

another judgment creditor, that the debt of the latter was tainted with usury, and there is nothing in a Georgia mortgage putting the mortgagee in a better position than a judgment creditor. It is true he has a lien on the land, but so has the creditor by judgment. It is true, also, that our courts have said of the mortgagee that, if he obtains his mortgage without notice of a secret lien, he is for his protection to be treated as a purchaser; not that he is a purchaser, but that he is to be treated as such for his protection. But he has yet no title, nor was it the intent of these decisions so to hold, because the statute, in express terms, says that in Georgia the mortgagee has no title, but only a lien. I am therefore of the opinion that a decree ought to be entered for the defendants, the children of P. M. Nightingale, denying the prayer of plaintiff's bill.

UNITED STATES v. FRY.

(District Court, E. D. Louisiana. January 14, 1892.)

VIOLATION OF CUSTOMS LAW—LANDING "MERCHANDISE."

The compass of a steam-ship, being part of its apparel and tackle, is not "merchandise," within the meaning of Rev. St. U. S. § 2873, imposing a punishment upon the master of a vessel for being concerned in landing any merchandise without the permit required by the preceding section. *U. S. v. Chain Cable*, 2 Story, 362, followed.

At Law. Information against F. G. Fry, master of the steam-ship Rhine, for a violation of the tariff laws. Judgment for defendant.

Wm. Grant, U. S. Dist. Atty.

Ernest T. Florance, for defendant.

BILLINGS, J. This is an information whereby the United States seeks to recover \$400 from the defendant, who was master of the British steam-ship Rhine, as a penalty for a violation of section 50 of the act of 1799, (sections 2872-2874, Rev. St.¹) The case shows that the defendant was master of the Rhine; that a compass, which was a part of the apparel and tackle of the vessel, being by law a necessary adjunct of the life-boat, was, without the knowledge of the master, stolen by one of the mariners, and taken on shore without any permit, and not in open day. The question submitted by the defendant's attorney is whether the com-

¹Section 2872 provides: "Except as authorized by the preceding section, no merchandise brought in any vessel from any foreign port shall be unladen or delivered from such vessel within the United States but in open day,—that is to say, between the rising and the setting of the sun,—except by special license from the collector of the port and naval officer of the same, where there is one, for that purpose, nor at any time without a permit from the collector and naval officer, if any, for such unloading or delivery." Section 2873 provides that, "if any merchandise shall be unladen or delivered from any vessel contrary to the preceding section, the master of such vessel, and every other person who shall knowingly be concerned" therein, shall be liable to a penalty, etc. Section 2874 provides that "all merchandise so unladen or delivered," contrary to the preceding sections, shall be forfeited, etc.

pass was merchandise, within the meaning of section 2873 of the Revised Statutes. This question was decided by Justice Story in *U. S. v. Chain Cable*, 2 Story, 362, against the United States. He held that appurtenances or equipments of a ship are not merchandise. I find no authority to the contrary. On the other hand, the defendant's counsel has cited several authorities tending to establish that merchandise includes only cargo. My conclusion is that the judgment must be in favor of the defendant.

UNITED STATES *v.* PEACE *et al.*

(Circuit Court, E. D. North Carolina. January 11, 1892.)

INTERNAL REVENUE—TAX ON SPIRITS—DISTILLERY WAREHOUSES.

Rev. St. § 8298, as amended by Act Cong. March 28, 1880, requires distillers to give a bond conditioned to pay the tax on spirits stored in distillery warehouses "before removal" therefrom, or within three years from the date of the bond. *Held*, that the destruction of such spirits by fire, while in the warehouse, does not constitute a "removal," so as to make the tax payable before the expiration of the three years.

At Law. Action against James C. Peace and others upon a distillery warehouse bond.

Charles E. Cook, U. S. Atty.

Thomas Strayhorn, for defendants.

SEYMOUR, J. The action is brought on a distiller's warehouse bond to recover the tax on certain spirits destroyed by fire in the warehouse. The fact of the destruction of the spirits does not release the distiller or his surety from liability for the tax. *Farrell v. U. S.*, 99 U. S. 221. The only question in the case is whether the tax is payable immediately upon the destruction of the spirits, or not until the expiration of three years from date of entry in the bonded warehouse. The present action was brought within the three years, and the question arises upon a special verdict.

The bond in suit, like all others of the same character, follows the phraseology of the statute, and is conditioned for the payment of the taxes due on the spirits described in it "before such spirits shall be removed from the warehouse, and within three years from the date of entry." The contention is as to the construction of the words, "removed from such warehouse." The verb, "to remove," bears in common usage two meanings: To cause a thing to change place, or to cause it to cease to exist; and, in the second meaning given, would include destruction by fire. The doubt in the matter *sub lite* does not, however, depend upon the abstract definition of the term, but upon the question of whether the removal contemplated by the statute must not be a removal by the distiller. The provisions of the statutes relating to the bonding of distilled spirits deemed material to the question of construction under con-