

lows: (1) The real owner of the shares of the capital stock of a national banking association may in every case be treated as a shareholder, within the meaning of section 5151. (2) Any person who holds himself out as the owner of the shares, by allowing himself to appear as the registered owner thereof upon the books of the banking association, may likewise be treated as a shareholder, within the meaning of that section. (3) If the real owner of the shares transfers them to another person, or causes them to be placed on the books of the banking association in the name of another person, with the intent simply to evade the responsibilities imposed by section 5151 on shareholders of national banking associations, such owner may be treated, for the purposes of that section, as a shareholder, and liable as therein prescribed. (4) If a person receives shares of the stock of a national banking association as collateral security to him for a debt due from the owner, with power of attorney authorizing him to transfer the same on the books of the association, and, being unwilling to incur the responsibilities of a shareholder as prescribed by the statute, causes the shares to be transferred on such books to another, under an agreement that they are to be held as security for the debt due from the real owner to the creditor,—doing so in good faith, and for the purpose only of securing payment of that debt without incurring the responsibility of a shareholder,—he will not be treated as a shareholder within the meaning of section 5151. The case of *Pauly v. Trust Co.* (recently decided by the supreme court) 17 Sup. Ct. 465, after reviewing previous decisions of the supreme court upon the general question, affirms the latter proposition.

In the present case the defendant never became the owner of the shares, but remained, as it always had been, merely the pledgee thereof, and, as was pointed out by the opinion in *Pauly v. Trust Co.*, could not become the owner by selling the shares to itself because of its fiduciary obligation to exercise the right of sale for the benefit of the pledgors.

It follows that the trial judge erred in ruling that the defendant was a shareholder within the meaning of section 5151, and directing a verdict for the plaintiff.

The judgment is reversed.

KENNEDY et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 6, 1897.)

1. LIMITATION OF ACTIONS—CUSTOMS DUTIES—CLAIMS AGAINST UNITED STATES.

In a suit against the United States for drawbacks on exportation of imported goods, the six-years limitation contained in the act of March 3, 1887, relative to suits against the United States, begins to run from the date of exportation, not from the date of the decision of the treasury department passing upon the claim.

2. CUSTOMS DUTIES—ACTION FOR DRAWBACKS—PARTIES.

Rev. St. § 3477, relating to assignments of claims against the United States, etc., does not apply to a claim for drawbacks on re-exported goods, made in the name of a person producing an outward bill of lading in his own name, though a third party was the real owner of the goods, since at its

inception the claim against the United States was the claim of the person named as exporter.

8. SAME—RIGHT TO DRAWBACK.

No right of drawback arises, under Rev. St. § 3019, when bags made of imported materials are leased to steamers for foreign voyages with the understanding that they are to be brought back again to the United States.

This was an action at law by Joseph S. Kennedy and William R. Moon, partners under the firm name and style of Kennedy & Moon, against the United States, under the act of March 3, 1887, which provides for the bringing of suits against the United States. The plaintiffs sought to recover the sum of \$8,517.39 as drawbacks upon certain bags made of imported jute, and exported, under Rev. St. § 3019. The case was tried upon two of the entries, of which there were some 87 on the bill of particulars, namely, on the entry of the bags alleged to have been exported by the petitioners on the 8th of March, 1888, by the Ariete, and on the entry on the Sirius, December 8, 1888.

It appeared that the bags in question never belonged to the petitioners, but were the property of D. W. Mainwaring & Co., who leased them to the various steamers named in the bill of particulars, and that the bill of lading was indorsed to Kennedy & Moon, to act as exporters, for the benefit of drawback, by said firm of Mainwaring & Co.

Rev. St. § 3019, reads as follows: "There shall be allowed on all articles wholly manufactured or materials imported, on which duties have been paid when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the secretary of the treasury. Ten per centum on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks respectively." The regulation made by the secretary of the treasury January 5, 1885 (S. 6708), provides as follows: "The person producing an outward bill of lading in his own name, or duly indorsed to him by the party named in the bill of lading, authorizing the indorsee to act for customhouse purposes, shall be recognized as the exporter of the bags and bagging or meats for the purpose of making entry and receiving the drawback or a refund."

The petitioners insisted that they were entitled to recover, for the reason that there was an exportation of the bags in question, within the meaning of Rev. St. § 3019; citing *Kidd v. Flagler*, 54 Fed. 367, upon which case they principally relied. The defendants maintained, by way of partial defense: (1) That the right to recover on a large number of the entries on the bill of particulars had expired by reason of the proviso in the second paragraph of the act of March 3, 1887, relating to suits against the United States, which reads as follows: "Provided that no suit against the government of the United States shall be allowed under this act unless the same shall have been brought within six years after the right accrued for which the claim is made." (2) That the parties plaintiff were not the real owners of the cause of action, and consequently not the proper parties to sue on the claim, under Rev. St. § 3477, relating to the assignment of claims against the United States. (3) That there was no evidence in the case to show that the bags in question had been taken without the United States and brought into some port, harbor or haven, with intent to land the goods there." (4) That, assuming that the bags had actually been taken without the United States upon the vessels to which they had been leased, there never had been such exportation thereof, within the meaning of Rev. St. § 3019.

Albert B. Comstock, for plaintiffs.
Wallace Macfarlane, U. S. Atty., and James R. Ely, Asst. U. S. Atty.

