

of limitations, and allow the claim as described in the act to be passed upon with the same effect as if it had been presented within the time limited; or not only to do this, but, in addition, to give plaintiffs the right to interest, which they did not then have, and could not have recovered, if there had been no bar of the statute of limitation. It seems to me the proper construction of the act is that congress only intended to prevent the running of the statute of limitation by allowing the claim to be considered and passed upon with the same effect as if there was no such statute, and did not intend to increase plaintiffs' existing rights by giving a demand made in 1890 the same effect, as to interest, as if it had been made in 1872. I am inclined to the opinion that the law, as announced in *Erskine v. Van Arsdale*, 15 Wall. 75, has been somewhat modified, as to interest on taxes illegally collected, by the later cases. See *U. S. v. Bayard*, 127 U. S. 260, 8 Sup. Ct. Rep. 1156; *Stuart v. Barnes*, 43 Fed. Rep. 281. But, assuming the law as laid down by Chief Justice CHASE is unmodified, the plaintiffs cannot recover interest in this case, because they have not taken the necessary steps to entitle them to it, and the act of June, 1890, has not given it to them. We conclude, therefore, that defendants' demurrer must be sustained to the entire claim and petition, and it is so ordered.

HICKS v. JAMES' ADM'X.

(Circuit Court, E. D. Virginia. January, 1883.)

INTERNAL REVENUE—RECOVERY OF TAXES ILLEGALLY PAID—PRESENTATION OF CLAIMS—LIMITATIONS.

A claim for the refunding of taxes alleged to have been illegally collected was made to the commissioner of internal revenue upon form 47, prescribed by the department for claims "for the remission of taxes improperly assessed," instead of upon form 46, for claims "for taxes improperly paid," and was rejected. After a long delay, caused by loss of papers by the department, it was at length presented on form 46, supported by the proper affidavits. Act Cong. July 13, 1866, c. 184, § 19, as amended by Act Cong. June 6, 1872, c. 315, § 44, declares that no suit shall be maintained to recover taxes illegally collected until claim has been made to the commissioner and a decision had thereon, or until the decision has been delayed for more than six months; and that no suit can be brought more than one year after his decision. *Held*, that the claim was not in shape for decision on the merits until the last presentation, and, the decision being delayed more than six months, suit could be brought, notwithstanding that more than a year had elapsed since the first rejection, and that the commissioner refused to act on the ground that the first rejection was final.

At Law. Action by S. D. Hicks against the administratrix of William James, deceased, to recover taxes alleged to have been illegally collected by him as United States internal revenue collector, at Richmond, Va.

Upon the subject of refunding taxes, Act Cong. July 13, 1866, c. 184, as now embodied in Rev. St. U. S. § 3220, provides, among other things; that "the commissioner of internal revenue, subject to regulations prescribed by the secretary of the treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously

or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount or in any manner wrongfully collected." Section 19 of the same act, as amended by the act of June 6, 1872, c. 315, § 44, (Rev. St. U. S. § 3226,) provides, in substance, that no suit shall be brought to recover taxes illegally or erroneously collected, unless an appeal has first been taken to the commissioner of internal revenue, and a decision thereon had by him: provided, that a suit may nevertheless be brought if his decision is delayed more than six months, but that no suit shall be brought more than a year after a claim is rejected.

HUGHES, J. This is an action for the recovery of \$3,292.95, claimed to have been illegally collected for taxes claimed to have been not really due, on 218½ boxes of manufactured tobacco, which were claimed to have been removed from the place of manufacture previously to the 1st September, 1862, and therefore not subject to the tax imposed by the act of July 1, 1862, "to provide internal revenue," etc. The defendant's intestate, William James, was collector of internal revenue at Richmond, Va., and the tax was paid by the plaintiff, under protest, in October, 1865, to him as collector. A claim, dated December 23, 1865, was filed in the office of the commissioner of internal revenue at Washington by the plaintiff on the 8th February, 1866, for this identical sum of \$3,292.95. That claim was made on form 47, entitled "For the remission of taxes improperly assessed," which, under regulations of the department, was and is used only in cases where the amount of taxes assessed is alleged to have been excessive; and the claim is only for the reduction of the assessment, but not for the refunding of taxes which have already been actually paid. It seems that plaintiff's attorney or agent in the matter, confounded form 47 with form 46, which latter is the form required by the regulations of the department to be used where the claim is for the refunding of taxes already paid to the collector, its caption being "Claim for taxes improperly paid." This claim for the correction of an assessment was formally rejected by the commissioner of internal revenue, because, as I presume, it was made on a wrong form. It was rejected by a letter from the commissioner to the collector dated the 10th of May, 1866. Some time after the filing of this claim, to-wit, on the 9th of March, 1866, the plaintiff filed his claim in the office of the commissioner, made out this time on the proper form, —46, —but not supported by the certificate either of the assessor, or assistant assessor, or collector of the district, which is required to accompany every such claim, by regulations of the department. This claim was also rejected by the commissioner, in the same letter of May 10, 1866, already mentioned. It was rejected, I presume, because of its lack of the certificate of some proper officer of the revenue in the district, as required by regulations of the department. Afterwards, to-wit, on the 8th day of January, 1868, the claim was again filed with the commissioner by the plaintiff, this time on the proper form, —46, —and this time accompanied by the certificate of the proper officer, as required

by the regulations of the department. Thus it seems this claim was never, until January 8, 1868, before the department in a form in which it could be considered and rejected on its merits, in accordance with what I conceive to be the meaning of section 19 of the act of July 13, 1866, (14 St. at Large, 152.)

