

relief, you will be able, likely, to only approximately do so; but your verdict should be responsive to whatever you may believe to be, substantially, remedial in the premises.

In addition to what we have been considering, the plaintiff says an oppressive and wanton discrimination was made against the shareholders, in this: That the assessing officers have willfully, wantonly, or through gross culpable negligence, refused, failed, and omitted to subject to taxation a large amount, nearly if not more than \$1,000,000 of rights, credits, notes, mortgages, etc., and other moneyed capital, which was known by such officers to be in the hands of individual citizens of the parish and city. Upon this matter I charge you that it is not disputed by defendants that a large sum of such moneyed capital was not listed for taxation, and that, as a matter of fact, only a trifling amount of such taxable property was subjected to taxation; and, if the evidence sustains the allegation of such willful refusal or gross culpable negligence against the assessing officers, you are authorized to relieve plaintiffs to the extent of annulling the whole assessment as to the bank.

Verdict for plaintiffs.

LEESON v. YOUNG.

(Circuit Court, N. D. California. March, 1891.)

CUSTOM DUTIES—"SEINE AND GILLING TWINE."

An article manufactured, imported, and sold under the name "salmon net twine, 14 ply," made of the first quality of flax, having 14 small strands or threads very slightly twisted together, and mainly used for making seines and gilling nets for catching fish, and known in the trade and in its use as "salmon seine," and "seine and gilling twine," though it can be used for sewing sacks, shoes, etc., is taxable at 25 per cent. *ad valorem*, as "seines" and "seine or gilling twine," under Schedule J, Act 1883, (23 St. 507,) rather than 40 per cent. *ad valorem*, as "flax or linen thread," under the same schedule.

At Law.

Suit by J. R. Leeson against J. R. Young, administrator of the estate of Sullivan, collector, to recover the excess of duties alleged to have been illegally exacted.

E. F. Swortfiquer and *George A. Wentworth*, for plaintiff.

Jackson Hatch, Ass. U. S. Atty. for defendant.

Before SAWYER, Circuit Judge.

SAWYER, J. This is a suit to recover an alleged excess of duty charged and collected by the collector of the port of San Francisco, on what is claimed to be salmon seine or gilling twine.

The only question is one of fact; whether the article is "flax or linen thread" mentioned in Schedule J of the act of 1883 embracing hemp, jute and flax goods, taxable at 40 per cent. *ad valorem*, or whether it is "seines" or "seine and gilling twine" as used in the same schedule, and

taxable at 25 per cent. *ad valorem*. See 22 St. 507. The article was made in and imported from Scotland. It has a printed label on it marked "Salmon net twine, 14 ply," with the number 40 in the corner. It is made of first quality of flax, having 14 small strands or threads, very slightly twisted together, if it can be called twisted at all, into one strand or cord of twine or thread, whatever it may be properly called. There is abundant testimony showing that it is manufactured, imported, sold and used mainly for making seines and gilling nets for catching salmon and other fish, and that it is known in the trade and in its use as "salmon seine," and "seine and gilling twine." There is other testimony that it can be used, not that it is generally so used, in sewing shoes, sacks, etc. There is testimony of other witnesses that this is a thread, and that twine is hard twisted, etc., and that seines are also made of hard twisted twine or thread. If there is any reliance to be placed upon dictionaries in the definition of twine, and thread, the article in question, is, certainly a twine, rather than a thread. Out of the 20 odd specimens of thread and twine put in evidence, to show, in connection with the testimony of witnesses, what is thread, and what is twine, if this is not twine, then I am unable to say which is twine. In my judgment, in view of all the testimony, if there is any such thing as "seine twine" or "gilling twine" within the meaning of the statute, this must be the article, or at least one of the articles. It may be that other articles imported and used for the same purpose, may, also, come within the purview of the statute. It does not follow, that, this, alone, can come within the meaning of the statute, but this, at least, must be one of them. Some are large and some are small. Some of more, and some of less ply. The statute must mean something, and there was, doubtless, some reason for reducing the tariff on twine, used for this purpose of making seines and gilling nets, though congress has not seen fit to inform us what it is. Probably to encourage this class of fishing. If that be so, the fact that it is manufactured, imported, purchased, and used for this purpose, satisfies the reason, as well as, the letter, of the law; and the fact, that it may be used for other purposes, also, should not deprive it of the privilege of a reduced duty, when manufactured, imported and used in this business. Manufactured seines, and twine for seines, and gilling nets, are within the statute. Whether harder twisted threads, made into seines, or imported and sold in the trade and used for the same purpose, would, also, under such conditions, be within the scope of the statute, it is not necessary now to inquire. I am satisfied that the article in question, is seine or gilling twine, within the meaning of the statute.

