

charges, with the demand for the collaterals, was not sufficient, for the collateral was held lawfully for the amount of advances made to the plaintiffs. The refusal to surrender the goods shipped, without a tender for the full amount taxed, was rightful. Hence there was no conversion entitling the plaintiff to recover.

Judgment, therefore, is for the defendant.

### C. N. NELSON LUMBER CO. v. TOWN OF LORAINÉ.

(Circuit Court, W. D. Wisconsin. 1884.)

1. **TAXATION—INTERSTATE COMMERCE—LOGS IN TRANSIT.**

Logs cut on lands owned by a Minnesota corporation in Wisconsin and hauled down to a river, and piled on the ice to await the opening of the river, to be floated down into Minnesota, to be there manufactured into lumber, cannot be considered as in transit from one state to another in a commercial sense, and may be assessed and taxed in Wisconsin.

2. **SAME—CONSTITUTIONALITY OF WISCONSIN STATUTE OF 1882.**

Sections 1 and 2 of the Wisconsin statute of 1882, regulating the assessment and taxation of logs belonging to non-residents, is not unconstitutional as violating the principle of uniformity in providing for an assessment in April, while logs belonging to residents are assessed in May, nor as unjustly discriminating against non-residents.

3. **SAME—DOUBLE TAXATION.**

The fact that lands on which logs are grown are assessed for taxation in May, and the logs cut therefrom are assessed for taxation in the following April, does not render the tax on the logs a second tax.

4. **SAME—TAXATION IN ANOTHER STATE—REMOVAL OF PROPERTY.**

Where a tax is lawfully levied on property in one state, the constitutionality of such tax is not affected by the fact that such property is again subjected to taxation in another state to which the owner has removed.

At Law.

*J. N. & I. W. Castle, Fayette Marsh, and Clapp & McCartney, for plaintiff.*

*George D. McDill, for defendant, with J. N. Searles, of counsel.*

BUNN, J. This is a general demurrer to the first and third counts of the plaintiff's complaint, in an action at law to recover back taxes paid to the treasurer of the defendant town. The facts in the case are briefly these: The plaintiff is a corporation created under the laws of Minnesota, and doing business at Stillwater, in that state. It is, and for many years has been, the owner of large tracts of pine-timbered lands in northern Wisconsin, and is engaged in the lumbering business, which consists in cutting pine logs from the timber of said lands during the winter season in each year, and hauling the same upon sleds to the different streams tributary to the Saint Croix river, in Wisconsin, and placing them upon the banks of said streams and upon the ice thereof, between the banks, and there awaiting high water in the spring to transport them down said streams into the

Saint Croix river, and thence through the Saint Croix lake to the city of Stillwater, where they cut them into lumber, and market the lumber in Minnesota and other states west of the Saint Croix and Mississippi rivers. This business, as appears from the complaint, is carried on upon a large scale; the logs so put in by the plaintiff in one winter, that of 1881-82, amounting to 10,000,000 feet. It appears clearly from the complaint that the logs taxed by defendant town during each winter were cut in the town of Lorainé, in Polk county, and were put upon the ice of the Clam river, between the banks in said town, for the purpose and with the intention of running them down said stream into the Saint Croix river, and thence to Stillwater, as soon as the ice and snow should thaw out in the spring, and there should be a sufficient rise of water in said Clam river to float them.

In the springs of 1882 and 1883, on or about April 1st, while the plaintiff's logs were so lying piled upon the ice of said stream in said town, the assessor of said town put them in his list and entered them for valuation and assessment for the general state, county, and town taxes for those years, and afterwards, the said tax being duly extended against said logs and default of payment made, a warrant was issued and the plaintiff's personal property seized for their non-payment, whereupon the plaintiff made protest, and, to save its property, paid said taxes, amounting in all to the sum of \$1,587.65, which this suit is brought to recover back, on the ground that the logs were not legally and properly taxable in Wisconsin.

The first and, in my judgment, the graver contention on the part of the plaintiff is that at the time of their assessment the logs were in commercial transit from one state to another, and were therefore exempt upon conceded principles of law, and also that they had so become the subject of commerce as to render taxation by the state authorities an unwarrantable interference, in violation of the provision of the United States constitution which gives to congress the power to regulate commerce between the several states. This is certainly a very important question, and I have endeavored to give to it the consideration which it deserves, and in doing so have examined all the authorities I have been able to find on this subject. If the logs were in commercial transit, or their taxation was an interference with congressional authority, they were not taxable. The plaintiff contends that they became and were in transit from the time they were loaded upon sleds in the woods and started on their destination towards the river, to be rolled down the banks thereof upon the ice. But I am unable to concur in this view, and am of opinion that the logs were in no actual or legal sense *in transitu* while awaiting shipment down the river, nor had they become the subject of commerce so as to make the usual and ordinary taxation by the state authorities an interference with the proper regulation of commerce by congress.

It was a part of the business of the plaintiff to grow the timber

upon its lands from which the logs were made. They were carrying on an extensive business in Wisconsin, which required the employment of many hands and teams, and the carrying on of large operations during five or six months of each year. These logs were grown in the township and taxing district where they were cut and piled up at the time the tax was extended against them. They had never been sold, but at the time of the assessment still belonged to the same corporation which owned the land and timber from which they were cut. Though put upon the ice of the river with the intention of floating them down at some future indefinite time, they were still there, and in the same town and county where they grew and were cut, and how long they would remain there, or when they would or could be started on their further destination out of the state, was wholly uncertain. The plaintiff might change its intentions in regard to shipping them. Unless it did so they would doubtless be put in motion whenever the floods came, whether the following spring or summer or fall; or, if the water should not be sufficient to float them out during that season, then the next following or some subsequent season, according to the usual course of such business. As generally happens, some would be floated out the first season, and some would remain over and go out during subsequent seasons. I cannot think that the act of hauling the logs and piling them upon the ice or upon the banks of the stream, within the town and taxing district where they grew and were cut, with the intention of floating them out of the state whenever high water should come, for the purpose of manufacture, constitutes putting them *in transitu*. And I think the power which congress has under the constitution to regulate commerce, was never intended to interfere in any degree or manner with the power of the local authorities to tax personal property in the district where the owner resides, or where the property has a legal *situs*.

It is not denied by plaintiff's counsel that the property had a legal *situs* in the town of Loraine from the time the logs were cut to the time they were hauled to the river; but it is claimed they lost their *situs* and were in transit from the time they were started on sleds, or other means of conveyance, to the stream where they were banked. I think the legal *situs* continued during the time they remained so banked upon the river. If so, the tax was a proper one upon the property itself where situated, and was not a tax upon commerce or upon the transportation of property, and had no relation to the matter of regulating commerce between the states, which belongs to congress. Suppose the plaintiff, instead of using these lands to grow pine timber, had used them for a farm, upon which they grew large quantities of stock for market, and in the winter should drive droves of cattle from the farm to this same Clam river, and there feed and keep them until high water in spring or summer, when they could ship them down the river out of the state to market. They still belong to the original owners, have never become the subject of commerce by