

charging, the defendant has his remedy by writ of error. The only question to be now determined is whether or not the verdict of \$2,500 was excessive. It was left to the jury to say whether or not the defendant had manifested such reckless indifference to the rights of others as would call for punitive damages, and it must be assumed that they found against it on that question. That being so, there is no way in which the court can ascertain how much of the verdict represents what they considered compensation to the plaintiff, and how much of it represents what they considered a proper punishment by way of example. Taking both elements of damage into consideration, the amount found is not so clearly excessive as to warrant the court in disturbing the finding of the jury, which, under our system of jurisprudence, is specially charged with the determination of that question.

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THEBAUD et al. v. NATIONAL CORDAGE CO.

(Circuit Court, S. D. New York. September 25, 1893.)

ATTACHMENT—INDEMNITY BOND TO SHERIFF—MOTION TO CANCEL.

Where a sheriff has levied an attachment upon personal property, and, upon claim thereto being made by third parties, has required the attaching creditor to give him a bond of indemnity, the court will not cancel the bond, upon motion by the plaintiff in the attachment suit, when the rights of the third parties claimant against the sheriff have not been determined in the action.

At Law.

Action by Paul L. Thebaud and another against the National Cordage Company, a foreign corporation. The action was begun in the New York supreme court by attachment, and was removed by the defendant to the circuit court for the southern district of New York. Property in storage warehouses, which the plaintiffs claimed belonged to the defendant, was levied on by the sheriff. Thereupon, replevin suits were begun against the sheriff by various parties claimant. The sheriff demanded from the plaintiffs in the attachment suit, an indemnity bond for \$150,000. The plaintiffs obtained a bond for that amount from the Lawyers' Surety Company, as surety, depositing with that company \$50,000 as cash to secure it against liability. The plaintiffs and the surety company were substituted as defendants in the replevin suits in place of the sheriff, pursuant to the provisions of the New York statute. The replevin suits were discontinued by consent, the plaintiffs in these suits consenting to a discharge of the bond of indemnity. Thereafter, the attachment was vacated. The plaintiffs moved upon affidavits setting up those facts, and also that the Lawyers' Surety Company refused to repay to them the \$50,000 deposited with it as collateral until the bond was canceled, and moved for an order of the court to cancel the bond. The sheriff replied by affidavits setting up that he was still in possession of a part of the property levied on, and that keepers' fees and the poundage of the sheriff had not been paid. He also set up the fact that he had not received a general release from the attorneys, or any of the claimants, releasing him from damage and responsibility by reason of the levy of the attachment. Motion denied.

William J. Courtney, for the motion.  
Strong & Cadwalader, opposed.

LACOMBE, Circuit Judge. The motion is denied. This court, upon summary motion made in this case, should not undertake to

determine what rights, if any, the third parties claimant of the goods levied upon may or may not have against the sheriff, nor, in advance of a final adjustment of all possible claims in such form as would be binding upon all parties, should it interfere with the security the sheriff has obtained from those who required him to take the responsibility of levy. That the complainants entered into a most improvident contract with the surety company, or that the latter is acting unconscionably in retaining their cash as collateral security, when all chance of the company's being called on to respond is at an end, does not alter the situation, so far as the sheriff is concerned.

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LOEB et al. v. HENDRICKS, Collector.

(Circuit Court, S. D. New York. September 14, 1893.)

CUSTOMS DUTIES—EXCESSIVE VALUATION—STATUTORY REMEDY EXCLUSIVE.

Under the customs administrative act of June 10, 1890, § 13, which provides for an appeal to the board of general appraisers if the importer is aggrieved by valuation of the import, and section 25, which declares that no action shall be against the collector in any case in which the importer is entitled to appeal under the provisions of the act, the remedy by appeal from an appraisement is exclusive, and an action cannot be maintained against the collector to recover an alleged excess of duties paid on a valuation advanced by an appraiser over the invoice value of imported merchandise.

At Law. Demurrer to complaint for want of jurisdiction. Sustained.

On an importation and entry of cotton embroideries from St. Gall, Switzerland, by Loeb & Schoenfeld, at the port of New York on November 7, 1891, the invoice of the goods was transmitted by the collector to the appraiser of the port for appraisement. The complaint in the action alleged that the appraisement was not conducted according to law; that the appraiser made no attempt to appraise the market value of the goods, but proceeded in an irregular, arbitrary, and illegal manner to appraise the cost of production thereof, and made an addition to the invoice value of said merchandise of 3 per cent., purporting to be for general expenses; that the collector liquidated the duties upon such illegal advanced valuation returned by the appraiser, which liquidation was therefore alleged to be wholly null and void. The collector assessed and collected the duties on the advanced valuation, and the importers brought suit directly in the United States circuit court against the collector to recover judgment for the alleged excess. The United States attorney, on behalf of the collector, filed a demurrer to the complaint, on the ground that the court had no jurisdiction of the cause of action therein alleged against the defendant.

The act of congress of June 10, 1890, relative to the collection of customs duties, contains the following provisions: "Sec. 13. \* \* \* The decision of the appraiser or the person acting as such (in cases where no objection is made thereto, either by the collector, or by the importer, owner, consignee or agent,) or of the general appraiser in cases of reappraisement, shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein, unless the importer, owner, consignee, or agent of the merchandise shall be dissatisfied with such decision, and shall within two days thereafter, give notice to the collector in writing of such dissatisfaction, or unless the collector shall deem the appraisement of the merchandise too low, in either case the collector shall transmit the invoice and all the papers appertaining thereto to the board of three general appraisers,