

nized their right of dominion, and his possession was theirs, in contemplation of law, and he held it merely as their bailee.

Judgment is ordered for the defendant.

GREENLEAF and others v. WORTHINGTON, Collector.

(Circuit Court, D. Massachusetts. December 2, 1885.)

CUSTOMS DUTIES—MERINO SHIRTS, ETC.—UNDER WHAT LAW DUTIABLE.

Shirts, drawers, and stockings composed in part of wool and in part of cotton, and known commercially as merino goods, are liable to an assessment of 35 per cent. *ad valorem*, under the act of August 7, 1882, (22 St. 301,) in amendment of Rev. St. § 2504, irrespective of the proportions in which the wool and cotton are combined, or the comparative value of the wool in the fabric.

Rescript.

C. L. Woodbury, for plaintiff.

Geo. P. Sanger, U. S. Atty., for defendant.

COLT, J. Under the agreed statement of facts it appears that the importations were known in trade in 1874 as merino shirts, drawers, socks, and stockings, and that the yarn was known in trade as merino yarn, and that this yarn was produced by carding together wool and cotton, and spinning, by which process a distinct article of commerce from either wool or cotton is produced, which is known and described as merino. The importations being composed in part of wool and in part of cotton, and known commercially as "merino," we do not think they should be assessed under section 2504, Schedule L, of the Revised Statutes, but that they clearly come under section 2504, Schedule M, of the Revised Statutes, amended August 7, 1882, (22 St. 301,) and are liable to an assessment of 35 per cent. *ad valorem*.

Upon the facts as presented we deem the proportions in which the wool and cotton are combined, or the comparative value of the wool in the fabric produced, immaterial and not affecting the question.

McGUIRE v. WINSLOW and others.

(Circuit Court, N. D. New York. January 27, 1886.)

1. CUSTOMS—SEIZURE—LIABILITY TO FORFEITURE.

The question whether property which has been seized by the proper revenue officers of the government is liable to forfeiture under the customs laws of the United States, can only be adjudicated in the mode and by the procedure prescribed by the laws of congress.

2. SAME—DUTY OF OFFICER.

It is the duty of the officer to make the seizure if he has probable cause to believe the property to be forfeited.

3. SAME—JURISDICTION—PROPER ACTION.

The exclusive jurisdiction to determine whether property has become forfeited to the United States is vested in the federal courts, and is to be exercised by proceedings *in rem*, and it depends upon the final decree of such courts whether the seizure is to be deemed rightful or tortious.

4. SAME—PROCEEDINGS IN REM PRECEDE ACTION IN TRESPASS FOR FORFEITURE.

When a seizure is made for a supposed forfeiture under a law of the United States, no action of trespass lies in any common-law tribunal until a final decree is pronounced upon the proceeding *in rem* to enforce such forfeiture.

5. SAME — REVISED STATUTES, §§ 3074-3079, INCLUSIVE — SALES PURSUANT THERETO.

A sale of seized property pursuant to sections 3074-3079, inclusive, of the Revised Statutes, is, in legal effect and operation, equivalent to a sale under a judicial decree of condemnation.

Action of Trover.

Martin I. Townsend, for defendants.

Thomas H. Breen, for plaintiff.

WALLACE, J. This action was commenced in the supreme court of this state, and removed to this court upon the petition of the defendants. It is an action of trover, brought to recover the value of a horse alleged to have been wrongfully taken by the defendants from the possession of the plaintiff, and converted to their own use. The defense is that the horse was imported into the United States from the dominion of Canada, in violation of law, and was subject to seizure and forfeiture to the United States; and that all the acts done in the premises by the defendants were done by them in the seizure and sale of the horse as officers of the government; the defendant Winslow as a special agent of the treasury department, and the defendant Warren as collector of the port of Cape Vincent.

Upon the trial it appeared that the horse was brought into the district of the defendant Warren, and was seized by him, with the co-operation of the defendant Winslow, upon the assumption that the plaintiff had entered the horse for importation by means of a false invoice, with intent to defraud the United States. The collector, being of opinion that the value of the property seized did not exceed \$500, caused an appraisement to be made pursuant to section 3074, Rev. St. Upon the appraisal the property was found to be of less value than \$500, and thereupon he caused publication of notice to be made in manner and form, and for the period of time, prescribed by