

DIECKERHOFF AND OTHERS *v.* ROBERTSON.

Circuit Court, S. D. New York.

August 16, 1887.

CUSTOMS DUTIES—AMENDMENT OF BILL OF PARTICULARS—SECTION 8012,
REV. ST.

A bill of particulars, required by section 3012, Rev. St. U. S., in an action brought against a collector of customs to recover excessive duties, may, under that section, be amended by increasing the amounts of such duties therein claimed, in case of reasonable excuse for a *bona fide* mistake; but the specific cause of error or mistake should be shown, and why the original was not made in proper form.

This action was brought June 20, 1885, against the defendant to recover an alleged excess of duties exacted of plaintiffs by him as collector

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of customs. Thereafter the plaintiffs, under section 3012, Rev. St., served a bill of particulars of such duties claimed by them. Subsequently it was determined that the amounts of such duties claimed by them in the case of five importations was less than the real amounts exacted. They thereupon moved the court for permission to amend their bill of particulars by substituting the real amounts for the amounts claimed therein. The affidavit upon which this motion was based set out:

That, in the official adjustment of the items in the bill of particulars in the above action, it has been found that several errors have occurred in said bill of particulars, as will appear in the annexed schedule marked "A;" that the figures in column No. 2 are found to be the correct amounts, and should be substituted for those in column No. 1, and the bill of particulars amended accordingly.

SCHEDULE A.

NAME OF STEAMER.	DATE OF ENTRY.	AMOUNT NO. 1.	AMOUNT NO. 2.
Oder	July 3, 1883	\$ 10 00	\$ 19 00
France	July 5, 1883	208 50	345 50
Main	July 9, 1883	8 50	13 00
Rhein	July 18, 1883	20 00	36 50
Werra	July 23, 1883	26 00	41 25

Edgar Ketchum, for the motion.

Stephen A. Walker, U. S. Atty., and *Thomas Greenwood*, Asst. U. S. Atty., opposed.

LACOMBE, J. This application, which is for leave to amend a bill of particulars in an action to recover excess of duties, may be best answered by quoting the decision of Judge BROWN in *Levi v. Robertson*, (filed August 5, 1887.)

"Under section 3012, an amendment of bill of particulars may, I think, be made as in any other case of reasonable excuse for a *bona fide* mistake. But the specific cause of error or mistake should be shown, and why the original was not made in proper form. The within affidavit is insufficient. If allowed, it would in effect abolish section 3012 in part."

The affidavit on which this motion is made is also insufficient. Motion denied, without prejudice to a similar motion on additional affidavits.