

property, not by virtue of the codicil, but under the will, through which title passes to them.

The testator is presumed to have used words in their natural sense, and when in the codicil he authorizes the executor to divide all of his estate, etc., it cannot be said that the words imported devise all his estate and authorized the executor to divide it, when by such construction a radical change would take place in the will, and bequests be revoked which were made by express terms. The intention of the testator is to be gathered from the will and codicil; both must be construed together. The words "divide" and "devise" are both used in the will—the former confined to an act to be done by the executor—and it would be a strained construction to say that in the codicil the testator intended by the use of the word "divide" to do more than authorize a change in the division of that portion of the estate already devised by the will to the widow and children.

I see no ambiguity in the language of the codicil, and its terms are not inconsistent with the special devise of the Minnesota land to the plaintiffs. Having arrived at this conclusion, it is unnecessary to consider the case any further.

Judgment for plaintiffs.

THE UNITED STATES v. COMAROTA.

(*District Court, S. D. New York. March 13, 1880.*)

IMPORTS—WITHDRAWAL FROM WAREHOUSE—DUTIES ON—RELIQUIDATION OF.

S. L. Woodford, District Attorney, for plaintiff.

Hartley & Coleman, for defendant.

CHOATE, D. J. This case has been tried by the court upon a waiver of the jury. The facts are agreed.

The suit is to recover a balance of duties on goods imported by the defendant. The goods were imported and entered for warehouse September 29, 1874. On the twenty-eighth of

v.2,no.2—10

October, 1874, the duties were liquidated at \$658.25. On the twenty-seventh of April, 1875, the duties were reliquidated at \$783.35. Meanwhile, the goods had been withdrawn from warehouse and the goods delivered to the defendant, and the duties paid upon the basis of the first liquidation—the last delivery and payment of duty being on the ninth of February, 1875.

There was no fraud in the importation, entry or withdrawal of the goods, and no protest by the importer.

This action was commenced in June, 1876, to recover the balance of \$125.10, being the excess of the second liquidation over the amount of the duties paid.

The entries which are made part of the agreed statement of facts show that the first liquidation was upon the basis of a duty of 25 per cent., and the second liquidation was on the basis of a duty of 40 per cent. upon that portion of the goods which actually remained in warehouse after the eighth day of February, 1875, although the defendant had, on the twenty-fifth of January, signed and presented to the collector an entry for their withdrawal, under which they were delivered from warehouse and the duties paid on the ninth of February.

The point sought to be raised by the defendant is whether, under the act of February 8, 1875, (18 St. 307,) which imposed this increased duty on goods "in bonded warehouse" on the eighth day of February, these goods were, within the meaning of the law, "in bonded warehouse" on that day. The ground on which, as it is assumed by counsel, the duties were reliquidated at 40 per cent., was that they were, within the meaning of the act, still in warehouse, while the defendant contends that they had been withdrawn. It is, however, impossible to raise this question on this record. In the recent case of the *United States v. Phelps* it was held that the collector is authorized, notwithstanding the payment of duties upon a regular liquidation, and the delivery of the goods to the importer, to make a reliquidation, although the error sought to be corrected by such reliquidation is an error or a supposed error of law only. The circuit court held that the act of March 3, 1875, (18 St. 469,) did not restrict the power

so to reliquidate to a case where the purpose of the reliquidation was to correct an error of fact.

It is, however, insisted that because this action was commenced more than a year after the original entry of the goods it cannot be maintained. The argument is that the twenty-first section of the act of June 22, 1874, which provides that the settlement and payment of duties conformably to that section shall, "after the expiration of one year from the time of entry," etc., "be final and conclusive," limits the United States to one year for the commencement of a suit. But I think it is clear that this section contains no limitation upon the time within which an action can be brought on a reliquidation of duties duly made by the collector within the year to which his authority to reliquidate extends, and that the reliquidation duly made determines the right of the United States to the duty as reliquidated, unless the importer protests and brings his action thereon in the mode provided by law.

Whether, if there is no reliquidation, but an action is brought within the year for the larger duty, the United States could recover, is another question, which it is unnecessary to consider.

The plaintiff is entitled to judgment.

THE UNITED STATES v. EVANS and others.

(Circuit Court, W. D. Tennessee. March 29, 1880.)

RECOGNIZANCE—SCIRE FACIAS—DEFENCE.—Where a recognizance was given for the appearance of a defendant to answer a "charge against him for passing counterfeit money," held, that the fact that the indictment was defective could not be asserted as a defence to *scire facias*, upon such recognizance, after forfeiture.

SAME—SAME—SUFFICIENCY OF BOND.—In Tennessee every bond or recognizance that would have been good at common law will be regarded as sufficient statutory bond in any proceeding where it may be questioned.