some difficulty is, whether, in the peculiar circumstances of this indefinite contract, the plaintiffs had a right to require the defendants to answer their repeated inquiries as to the order of time in which they would load the ship. If it is a question of courtesy, the law cannot deal with it. If one of right, the increased expense, slight though it is, of keeping the ship at Wicasset rather than at Bath, consisting of the wages of master, mate and cook, may fairly be charged to the defendants. Upon reflection, I think the plaintiffs were bound to notify the defendants of their readiness to send the ship to Wicasset, and were entitled to be told, in answer to their demand, when the defendants expected to be ready on their part. If the answer had been that the Cheesborough would be loaded first, it is very probable that the plaintiffs would have acquiesced, and have taken their measures to reach Wicasset some days later than the seventeenth of August. It seems to me, therefore, reasonable and just that the expenses which I have referred to should be paid by the defendants.

Judgment for the plaintiffs for $40 and costs.

UNITED STATES v. CLARE.

(District Court, E. D. Pennsylvania. March 12, 1880.)

INTERNAL REVENUE—DEALER IN MALT LIQUORS—REV. ST. § 3242.—Any person who carries on the business of a brewer, or wholesale or retail dealer in malt liquors, must first pay a special tax therefor.

SAME—"WHOLESALE DEALER"—REV. ST. § 3244.—If the quantity of malt liquors sold at one time exceeds five gallons, the vendor is a "wholesale dealer," although the same is not contained in one package.

Motion for new trial.

Defendant was indicted and found guilty as a wholesale dealer in malt liquors, who had not paid the special tax required by the act of congress.

John K. Valentine, U. S. District Attorney, for the United States.

William H. Staake, for defendant.

BUTLER, D. J. A new trial is asked for on two grounds—*First*, that the statute under which the indictment is drawn does not require payment of the tax specified in advance of prosecuting the business; *second*, that the defendant was not a "wholesale dealer," as charged.

Section 3242 of the Revised Statutes provides "that every person *who carries on* the business of a brewer, or wholesale or retail dealer in malt liquors, *without having paid* a special tax therefor, as required by law, shall, besides being liable for the payment of a tax, be fined not less than $10, nor more than $500."

Section 3232 provides "that *no person shall be engaged in or carry on* any trade or business hereinafter mentioned, *until he has paid* a special tax therefor, in a manner hereinafter provided."

Section 3237 provides "that all special taxes shall become due on the first day of May in each year, or *on commencing* any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year; and in the latter case it shall be reckoned proportionately from the first day of the month in which the liability to a special tax commenced, to the first day of May following."

Section 3239 requires the stamp denoting the payment of the tax to be prominently exhibited at all times, in the place where the business is conducted, and provides a penalty for failure to observe this requirement.

The foregoing provisions leave no room for doubt that the tax must be paid in advance. The business is prohibited, except when thus licensed; until the tax is paid it cannot be lawfully pursued.

The case of *U. S.* v. *Thirty-five Barrels of Spirits*, 9 Leg. Int. Rev. Rec. 67, 68, does not, as I understand it, involve the point here under consideration. It arose out of a claim to forfeiture, under the statute of July 20, 1868, relating to distilleries. The provisions of that statute differ materially

from the provisions before me. It would seem doubtful, at least, whether the tax there involved could be paid in advance; whether ascertainment of the amount must not await the close of the year. The bond required to be given, in advance, would appear to be intended, in part, to secure their payment when the amount should be ascertained. The judge refers to the fact that the statute does not specify, in terms, *when* the tax shall be paid; and infers that it is not payable until after demand. In our case, as already seen, the provision is plain that the tax shall be paid in advance; that, according to section 3232, "no person shall carry on any trade or business * * * *until he has paid*" the tax; that, according to section 3237, the tax is due and payable *on the commencement* of the business; that, according to section 3239, the evidence that payment *has been made* shall at all times be exhibited where the business is carried on; that, according to section 3242, "every person who carries on the business, * * * without *having paid*" the tax, is liable to prosecution.

Is the defendant a "wholesale dealer," as charged? The meaning of this language is defined by the fifth paragraph of section 3244 of the Revised Statutes, as follows: "Every person who sells or offers for sale malt liquors in quantities of more than five gallons, at one time, * * * shall be regarded as a wholesale dealer." This language is so plain as to leave nothing for construction. The proviso which follows relates to a different subject, and in no wise qualifies it. If the *quantity* sold at one time exceeds five gallons, the party selling is a "wholesale dealer" within the meaning of the statute. If we interpolate the words "in one package," as urged to do by the defendant, it is plain that the statute is not only changed in terms and effect, but is virtually abrogated. The wholesale dealer, in such case, need do no more to avoid payment of the tax than reduce the size of his vessels. By substituting demijohns and small casks for barrels and half barrels, he may prosecute his business without serious detriment, and escape the claim of the statute.

Motion denied.

UNITED STATES *v.* OSBORN.

(*District Court, D. Oregon.* April 8, 1880.)

INDIAN—SPIRITUOUS LIQUORS—REV. ST. § 2139.—The disposition of spirituous liquors to an Indian, under the charge of an Indian agent, who has abandoned his nomadic life and tribal relations, and adopted the habits and manners of civilized people, violates section 2139 of the Revised Statutes.

Information for disposing of spirituous liquor to an Indian.

Rufus Mallory, District Attorney, for the United States.

Defendant *in propria persona.*

DEADY, D. J. This is an information filed by the district attorney against Frank Osborn, charging him with having disposed of spirituous liquor to an Indian, under the charge of an Indian agent, contrary to section 2139 of the Revised Statutes.

The defendant pleaded not guilty, and submitted to be tried by the court without the intervention of a jury.

The evidence, in which there is no conflict, proves that the Indian in question belongs to one of the tribes on the Warm Spring Reservation, under charge of Indian Agent Capt. John Smith; that with the consent of the agent and his mother he has lived off the agency with Mr. Miller, near Eugene, in this state, for the past eight or ten years, as a domestic, and was therefore commonly called "Joe Miller;" that within a few months since he left the house of Mr. Miller, and has been working in the neighborhood for some of the farmers, and occasionally making his home with an Indian living in the vicinity upon a portion of the public land under the homestead act, and called "Indian Jim;" that *this* Indian belongs to one of the coast reservations, but has not resided there for some fifteen years, and claims to be a citizen and voter of Oregon; that a short time since, and after Joe had left the Millers, he went to Eugene, a few miles distant from his former residence, and asked the defendant, who kept a drug store there, for a pint of alcohol.

The defendant knew the Miller family, and Joe, as an Indian