

ference of the court by injunction to prevent the debtor from disposing of his property in fraud of such creditors.

It is not necessary to review at length the authorities which hold that the assignee or trustee in the bankruptcy proceedings is authorized to bring and maintain suits concerning the rights of property belonging to the debtor. It is enough to say that no trustee has been appointed, or can be appointed, until after the proceedings in bankruptcy have been commenced. But all the authorities which discuss this question are to the effect, as stated in *Bump, Bankr.* (10th Ed.) 229, that, before the appointment of an assignee (or trustee), proceedings for an injunction to protect the property of the bankrupt may be instituted by the bankrupt or the petitioning creditor. After an assignee or trustee has been appointed, he is the only person who could institute such proceedings on behalf of the bankrupt estate. Whenever the proceedings sought to be enjoined are prosecuted for the purpose of enforcing a valid lien, and were instituted before the commencement of proceedings in bankruptcy, the courts, in granting or refusing an injunction, are governed by the same principles that regulate their action in the liquidation of liens, and will only interfere when it clearly appears that such interference will benefit the creditors generally. The motion to dissolve is denied.

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UNITED STATES v. CAMPE et al.

(District Court, N. D. California. October 29, 1898.)

No. 1,578.

**1. INTERNAL REVENUE—REGULATIONS—REMOVAL OF LIQUORS UNDER FALSE BRANDS.**

Under Rev. St. § 3449, which provides that "whenever any person ships, transports, or removes any spirituous or fermented liquors or wines under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same," he shall forfeit the liquors, and be subject to a fine, a complaint charging the defendant with the removal of liquors marked by the name under which the product of a particular manufacturer is known to the trade, when the liquor was not such product, states a cause of action. The purpose of the statute is to aid in preventing frauds on the revenue by requiring all packages shipped to be truthfully marked; and the fact that its enforcement may incidentally prevent frauds against a manufacturer or the public does not affect its validity or construction.

**2. SAME—CONSTRUCTION OF STATUTE.**

The requirement of the statute cannot be limited to distillers, manufacturers, and rectifiers, as its language covers all persons who ship, transport, or remove liquors or wines.

This is a proceeding by the United States against Henry Campe & Co. to recover a fine for a violation of the internal revenue law. Heard on demurrer to the complaint.

Dinkelspiel & Gesford, for defendants.  
Samuel Knight, amicus curiæ.

**HAWLEY**, District Judge. This is a proceeding under the provisions of section 3449, Rev. St., to collect a fine of \$500, provided by

law for a violation of the act. The averment in the complaint is that defendants "willfully and unlawfully, and contrary to the provisions of section 3449, U. S. Rev. St., shipped, and caused to be shipped, transported, and removed, at and from their place of business, Nos. 221-225 Front street, to the premises Nos. 107-109 Front street, both in said city and county of San Francisco, with intent to have the merchandise hereinafter mentioned further transported to the city of Stockton, within said state and district, one case or package containing twelve quarts, in bottles, of spirituous liquors, under the following name and designation, with other marks, appearing on the outside of the said case or package." After giving the designation and marks, the complaint continues: "Which said name or designation was then and there other than, and not, the true and proper name or brand known to the trade as designating the kind and quality of the contents of said case or package, which did not then and there contain the genuine Hennessy One Star Cognac, as the same was and is known to the trade." To this complaint the defendants have interposed a demurrer upon the ground that it does not state facts sufficient to constitute a cause of action.

The statute reads as follows:

"Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall forfeit said liquors or wines, and casks or packages, and be subject to pay a fine of five hundred dollars."

In support of the demurrer, defendants rely upon the principles announced by Judge Priest in *U. S. v. 132 Packages of Spirituous Liquors*, 65 Fed. 980, which sustains their views. But in that case a demurrer to the complaint was overruled by Judge Thayer. The views expressed by him as to the object, intent, and purpose of the statute sustain the position contended for by the plaintiffs herein,—that the officers of the revenue would be aided, to some extent, in the discharge of their duties, if dealers, in the manufacture or sale of spirituous and fermented liquors, were required to brand all casks and packages containing spirituous liquors "which they shipped or removed from one place to another with the true name by which they were known to the trade," and that it was immaterial that the statute as framed also had a tendency to protect trade-marks and prevent private frauds; citing in support of these views, *U. S. v. Loeb*, 49 Fed. 636; Opinion of Attorney General, 22 Int. Rev. Rec. 261; Commissioners' Decision, 30 Int. Rev. Rec. 278. Thereafter the case was tried, upon an agreed statement of facts, before Judge Priest, and he held that a compounder or rectifier of liquors, who labels his products as those of a well-known distiller and rectifier, and attempts to place them on the market under such brands, removing them for that purpose from his warehouse to another place, does not thereby subject his liquors to forfeiture or himself to fine, under the provisions of section 3449. An appeal was taken to the circuit court of appeals, and it was there held that section 3449 is not a trade-mark regulation, but is for the prevention and detection of fraud on the revenue, and that

its validity is not in any manner affected by the fact that it incidentally tends to the discovery or suppression of private frauds. Among other things, the court said:

"Unquestionably, an observance of the requirement that packages of liquor shall be shipped or removed only under names indicating truthfully their contents, will aid the revenue officers to trace and identify such packages, and thereby verify the truth or falsity of the books and records of the distiller or rectifier. There are doubtless other ways familiar to the revenue officers in which the requirement of section 3449 tends to the detection and suppression of frauds on the revenue."

At the close of the opinion the court said:

"We have set out in the statement the opinion of Judge Thayer on overruling the demurrer to the information. We fully agree with the reasoning and conclusion of that opinion. The judgment of the district court is reversed, and the cause remanded, with instructions to grant a new trial." 22 C. C. A. 231, 76 Fed. 367.

As that action was against a distilling company, the court had no occasion to pass directly upon the point whether or not the act in question was intended to apply to any other persons than distillers, manufacturers, or rectifiers of liquors; and defendants argue that it must be limited to such persons. The statute does not, in terms, make any such limitation. The language of the court in the case cited is broad enough to include any person "who ships, transports, or removes any spirituous or fermented liquors" from one place to another in violation of the provisions of the statute. The demurrer is overruled.

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UNITED STATES v. STODDARD, HASERICK, RICHARDS & CO.

(Circuit Court, D. Massachusetts. October 11, 1898.)

No. 701.

1. STATUTES—TIME OF TAKING EFFECT—FRACTIONS OF DAY.

Where an act of congress takes effect by its terms from and after its passage, with a proviso that it "shall not affect any act done or any right accruing or accrued," as between the government and an individual the act does not take effect until the moment of its approval by the president, when such time can be shown.

2. CUSTOMS DUTIES—TIME OF TAKING EFFECT OF DINGLEY LAW.

The tariff act of 1897 took effect only from the moment of its approval by the president, which was 6 minutes past 4 o'clock p. m., Washington time, on July 24, 1897; and goods imported and entered for consumption on that day, but prior to such approval, were dutiable under the law of 1894.

This is a petition by the United States to review the action of the board of general appraisers in sustaining a protest of importers, the question involved being the precise time when the Dingley law went into effect.

Boyd B. Jones, for the United States.  
Josiah P. Tucker and William Odlin, for importers.

COLT, Circuit Judge. This is a petition for review from the decision of the board of general appraisers. The importation in ques-