I find that Judge BLODGETT, in the northern district of Illinois, took a similar view in *McNab v. Seeberger*, 39 Fed. Rep. 759, where twine, apparently, quite similar to this, was in question. Plaintiff is entitled to recover the excess of duty paid, over 25 per cent. Let a general finding be drawn, and judgment entered accordingly.

In re MASSEY.

(District Court, E. D. Arkansas, W. D. October Term, 1890.)

ELECTIONS OF CONGRESSMEN—ENFORCEMENT OF FEDERAL LAWS—INSPECTION OF BALLOTS.

The laws of the United States concerning elections at which congressmen are elected are paramount, and Mansf. Dig. Ark. § 2694, providing that "the judges of election shall securely envelop all the ballots which may have been received under seal, and return the same to the clerk of the proper county, which shall in no event be opened except in case of a contested election," cannot be held to justify the refusal of the clerk to produce the ballots before the grand jury of the United States, pending an investigation into alleged violations of federal election laws.

Rule to Show Cause why respondent should not be committed for contempt.

In response to a rule to show cause why respondent, a county clerk, should not be committed for contempt in refusing to bring the ballots cast at a congressional election, before the grand jury the respondent filed the following answer:

"The respondent would respectfully represent to this honorable court that, in compliance with the *subpœna duces tecum* served on him by the marshal of said district, a certified copy of which, together with the orders of this honorable court under which the summons issued, and the return of the marshal thereon, is hereto attached and made a part of this response, he appeared before the grand jury for the purpose of answering, and did answer, all questions propounded to him by said body, and also produced the poll-books of the election in Wellborn township in said county, in obedience to the directions contained in said writ. The respondent would further represent to this honorable court that he is the county clerk within and for Conway county, state of Arkansas; that he is not by the laws of said state an election officer, and has no duties to perform in connection with elections, except as hereinafter stated; that by the provision of the statute of the state of Arkansas the county court is required at its last term, held more than 30 days before any election, to appoint three discreet persons in each township, having the qualifications of electors, to act as judges of election within the township, and the judges so appointed shall select two persons having the like qualifications to act as clerks thereof; that all elections are held by said judges and the clerks to be by them appointed. It is by law the duty of the clerk of the county court at least twenty-five days before a general election to make out and deliver to the sheriff of the county two blank poll-books for each township in his county, properly laid off in columns, with proper captions, with forms of oaths and certificates attached thereto, and it is by law made the duty of the sheriff forthwith to deliver such books to the judges of elections within their respective townships. The judges of elections, before entering upon their duties, are required to take an oath that they will perform the duties of judges of the election according to law, and to the best of their knowledge and abilities, and will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same; and will not disclose how any elector shall have voted, unless required to do so in a judicial proceeding, or a proceeding to contest an election. The clerks of election are required, before entering on their duties, to take an oath that they will faithfully record the names of all voters, and that they will not disclose how any elector shall have voted, unless required to do so as a witness in a judicial proceeding, or in a proceeding to contest an election. That, after canvassing the votes cast at the election, the judges, be-