that he made no record, as required by the treasury regulations, and he permitted the remaining goods to be withdrawn on the payment of duties as fixed by the original liquidation.

That the treasury department considered it nothing more than an investigation, appears from the order of January 7, 1878, directing a reliquidation.

So far as a liquidation is determined by the law, it is the decision by the collector of the amount of duties, charges, and exactions required to be paid on the merchandise. See *Rev. St. §§ 2931, 2932*.

As shown by the record, the collector made no such decision in this case on May 4, 1878, nor at any time subsequent to the original liquidation, until January 16, 1879.

2. Section 21 of the act of congress approved June 22, 1874, (18 *St. at Large*, 190,) reads:

"That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty, and such settlement of duties, shall, after the expiration of one year from *the time of entry*, in the absence of fraud, and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties."

What *entry* is intended in the foregoing section? An examination of all the statutes in relation to the importation, warehousing, appraising of, and the collection of, duties upon goods, wares, and merchandise shows only one entry required or referred to. That entry is the original entry provided for, regulated, and defined by sections 2785 to 2790, inclusive, of the Revised Statutes. That entry is undoubtedly the one referred to in the section aforesaid. A construction of all the statutes on the subject, or of the particular section, points conclusively to such an entry as being the one from which the year's limitation provided shall commence to run. No other entry can be found as referred to, unless we go outside of the statutes.

The treasury regulations speak of entries for warehouse, entries for withdrawal, and other entries, and Mr. Justice STRONG, in *Westray v. U. S.* 18 Wall. 322, speaks of "entry for warehouse" and "withdrawal entry." The entry for warehouse is the original entry; but the term "entry for withdrawal" is a misnomer. There may be an application for permission to withdraw goods already entered, which is called in the treasury regulations the "entry for withdrawal," which has certain requisites as to form, and it may be for withdrawal, for consumption, transportation in bond, or exportation; but certainly no such application can be the *entry* meant in the statute. And I see no good reason for arguing that any other than the original entry of goods was intended by the law.

A full year, in the absence of fraud or protest, is given to ascertain the amount of duties. The time is ample, the opportunities are ample, for the government has possession of all goods in warehouse, and if the government is to be limited at all in the time within which duties may be reliquidated, the term allowed by the statute from the original entry is sufficient. But be that as it may, if the intention was to allow the government to reliquidate at any time while any of the goods remained in the warehouse, and for one year thereafter, congress should have so enacted; but, as I read the statute, the time allowed is only one year from the date of the original entry.

It is, therefore, my decision that there was no error in the charges and refusal to charge of the court on the trial of the case in the court below, and that the jury were properly directed.

The judgment of the lower court will, therefore, be affirmed.

## BALFOUR and others v. SULLIVAN, Collector.

(Circuit Court, D. California. April 16, 1883.)

## 1. DUTIES—SHRINKAGE IN WEIGHT.

Where a cargo of coke, imported from Wales, by reason of evaporation of the moisture contained in it during the voyage, weighed several tons less than when shipped, *held*, that duties could only be legally collected on the actual weight at the time of the importation, and not on the weight shown by the invoice.

## 2. REGULATION OF THE SECRETARY OF THE TREASURY.

A regulation of the secretary of the treasury, that duties shall be collected according to the invoice, unless the importer accounts, by proofs, for the discrepancy between the amount shown by the invoice and the actual weight at the time of importation, is no defense to an action to recover the duties exacted from the importer on the difference between the amount actually imported and the amount shown by the invoice to have been shipped.

At Law.

*Charles Page*, for plaintiffs.

*Mr. Teare*, U. S. Atty., for defendant.

SAWYER, J. The plaintiffs, Balfour, Guthrie & Co., in January, 1882, imported into San Francisco, from Cardiff, Wales, a cargo of coke, which, upon its arrival and entry, was duly examined and weighed by the proper custom-house officers, and was found, and so reported, to actually weigh one thousand and ninety-nine tons, four centals, two quarters, and twenty-six pounds. The weight, as set forth in the invoice which accompanied the importation, was one thousand one hundred and forty-six tons and sixteen centals. The amount of duties payable on the weight shown by the invoice is one thousand one hundred and thirty dollars and fifty cents; while that payable according to the actual weight is one thousand and eighty-five dollars and fifty-nine cents,—making a difference of forty-four dollars and ninety-one cents. The collector demanded and collected the amount due according to the weight shown by the invoice, instead of the actual weight, which sum was paid by plaintiffs under protest, in order to obtain possession of the coke. The importers appealed to the secretary of the treasury, who affirmed the action of the collector; and this action is brought to recover the excess of forty-four dollars and ninety-one cents, so collected, on the ground that duties could only be legally collected upon the weight of the coke actually imported. Coke is a porous substance, subject to change in condition by increase of weight in a moist, and decrease in a dry, atmosphere. Article 532 of the regulations of the treasury department, adopted in 1874, is as follows:

“No allowance will be made in the estimate of duties for lost or missing articles or packages appearing on the invoice, unless shown, by proof satisfactory to the collector and naval officers, not to have been originally laden on board, or to have been lost or destroyed, by accident, during the voyage.”