

amined witnesses, and at which counsel were heard. December 10, 1879, the board reported, sustaining the higher valuation of these Nicholson Blue, A, goods, and the defendant made a reliquidation of the entry, April 20, 1880. In the mean time the goods were delivered June 6, 1879, in the special manner already mentioned. The duties were assessed at this higher valuation, and were paid under protest, and due appeal was taken to the secretary of the treasury, who confirmed the doings of the collector.

The only point of protest and appeal now insisted on is that the reliquidation was made more than a year after the entry, the goods having been delivered and duties paid in the mean time, contrary to St. 1874, c. 391, § 21, (18 St. 190.)

To this contention there appear to be two answers: (1) In point of fact, the duties were not paid on these eight packages of goods until after the reliquidation. (2) If I am mistaken and the goods had been delivered, it was under a stipulation which treated them as still in the possession of the defendant, and bound the plaintiffs to abide the results of the reappraisement. The only result which it was important that they should abide, was the reliquidation which ensued, of course, when the value was increased by the board of appraisers.

My decision, therefore, is that the reliquidation of the eight packages was regular and binding, and that the plaintiffs cannot recover. When the bill of exceptions has been filed and allowed, there will be judgment for the defendant.

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### THE SARATOGA, etc.

(Circuit Court, S. D. New York. February 27, 1883.)

#### 1. PENALTY—PROCEEDINGS TO RECOVER—VIOLATION OF REVENUE LAW.

Whenever a vessel, or the owner or master of a vessel, has become subject to a penalty for a violation of the revenue laws of the United States, such vessel shall be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel to recover such penalty.

Section 3088, Rev. St.

#### 2. SAME—WHEN VESSEL NOT SUBJECT TO SEIZURE.

The act of congress of February 8, 1881, provides that no vessel shall be subject to seizure or forfeiture as above by reason of the penalty incurred under section 2873, Rev. St., unless it shall appear that the master, at the time of the alleged illegal act, was a consenting party or privy thereto.

*Stewart L. Woodford*, U. S. Atty., for appellant.

*Goodrich, Deady & Platt*, for claimants and appellees.

WALLACE, J. Upon the appeal to this court from the district court, the libel to which the claimants' exceptions were sustained in the court below has been amended so that it affirmatively concedes that the libeled vessel "was used by the owners thereof as a common carrier in the transaction of their business as such carrier, and that neither the owner nor the master was a consenting party or privy to the illegal act for which the penalty was incurred." This amendment relieves the case from any mere technical question, and the right to seize the vessel and proceed against it summarily by libel under section 3088, Rev. St., to recover a penalty incurred under section 2873, although it was a vessel used as a common carrier, and neither the owner nor master was a consenting party or privy to the act for which the penalty was incurred, is the broad question presented by the claimants' exceptions. The act of congress of February 8, 1881, declares explicitly that a vessel so used shall not be subject to seizure or forfeiture by force of the provisions of title 34 of the Revised Statutes, unless it shall appear that the owner or master, at the time of the alleged illegal act, was a consenting party or privy thereto; and section 2873 is one of the provisions of that title.

Fully concurring in the conclusion reached by the district judge, and deeming that nothing can be added to the convincing exposition which this act has received in the opinion delivered by him, his decision is adopted, and the exceptions are sustained by this court.

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LORILLARD and others *v.* WIGHT.

(*Circuit Court, D. Maryland.* February 21, 1883.)

1. TRADE-MARK—COLORED TIN DEVICES.

Where complainants were the first to adopt and use as a mark for their product tin tags variously colored, with the name of their brand and their own name stamped thereon and fastened upon the outside of their plugs of tobacco, although their patent therefor was declared void after surrender and reissue, they had the right to the device as a trade-mark, the public having come to know their tobacco by the tags of their peculiar color, shape, and size.

2. SAME—INFRINGEMENT.

Where defendants use tin tags which are a close imitation of the tags of complainant,—so close an imitation that they are calculated to mislead the retail purchaser, whether so intended or not,—it is an infringement of complainants' trade-mark, and such use may be enjoined.

In Equity. Motion for injunction.