Somewhat voluminous affidavits and proofs were filed in support of this claim; but the papers belonging to it were by some accident lost by the department, and were afterwards imperfectly substituted and supplemented by other papers. Much delay resulted from this accident, during which counsel for the plaintiff, though quite persistent, was unable to obtain a consideration (or reconsideration) of the claim by the commissioner. Such action seems to have been prevented by an awkward discrepancy of opinion between the commissioner and the counsel of plaintiff as to whether or not this claim had been rejected on the 10th of May, 1866. The commissioner insists that it was rejected then, while counsel for plaintiff contends that the claim was never before the commissioner in form to be considered on its merits until the 8th January, 1868, when it was properly presented on form 46, and sufficiently supported by official certification. I think myself that not until January 8, 1868, did the plaintiff's claim come before the department in a form in which it could be decided on its merits. I think, moreover, that section 19 of the act of July 13, 1866, contemplates that before suit can be brought for the refunding of a tax claimed to have been improperly collected it must have been rejected by the commissioner of internal revenue on its merits; otherwise claimants could intentionally present their claims in irregular form for the purpose of enabling themselves, by their rejection, to bring suits in the courts in contravention of the object of the law. The claim which plaintiff's agent or attorney made him present in February, 1866, on form 47, was not really the one he was entitled to make. It was not an improper assessment of the tax which he sought to have corrected, but the improper collection of a tax which he sought to have rectified by repayment. The claim he presented on the 9th of March, 1866, on form 46, would have been the claim which the plaintiff was entitled to prefer in the manner contemplated by section 19 of the act of July, 1866; but this claim, by not having the certificate required by the regulations of the department, was not before the commissioner in a manner in which it could be considered on its merits, or considered at all, except for the purpose of rejection for irregularity. The claim, therefore, was before the commissioner for the first time in a manner to be considered on its merits, on January 8, 1868; and the only question is whether the commissioner's letter of January 22, 1879, was a rejection of the claim as filed on the 8th January of the preceding year. That letter erroneously treats the claim then filed as identical with that which had been filed two years before on the 8th February, 1866; and, in insisting, though erroneously, that the rejection of the claim on form 47 was a rejection of the subsequent claim preferred on form 46, was in fact and effect a rejection of the latter claim. That being so, and the claim of January 8, 1868, having been before the commissioner for a longer

period than six months, it is not barred either by section 19 of the act of July, 1866, or section 44 of the act of June, 1872, (17 St. at Large, pp. 257, 258.) Judgment must go accordingly.

In re HOUDLETTE et al.

(Circuit Court, D. Massachusetts. December 12, 1891.)

CUSTOMS DUTIES—CLASSIFICATION—SUFFICIENCY OF PROTEST.

The collector classified certain "shank steel," used in the manufacture of boots and shoes, under paragraph 146 of the tariff act of October 1, 1890, and also imposed an additional duty of one-quarter of a cent per pound on the goods, as "cold-rolled" steel, under paragraph 152. The importer protested against the additional duty, and on appeal the board of general appraisers held that the original classification was wrong, and that the goods should have been entered under paragraph 140, as "other steel," etc. They also found that they were not subject to the additional duty, but that the protest was insufficient, because it failed to point out the proper classification. *Held* that, as the objection was made only to the additional duty, and not to the original classification, the importer was not bound to point out the error in the latter, and the protest was sufficient.

Petition of F. A. Houdlette & Co. to review a decision of the board of general appraisers as to the classification of certain imports. Reversed.

J. P. Tucker, for petitioners.

Henry A. Wyman, Asst. U. S. Dist. Atty., for collector.

COLT, J. This is a petition to review a decision of the board of general appraisers. Act June 10, 1890, § 15. The importation in question is known as "shank steel," and is used in the manufacture of boots and shoes. The question for review by this court is raised under the third assignment of error in the petition, and relates to the sufficiency of the protest.

It is admitted that the subject of importation is steel, in form or shape three to four inches wide, fifty to sixty feet in length, thinner than No. 20 wire gauge, cold rolled, and valued at three cents or less per pound. The collector classified the import under that clause in paragraph 146 of the act of October 1, 1890, which provides for "steel in all forms and shapes not specially provided for in this act;" and it being of a value above two and two-tenths cents, and not above three cents, per pound, it was held subject to a duty of one and two-tenths cents per pound. The collector also imposed an additional duty of one-fourth of one cent per pound, under paragraph 152 of said act, which provides that on "all iron or steel bars or rods, of whatever shape or section, which are cold rolled, * * * there shall be paid one-fourth of one cent per pound in addition to the rates provided in this act." The importers duly protested against the imposition of this additional rate, upon the ground that the import was not steel in "bars or rods," within the commercial or any known understanding or application of these