

On May 29, 1889, the importer duly filed with the defendant a protest, claiming the merchandise to be dutiable at 35 per cent. ad valorem. The original classification was subsequently found to have been incorrect, and the invoice was reclassified at the rate claimed in the importer's protest. The aggregate amount due him for principal and interest was \$97.56, for which amount a verdict was directed. The "ten-day bond" is a bond given by the importer to the United States for the return to the collector of the merchandise delivered to the importer, provided he shall be so required, within 10 days after the packages sent to the public stores shall have been appraised and reported upon. The point made by the government is that the payment for increased duties was not made to obtain possession of the merchandise, and was therefore a voluntary payment as to the proportion of the additional duties levied upon the five cases of goods which had been previously delivered to the importer. It is familiar law that the importer cannot recover money paid for duties upon merchandise, unless the payment was made under compulsion in order to obtain possession of the goods. The compulsion which the collector exercised was in regard to the one case in the public store, of which the importer could not have had possession unless by payment of the entire amount claimed by the collector. The course of business in the collector's office is designated in article 358 of the treasury regulations of 1884, which is contained in the record. The portion of the regulations to which attention need be called is as follows: "If the invoice is indorsed 'Correct' by the appraiser, * * *, the collector will issue an order for the delivery of the examined packages. But if advanced by the appraiser, either in value or rate of duty, the package will not be delivered to the importer without an additional deposit for duties, if necessary." Unless the unpaid amount of the duty claimed to be due upon the invoice had been paid, no permit for the delivery of the examined packages would be given, and, in order to obtain possession of this part of his goods, the importer must pay or deposit the required amount. The facts in *Porter v. Beard*, 124 U. S. 429, 8 Sup. Ct. 554, are not analogous to those in this case. The judgment of the circuit court is affirmed.

CENTRAL TRUST CO. OF NEW YORK v. COLUMBUS, H. V. & T. RY.
CO. et al.

(Circuit Court, S. D. Ohio, E. D. March 21, 1899.)

INTERNAL REVENUE—STAMP ACT OF 1898—STAMPS ON DEEDS OF CONVEYANCE.

A deed to real estate, under Schedule A of the war revenue stamp act of 1898, requires stamps in proportion to the "consideration or value" of the interest transferred, and not to the entire value of the property, where it is conveyed subject to incumbrances.

Butler, Joline, Notman & Mynderse, for complainant.
Stetson, Jennings & Russell, for defendants.

TAFT, Circuit Judge. The question is presented to the court whether, under Schedule A of the war revenue stamp act, it is required that the masters of this court, in executing a deed in accordance with the decree of confirmation of this court, shall place upon the instrument of conveyance stamps proportioned to the value of that which is transferred,—that is, the equity of redemption of the railroad,—or the value of the railroad, including the amount of certain prior mortgages, which are not foreclosed, and subject to which the railroad and all the property of the railroad company is now to be transferred. I am advised by counsel that the commissioner of internal revenue has ruled that the words of the statute, “consideration or value,” are to be construed as meaning the value of the real estate which is conveyed in fee simple. The language of the statute is as follows:

“* * * conveyance, deed, instrument or writing, whereby any lands, tenements or other realty sold, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser or purchasers, or other person or persons, by his, her or their direction, and the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof, in excess of five hundred dollars, fifty cents.” 30 Stat. 460.

And the question is presented whether the words, “consideration or value,” therein, are to be construed as meaning the entire value of the land, or only the value of that interest in the land which is conveyed by the deed.

I am referred by counsel to the case of *James v. Blauvelt*, 13 Fed. Cas. p. 303, in which Judge Cadwallader, in the Eastern district of Pennsylvania, in passing upon a statute exactly similar in language and purport, held that in the phrase, “consideration or value,” the word “consideration” was to be understood as meaning the consideration for the conveyance, and the word “value” as meaning the value of the thing conveyed. The consideration for the conveyance is the price bid, and the thing conveyed is the equity of redemption, the value of which is the price bid. According to the ruling of the learned judge in the case cited, the amount of the stamp should be proportioned to the value of the equity of redemption, and not be based upon the entire value of the lands. I fully concur in his reasoning and conclusion.

I understand the foundation for the ruling of the commissioner to be that, if he does not hold that this is to include the entire value of the land, the next day a mortgagee may be paid off, and may release his mortgage, and that, in consequence, the government will not get as much revenue as it would under his ruling. But the statute must be construed according to the language used, and because congress may not have provided for a case for which, in the opinion of the commissioner, it ought to have made some provision, there is no reason why the language of the statute should be strained to mean something which it does not mean if the words are given their ordinary significance. The masters, therefore, will be authorized to attach stamps only proportioned to the price at which the land is sold, to wit, \$4,000,001.

Should the commissioner desire to contest the question, leave will be granted to him to appear by the district attorney or otherwise, as he may be advised, and to present the question further; and the court retains full power to require the attaching of additional stamps, if subsequently it shall be determined that they ought to be attached.

DUFF MFG. CO. v. NORTON.

(Circuit Court, D. Massachusetts. March 15, 1899.)

No. 1,068.

1. PATENTS—PRELIMINARY INJUNCTION—EFFECT OF PRIOR DECISIONS.

The rule as to the effect, on a motion for a preliminary injunction, of a prior adjudication by a circuit court of appeals of another circuit sustaining the patent in issue, is applicable even when such prior adjudication was itself rendered on an issue as to the propriety of a preliminary injunction, when the court nevertheless fully considered the case on its merits.¹

2. SAME.

On a motion for a preliminary injunction, a prior decision has the same effect on the question of infringement as on the question of validity, where the court fully considered the question of infringement, and gave the patent so broad a construction as to clearly include the device complained of in the subsequent case.

3. SAME.

In considering the effect of a prior decision, rendered after fully considering the merits, the court has a right to rely on the presumption that all defenses, both on the question of validity and infringement, were presented and considered in that litigation.

4. SAME—LIFTING JACK.

A preliminary injunction granted upon the Barrett patent, No. 455,993, for a lifting jack, upon the strength of prior decisions in other circuits.

This was a suit in equity by the Duff Manufacturing Company against Arthur O. Norton for alleged infringement of letters patent No. 455,993, issued July 14, 1891, to Josiah Barrett, for a lifting jack. Only claims 1, 2, and 6 of the patent were in issue. These claims read as follows:

"(1) In a jack, the combination of a bar having teeth on one side thereof, a pivotal lever, two pawls pivoted to said lever, and having fingers rigid therewith, and a yielding tripping plate having lugs thereon adapted to engage with said fingers, and, through the same, draw the pawls from engagement with the toothed bar, substantially as and for the purposes set forth.

"(2) In a jack, the combination of a bar having teeth on one side thereof, a pivotal lever, two pawls pivoted to said lever, and having fingers rigid therewith, and a yielding tripping plate pivoted to the jack frame, and having lugs thereon adapted to engage with said fingers, substantially as and for the purposes set forth."

"(6) In a jack, the combination of a bar having teeth on one side thereof, a pivotal lever, a pawl pivoted to said lever, and having a finger rigid therewith, and a yielding tripping plate mounted on the frame, and having a lug adapted to contact with said finger, and, through the same draw, the pawl from engagement with the toothed bar, substantially as and for the purposes set forth."

¹ As to effect of previous adjudication, see note to National Cash-Register Co. v. American Cash-Register Co., 3 C. C. A. 565.