

therein by the parties, which shall operate to oust the court of its ordinary jurisdiction. In the case of *Hamilton v. Insurance Co.*, 137 U. S. 370, 11 Sup. Ct. Rep. 133, the policy in suit provided that—

“In case differences shall arise touching any loss or damage after proof thereof has been received in due form, the matter shall, at the written request of either party, be submitted to impartial arbitrators, whose award in writing shall be binding on the parties as to the amount of such loss or damage, but shall not decide the liability of the company under this policy.”

It was held that the refusal of the assured to perform this condition did not preclude the maintenance of a suit by him; that to have such effect the policy should have further provided that no such action should be brought until after the award. To the same effect are *Crossley v. Insurance Co.*, 27 Fed. Rep. 30; *Reed v. Insurance Co.*, 138 Mass. 572; *Badenfeld v. Association*, 154 Mass. 77, 27 N. E. Rep. 769.

Counsel for the defendant has called the attention of the court to the case of the *Chippewa Lumber Co. v. Phenix Ins. Co.*, 80 Mich. 116, 44 N. W. Rep. 1055, and the case of *Morley v. Insurance Co.*, 85 Mich. 210, 48 N. W. Rep. 502, as holding a contrary doctrine. In this claim counsel is mistaken. In the first of these cases the policy of insurance expressly provided that “the amount of loss or damage shall be ascertained by arbitration, and shall not be payable until it is so ascertained by arbitration, and that such arbitration shall be a condition precedent to bringing suit on the policy.” It was held that this condition was reasonable and valid, and that no suit could be maintained until the condition had been performed or its performance waived. It is clear that the court would have reached a different conclusion if the language in the policy before it had been similar to that in the certificate under consideration. The condition in the policy in the case last above cited provided that the money secured by it should not become payable until the amount of the loss or damage should be first ascertained by the award of arbitrators. The court followed the doctrine announced in its former decision. It follows that the answer in abatement is insufficient. Let the demurrer be sustained, with leave to the defendant to answer over.

THE MIRANDA.

UNITED STATES v. THE MIRANDA *et al.*

(Circuit Court of Appeals, Second Circuit. July 20, 1892.)

SHIPPING—LIGHT MONEY—FOREIGN-BUILT VESSEL—COLLECTOR'S CERTIFICATE.

A foreign-built unregistered vessel, which carries a collector's certificate that the owner is an American citizen, and that the bill of sale for such vessel was valid and duly recorded in the United States customhouse, is in possession of such regular document as is required by Rev. St. § 4226, and exempt from payment of light money, under Rev. St. § 4225, on entering a port of the United States. 47 Fed. Rep. 315, affirmed.

Appeal from the United States District Court for the Southern District of New York.

In Admiralty. Action by the United States against the schooner *Miranda*, her tackle, etc., and George H. B. Hill. Judgment for defendants. Plaintiff appeals. Affirmed.

Thomas Greenwood, Asst. U. S. Dist. Atty.

J. Langdon Ward, for claimant.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is an appeal from a decree of the district court, which dismissed the libel of the United States against the schooner *Miranda* to enforce the collection of the duty known as "light money," and claimed to be collectible under section 4225 of the Revised Statutes. The facts in the case were undisputed, and are stated by Judge BENEDICT in his opinion (47 Fed. Rep. 815) as follows:

"The schooner *Miranda* was built at Wivenhoe, Eng. In 1886 she was purchased by George H. B. Hill, the present claimant, who then was, and still is, a citizen of the United States. By such purchase the claimant became, and has since continued to be, the sole owner of the schooner, and she has, since her purchase, been used for the purposes of pleasure only, never having been employed in trade or in any kind of transportation for hire. In the year 1886 the claimant produced to the collector of the port of New York his bill of sale of the *Miranda*, together with proof that he was a citizen of the United States; and thereupon, pursuant to a general regulation of the treasury department, the collector recorded the bill of sale in his office, and indorsed thereon a certificate, under his hand and official seal, stating that the bill of sale held by George H. B. Hill 'is in form and substance valid and effective in law, and has been duly recorded in my office, and that the said George H. B. Hill is a citizen of the United States.' The *Miranda* is enrolled among the yachts of the Royal Thames Yacht Club, and the claimant is a member of that club, which is a regularly organized yacht club of England. By section 4216 of the Revised Statutes of the United States, 'yachts belonging to a regularly organized yacht club of any foreign nation, which shall extend like privileges to the yachts of the United States, shall have the privilege of entering or leaving any port of the United States without entering or clearing at the customhouse thereof, or paying tonnage tax.' On the 18th day of July, 1891, the *Miranda* arrived at New York from Vineyard Haven, Mass., and anchored off Bay Ridge, in the harbor of New York; whereupon the collector of the port of New York demanded payment of light money for the yacht, which being refused, this action was brought to collect the same. The statute relied on by the government is section 4225 of the Revised Statutes of the United States. That section is as follows: 'Sec. 4225. A duty of fifty cents per ton, to be denominated "light money," shall be levied and collected on all vessels not of the United States which may enter the ports of the United States.' The claimant, among other things, relies upon the next succeeding section of the Revised Statutes, which contains the following provision: 'Sec. 4226. The preceding section shall not be deemed to operate upon unregistered vessels owned by citizens of the United States, and carrying a sea letter or other regular document issued from a customhouse of the United States, proving the vessel to be American property.'

'We are of opinion, for the reasons stated by Judge BENEDICT, that the certificate issued from the customhouse on September 15, 1886, is a "reg-

ular document," proving the schooner *Miranda* to be American property, within the meaning of section 4226, and that she is by virtue of that section exempt from liability to pay light money. The conclusive argument in favor of this proposition was so clearly stated by the district judge that a repetition of it is unnecessary.

The decree of the district court is affirmed.

MAGONE, Collector, v. KING *et al.*

(Circuit Court of Appeals, Second Circuit. July 20, 1892.)

1. CUSTOMS DUTIES—CLASSIFICATION—COPPER ROLLERS.

Under the tariff act of 1883, rollers used in printing patterns, and composed wholly of copper, were dutiable at 35 per cent. *ad valorem* under the copper clause of the metal schedule, (C,) which clause includes "copper in rolled plates, * * * and all manufactures of copper, or of which copper shall be a component of chief value," and not at 45 per cent. under the residuary clause of that schedule, which provides for manufactured articles not specifically enumerated, composed wholly or in part of iron, steel, copper, lead, etc.

2. SAME—CONSTRUCTION OF STATUTE.

As the act of 1883 reduced the duty on copper and copper articles, while it increased it on unenumerated metal articles, it would defeat the intent of congress to place the imports under the latter clause; and the rule applies that general legislation must give way to special legislation on the same subject.

3. SAME.

In such case the provision of the act declaring that if two or more rates of duty are applicable to any imported article "it shall be classified for duty under the highest of such rates," has no application, for the articles in question are clearly subject only to the duty of 35 per cent.

Error to the Circuit Court of the United States for the Southern District of New York.

Action by William King and Robert A. Lawrie against Daniel Magone, as collector of the port of New York, to recover \$370.31, alleged to be an excess of duty paid by them. The court directed a verdict for plaintiffs, and defendant brought this writ of error. Affirmed.

The imports in question were certain rollers composed wholly of copper, and used in printing patterns on oilcloth. The collector levied and collected a duty of 45 per cent. *ad valorem*, under the last paragraph of Schedule C, Tariff Act of March 3, 1883, (22 St. at Large, c. 121, p. 500; Heyl, 216.) The importers protested, claiming that the rollers were dutiable at 35 per cent. *ad valorem*, under the copper clause of said schedule, (Heyl, 186.) The importers appealed to the secretary of the treasury, who affirmed the collector's decision, and thereupon this action was brought.

Edward Mitchell, U. S. Atty., and Charles Duane Baker, Asst. U. S. Atty., for plaintiff in error.

Wm. Wickham Smith, for defendant in error.

Before WALLACE and SHIPMAN, Circuit Judges.