

In re MATHEWS et al.

(Circuit Court, D. Vermont. April 7, 1891.)

CUSTOMS DUTIES—LUMBER IN BOND—APPRAISAL OF DUTY.

By Act Cong. Oct. 1, 1890, it was provided that the duty on lumber imported should be reduced from two dollars to one dollar per M., but that, if any country should impose an export duty on logs for this country, the duty on lumber should remain as before. The export duty on logs from Canada was removed October 13th. The lumber in question was imported September 27th, and deposited in bond. It was not withdrawn until October 16th. *Held*, that under the provision of section 54, that merchandise deposited in bond may be withdrawn within three years from the date of the original importation upon the payment of the duties and charges to which it may be subject by law at the time of its withdrawal, it should have been assessed only one dollar per thousand.

At Law.

W. L. Burnap, for Mathews & Hickok.

WHEELER, J. This matter has been heard upon the return of the general appraisers. Prior to the act of October 1, 1890, the duty on sawed pine lumber was two dollars per M. 22 St. 501, Schedule D. Canada imposed an export duty on logs. Mathews & Hickok imported 525,943 feet of such lumber September 27th, at Burlington, and deposited it in bond. By that act the duty was fixed at one dollar per M., provided that, if any country imposed an export duty on logs for this country, the duty on lumber imported from such country should remain as before. The export duty on logs from Canada was removed, to take effect October 13th. This lumber was withdrawn from bond and entered for consumption October 16th. A duty of two dollars per M. was assessed upon it because the collector had not been informed from the treasury department that the export duty on logs had been removed by Canada. This assessment appears to have been affirmed by the general appraisers because the lumber did not appear to have been imported after October 13th. But by section 54 of that act any merchandise deposited in bond "may be withdrawn for consumption within three years from the date of original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal." This lumber was subject to a duty of one dollar per M. only at the time of its withdrawal. Under this statute the importers seem to have had the right to withdraw the lumber on payment of that duty. *Hartranft v. Oliver*, 125 U. S. 525, 8 Sup. Ct. Rep. 958. Judgment that entry be liquidated at one dollar per M.

UNITED STATES v. BOYD *et al.*

(Circuit Court, W. D. Arkansas. October 28, 1890.)

1. WHAT CONSTITUTES MURDER.

The statutes of the United States, providing for the punishment of the crimes of murder and manslaughter, do not define murder, but do manslaughter. We must therefore go to the common law to ascertain the definition of murder.

2. SAME.

Under the law of the United States there can be but two crimes growing out of the taking of human life—murder or manslaughter. To constitute murder the killing must be done willfully, and with malice aforethought.

3. SAME—WILLFULLY, WITH MALICE AFORETHOUGHT.

Aside from the acts of violence which produce a deadly result these acts must be executed willfully, and with malice aforethought. The word "willful" and the phrase "malice aforethought" have a technical legal meaning which should always be clearly given by the court to the jury.

4. SAME.

The word "willful," as used in connection with a homicide, means a killing that is intentional, and not accidental.

5. SAME—ACCIDENT.

An accident as recognized in law is something that occurs after the exercise of the care required by the law to prevent its occurrence.

6. SAME—INTENT.

The law fastens intent to every act that is not an accident. Every act that produces death that is outside of the definition of the word "accident" is intentional in the law, whether it grows out of a specific design to take life, or of gross carelessness, or it arises from a condition of mind that prompts the possessor of that mind to be engaged in some wrongful or criminal act which from its nature, or the way it is executed, may reasonably or probably produce death.

7. SAME.

That the act producing death was intentional may be found from the nature of the act done, and the way it is done, the character of the weapon used, the way it was used, and the result produced by such use. This is upon the principle that every man by the law is held to intend the natural, reasonable, ordinary, and probable consequences of his act.

8. SAME—MALICE.

The peculiar distinguishing trait of murder, the grand criterion which distinguishes it from other homicides, is malice aforethought. Malice aforethought means an intention to do such bodily harm as may produce death in the absence of mitigating facts or justifying circumstances, or a formed design to do such mischief as may endanger life, or it is an intent of the mind and heart which prompts the doing of a wrongful act without just cause or excuse, or in the absence of that which justifies the act, or which reduces the grade of the crime.

9. SAME—EVIDENCE.

The fact that an act is willful, and done with malice aforethought, is necessarily a circumstantial fact, for they are of the mind and heart, and there never can be presented to the jury direct or positive evidence of what was the intent of a man's heart at the time of doing an act. These necessary elements of murder must always be established by circumstantial evidence.

10. SAME—CONSPIRACY TO COMMIT FELONY.

If a number of persons enter into an agreement to commit a criminal act, and proceed to execute such conspiracy, and in the execution of it a person is killed by one of such conspirators, all who have entered upon the commission of the criminal act, and continue in the execution of it up to the time of the killing, are guilty of the crime of murder, provided the act agreed to be done is one which from its nature, or the way it is to be executed, may jeopardize, or is dangerous to, life, or homicidal in character. This is because all persons must be held to intend the necessary and natural consequences of their acts. An agreement to commit a robbery is an agreement to do such an act that if a person is killed in the execution of it all who are in the conspiracy to rob, and are aiding in executing it at the time of the killing, are guilty of murder, for the crime of robbery is homicidal in its character.

11. SAME.

When the unlawful act agreed to be done is not of a dangerous or homicidal character, or its execution does not necessarily or probably require the use of such force or violence as may naturally or probably produce death, and a person is killed