

It is equally clear that neither he nor the funds in his hands arising from the earnings of the road under him can be held responsible for wrongs committed before any receiver was appointed. *Davenport v. Railroad Co.*, 2 Woods, 519; *Ex parte Brown, supra.* As the court in this last case says: "The receivership is the transfer of the property to a new owner, who begins his work, cut off from the past, with new duties and new obligations." 15 S. C. 533. The proper course for the petitioner is to bring his action against the company. If the result of a judgment in his favor would be a lien on the property which could interfere with the lien of the mortgagees, (see Gen. St. S. C. § 1528,) then the receiver will be instructed to defend the suit. If any injunction be in existence which may prevent such a suit against the company, his petition should pray that it be suspended as to him. But he cannot have the sanction of the court for a suit against the receiver upon a cause of action for which, as such, the receiver cannot be responsible. The leave asked is refused.

UNITED STATES v. WOLTERS *et al.*

(Circuit Court, S. D. California. June 8, 1891.)

INTERNAL REVENUE—DISTILLED SPIRITS—LIABILITY OF STOCKHOLDERS OF DISTILLERY CORPORATIONS.

The stockholders of a corporation engaged in operating a distillery are "persons interested in the use of the distillery," within the meaning of Rev. St. U. S. § 3251, which declares that every proprietor and possessor, "and every person in any manner interested in the use, of" a distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

At Law. On demurrer to complaint.

W. Cole, U. S. Atty., for United States.

Anderson, Fitzgerald & Anderson, for defendants.

Ross, J. This is a suit to recover of the holders of the stock of a corporation organized under the laws of California to engage in, and which did engage in, the business of distilling, a tax amounting to \$20,124.40 on spirits distilled by it, and of which tax, it is alleged, the distiller defrauded the government. The action is based on that clause of section 3251 of the Revised Statutes which declares that "every proprietor and possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom." Demurrers to the complaint have been filed by some of the defendants, and in their support it is urged that the language of the statute in question is not broad enough to include the stockholders of a corporation engaged in the business of distilling; that stock-

holders are neither proprietors nor possessors of the corporate property; and that the words "interested in the use of" were inserted "to designate a class who might be using, or interested in using," such distillery, although not interested in the property itself.

The language of the act does not admit of such limitation. Revenue laws are not, like penal laws, to be strictly construed, nor are they, like remedial statutes, to be construed with extraordinary liberality; but they should be so construed "as most effectually to accomplish the intention of the legislature in passing them." *Taylor v. U. S.*, 3 How. 197. The provisions of the law are rigid, and in some instances perhaps arbitrary, in their operation. But they were designed to prevent frauds upon the government, and whoever engages in business by virtue of their provisions must be governed by them. The holder of stock in a corporation organized for and engaged in the business of distilling spirits, if not the proprietor or possessor of the distillery within the meaning of the statute, is certainly "interested in the use of" the distillery operated by the corporation of which he is a stockholder. He has a direct, pecuniary interest in the business of distilling,—the purpose for which the distillery is used,—as well as in the property itself. The amount of such interest, whether large or small, is of no consequence. The statute declares that every person so interested shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom. It is obvious that the state statute regulating the liability of stockholders of corporations organized under its laws has no application here. The liability of the defendants is to be measured by the provisions of the statute under which, and by virtue of which only, the distilling was done.

Demurrers overruled, with leave to defendants to answer within the usual time.

In re ARNOLD *et al.*

(Circuit Court, S. D. New York. May 6, 1891.)

1. CUSTOMS DUTIES—ACT OCT. 1, 1890.
Construction of paragraphs 392 and 396 of Schedule K.
2. SAME—WOOLEN UNDERWEAR.
Completed articles of woolen underwear held to be dutiable as "articles of wearing apparel," and not as "knit fabrics."
3. SAME.
If they are knit fabrics, they are also wearing apparel, and their use is determinative of the proper rate of duty to be assessed thereon under said act; it being shown that there are other "knit fabrics," well known in trade and commerce, bought and sold by the yard and in the piece, and not made up into completed articles for wear.

At Law. Appeal from decision of board of United States general appraisers.

Arnold, Constable & Co., of the city of New York, imported certain merchandise by the steamer Alaska on October 13, 1890, consisting of