LACOMBE, Circuit Judge. This case was taken under advisement by the court, after being partially tried, in order to rule upon two questions which it was agreed covered all the items in the bill of particulars, and upon one question (the statute of limitations) which it was contended covered some of the items only; also, to rule upon the sufficiency of certain evidence given as to the first two items, with the expectation that, after the court had thus indicated its opinion as to the weight of the testimony, some stipulation as to the facts might be entered into, with a view of shortening the trial. The court has considered all these questions, bearing in mind the desirability of so disposing of the case in the first instance that in event of an appeal a new trial may not be necessary.

1. The evidence which was introduced as to the two items was sufficient to satisfy the court that the articles in question had been manufactured of materials imported, which had paid duty when so imported, and that the evidence submitted by the plaintiffs substantially conformed to the regulations of the secretary of the treasury touching proof to be made upon claims for drawbacks.

2. In the opinion of this court, the statute of limitations runs from date of exportation, not from the date of the decision of the treasury department passing upon these claims.

3. The provisions of section 3477 of the Revised Statutes do not apply, for the reason that under the regulations of the treasury department (S. 6708; dated Jan. 5, 1885), it is provided that the person producing an outward bill of lading in his own name, or duly indorsed to him by the party named in the bill of lading, authorizing the indorsee to act for customhouse purposes, shall be recognized as the exporter of the bags, for the purpose of making entry and receiving the drawbacks or refund. Since in this case it was the plaintiffs' firm, and not the manufacturer of the bags, who produced the outward bill of lading, the claim against the United States was, at its inception, the claim of the plaintiffs, and no assignment of it as a claim was necessary to entitle the plaintiffs to recover.

4. Upon the evidence as it stands, I do not think plaintiffs are entitled to recover, for the reason that the bags in question were "leased" to the steamship company, with the understanding, of course, that they were to be brought back to this country. They were not "exported," within the meaning of section 3019.

The result is that a judgment should be directed for the defendant. There should be no difficulty in so preparing the statement of facts that upon appeal all of these questions may be passed upon.

NEW YORK ELECTRIC EQUIPMENT CO. v. BLAIR.

(Circuit Court of Appeals, Second Circuit. April 8, 1897.)

1. **NEGLIGENCE—PERSONAL INJURIES—EVIDENCE OF NOTICE TO DEFENDANT.**
In an action for personal injuries, evidence of notice to the defendant, before the injury, of the nature of the dangers to be apprehended, and of the unsafe practices which he is employing, is competent upon the question of his negligence by the use of methods which he knew, or ought to have known, were hazardous.
2. **SAME—OPINION EVIDENCE.**
In an action to recover damages alleged to have been caused by the negligence of the defendant in hoisting pipes, it is not competent for a witness, called as an expert, to state whether it is necessary, in the proper performance of duty in hoisting pipe, that certain specified precautions should be taken, since the question is one which the jury can determine upon a statement of the facts.
3. **TRIAL—OBJECTIONS TO EVIDENCE.**
An objection to a question, on the ground that it is immaterial, irrelevant, and incompetent, is insufficient, if the particular fault relied upon is not otherwise pointed out, and is such as, if stated at the trial, could have been obviated.
4. **APPEAL AND ERROR—EVIDENCE—WAIVER OF OBJECTIONS.**
By the admission, without objection, of irrelevant testimony, showing all the facts upon a topic which might, on objection, have been excluded, a party waives any reversible error in the admission of subsequent testimony of the same character.

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

This is a writ of error to review the judgment of the circuit court of the United States for the Southern district of New York, which was entered upon a verdict in favor of the plaintiff for \$15,000, in an action brought to recover damages for severe personal injuries received by the plaintiff in consequence of the alleged negligence of the defendant's servants. The accident occurred on April 1, 1895, in the extension of a building on Elm and Leonard streets, in New York City. The plaintiff was in the employ of Otis Bros., constructors of passenger elevators, and was at work in elevator shaft No. 1, on a platform about six feet above the fourth floor. The defendant was equipping the building with electrical appliances, and its employes were hoisting iron pipes of ten feet in length and an inch in diameter, in bunches of six, from the first floor to the ninth floor, in elevator shaft No. 3. There were four shafts, which were apparently close to each other. The pipes in each bundle were tied together by a rope twisted around them near the bottom of the bundle, and looped about them again towards the top. No bagging or canvas was placed around the lower ends of the pipes, and the coupling ends were intended to be placed at the top of the bundle, so as to form a sort of cone, with the larger ends upward. The plaintiff offered evidence tending to show that the defendant's workmen who were attending to this business, were warned to be careful, and were told that the right way to raise the pipes was to roll canvas on the bottom of the bundle, and make a hitch from the bottom and around the canvas; that a bundle passed the fourth floor in its upward ascent, with one pipe projecting below the other pipes, with its coupling end downwards; that a pipe forthwith came down the same shaft, and struck a cross beam between the second and third shaft above the fourth floor; that this pipe struck the plaintiff, threw him to the fourth floor, broke his lower jaw, lacerated his scalp, and that permanent partial motor paralysis of the right side was the result, which will probably be progressive, and entirely prevent his working again. The defendant's testimony tended to show the safety of the method of securing the bundles, the care with which they were tied, and the improbability that a pipe fell from a bundle. The defendant also urged the inability of the plaintiff to prove that its pipe fell and inflicted the injury.