

UNITED STATES v. COPPELL *et al.*

(District Court, S. D. New York. February 13, 1891.)

CUSTOMS DUTIES—TRANSPORTATION BOND—LIABILITY OF PRINCIPAL AND SURETY.

Where transportation bonds, pursuant to sections 3000, 3001, Rev. St. U. S., were executed by principals and surety, conditioned for the transportation of merchandise from bonded warehouse in New York city to be entered and rewarehoused in New Orleans, La., and where such merchandise, through no fault of the principals on the bonds, was not entered at the port of New Orleans, nor rewarehoused therein, but was, upon arrival at New Orleans, shipped by rail to its destination in the republic of Mexico, through a mistake or oversight of the United States inspector of customs at New Orleans, *held*, that the principals and surety upon the bonds remained liable for double the amount of the duties upon said merchandise, according to the condition of the bonds and the provisions of sections 3000 and 3001, Rev. St. U. S.

At Law.

This was a consolidated action, brought by the United States government to recover the penalties upon two transportation bonds given by the defendants as principals and surety. The bonds were in the same form, both dated May 23, 1889,—one being in the penal sum of \$100, the other in the penal sum of \$300,—conditioned for the transportation from New York to New Orleans, La., of certain drums of caustic soda, which merchandise was contained in bonded warehouse at the port of New York. The condition in both of the bonds was in the usual form provided by articles 725 and 726 of the United States treasury regulations of 1884, and was as follows:

"Now, therefore, the condition of this obligation is such that, if the above-bounden principals shall within four months [days] from the date hereof transport or cause to be transported in Cromwell's line of steamers to New Orleans, and shall within the time herein specified deliver the same to the collector at the said port of destination, and cause due entry thereof to be made for rewarehousing, and shall also within the time herein specified produce to and deposit with the collector of said port of withdrawal a certificate of the collector of the said port of destination that the said merchandise has been delivered to him according to law and rewarehoused, and the duties thereon paid or secured; or, failing so to do, shall pay to the proper collecting officer of the United States at the said port of withdrawal the amount of duties to be ascertained as due and owing on the merchandise aforesaid, and an additional duty of 100 per cent., pursuant to the statute in such case made and provided; then this obligation to be void; otherwise it shall remain in full force."

The merchandise was withdrawn from bonded warehouse at the port of New York by two transportation entries in the usual form, both dated May 21, 1889, and providing that the "merchandise was intended to be withdrawn from warehouse by M. P. & Co. for transportation to New Orleans by route or vessel, Cromwell's line, SS. New Orleans." It was proved upon the trial that the merchandise in both cases was shipped at the port of New York on the steamer New Orleans, of Cromwell's line, on or about the 25th of May, 1889, and arrived in the said steamship at the port of New Orleans on or about the 3d day of June, 1889. The special manifest in each case was in the usual form prescribed by the

treasury regulations for the transportation of merchandise in bond from one collection district in the United States to another; and stated upon its face that the merchandise was "laden on board Cromwell's line for transportation and exportation to New Orleans in the state of Louisiana by way of ———, to be delivered to the collector or other proper officers of the customs on arrival at the port of destination;" and giving the consignees as "A. M. & Co." It was further proved that the general manifest of the steam-ship contained no special reference to the merchandise in question. The defendants offered testimony, which was received, under objections by the United States attorney, that it was their intention to ship the goods direct from the port of New York to the ultimate intended destination thereof in Mexico, but that they found upon inquiry that there was no bonded carrier between the port of New York and Mexico. They therefore proceeded to withdraw the goods from warehouse under the transportation entries above referred to, and to ship the same by the Cromwell line of steamers, which were bonded carriers, to New Orleans, intending to rewarehouse the goods at that port, and then to withdraw them for transport to Mexico. They therefore delivered the receipt or bill of lading received from the Cromwell line of steamers to the agent of the Mexican Central Railway Company, in the city of New York, and received from the Mexican Central Railway Company a bill of lading for the merchandise in question, providing that said merchandise should be transported from said initial line and connections, (viz., the Cromwell line of steamers,) and delivered to the Mexican Central Railway Company at El Paso, Tex., thence to be transported over the line of said Mexican Central Railway Company to Aguas Calientes, and delivered to the consignees, etc. It was shown by testimony taken in New Orleans in behalf of the defendants that the United States district inspector at New Orleans was notified by the delivery clerk for the Cromwell line that certain bonded freight was on board the steamer New Orleans, and that such United States district inspector came to the ship, and a special manifest of the bonded goods was delivered to him, and that the said United States inspector indorsed the same, and certified to the transfer of the merchandise to the cars of the Texas Pacific Railroad Company; that the merchandise was transferred and forwarded to Mexico by the Texas Pacific Railroad Company. It also appeared that A. M. & Co., the consignees of the goods at New Orleans, were the agents of the Cromwell line at that port. The defendants further introduced testimony, likewise against the objection of the United States attorney, showing that the merchandise in question arrived at Ciudad Juarez, in Mexico, about June 15, 1889, and that the usual "landing certificate" in respect to such goods was duly executed, which certificate was certified by the United States consul. In behalf of the government (plaintiff) testimony was introduced showing that the merchandise in question had never been delivered to the collector of the port of New Orleans personally, or to his chief deputy collector, and that there were no records at the New Orleans custom-house showing the delivery of the same; that it was the duty of the bonded common carrier to report the arrival of bonded mer-