

able; and if the said levy is made with a knowledge, at the time, that it is illegal, while the tax-payer remonstrates that it is illegal, and claims the protection of the law of the land, then the jury may find that said levy was malicious, and are not confined to giving actual damages, but may give punitive or exemplary damages, as they may find the facts to be.

And the jury are instructed that the meaning of the word "malice" in law is not personal hate or ill will of one person towards another, but it refers to that state of mind which is reckless of law and of the legal rights of the citizen in a person's conduct towards that citizen; and the object of the law, in permitting the jury to give exemplary damages or smart money in cases like this, is not only to indemnify the plaintiffs for the loss sustained, but to prevent similar actions upon the part of these and other defendants in the future.

The court instructs the jury that the plaintiffs were under no obligation to pay their taxes in money, and surrender their coupons for identification and verification, but they had a right, under the law, to stand upon their tender of coupons, and to refuse to pay in money and surrender their coupons for identification.

The jury found a verdict for \$150 damages. The counsel for the plaintiffs moved to set the verdict aside upon the ground of inadequacy, but the circuit judge overruled the motion, saying that he could not tell how far the jury might have been influenced by the argument respecting the decision of the Virginia court of appeals on the school-tax question, which it would have been legitimate for the jury to consider in mitigation of damages.

STRICKLER and Wife v. YAGER, Treasurer, etc., and others.

(Circuit Court, E. D. Virginia. October, 1886.)

CONSTITUTIONAL LAW—TAXATION—VIRGINIA COUPONS—MEASURE OF DAMAGES

—MALICE.

Following *Willis v. Miller*, ante, 238.

At Law. Trespass.

The facts in this case were the same as in the preceding one, with the exception that the tax due was nine dollars only, and there was no question relating to the school tax involved in the case; the plaintiffs having paid that part of the tax relating to the public schools in currency, and having tendered coupons for the other part of the revenue solely.

The court gave the same instructions in this case as in the preceding one, and the plaintiffs' counsel urgently appealed to the jury to find a verdict for punitive damages, and thus arrest these open, pro-

claimed, and intended defiances of the supreme law of the land as laid down by the supreme court of the United States.

The plaintiffs had bought in their own property at the sale for nine dollars. Consequently nine dollars was the extent of the damage suffered. The jury found a verdict for nine dollars, the plaintiffs' actual damages, against the members of the indemnity board; but they found a verdict of not guilty as to the treasurer of Page county, who made the seizure and sale. The plaintiffs' counsel moved the court to set this verdict aside as inadequate, but his honor, the circuit judge, overruled the motion, saying that the amount of damages was a matter entirely within the province of the jury; that it appeared from the two trials which had been had that a jury of Virginians proposed to let it be known that they would not protect their fellow-citizens from willful trespasses committed upon them, when those fellow-citizens relied upon the constitutional laws of the United States only for that protection; and, if the jury chose to take this position, the court was powerless to secure the citizen any redress.

During the trial of the latter case the plaintiffs' counsel called the Honorable R. A. Ayers, attorney general of the state of Virginia, as a witness to prove that, as a member of the indemnity board, he had signed the circular instructing the treasurer to levy and sell, notwithstanding the tender of coupons, and promising them indemnity for such unlawful acts. During his examination the following colloquy took place between him and the court.

William L. Royall and George Bryan, for plaintiffs.

R. A. Ayers, Atty. Gen., and J. Randolph Tucker, for defendants.

BOND, J. Mr. Attorney General, when you signed that circular and that guaranty, did you know that the supreme court of the United States had decided that it was a trespass for a collector to levy on a tax-payer after a tender of coupons, and that any law of the state undertaking to protect him on that trespass was repugnant to the constitution of the United States and void?

AYERS, Atty. Gen. After the last decisions of the supreme court of the United States, made in the beginning of February last, I was before the legislative committee having charge of that subject. The meaning of those decisions was fully explained to and understood by that committee and the entire legislature. This act creating the indemnity board was the result of the resolution the legislature came to.

BOND, J. Do you think that indemnifying act a constitutional one, or that any act authorizing one citizen to commit a trespass upon another, and agreeing to indemnify him for all damages he might suffer, would be held to be constitutional by the courts of Virginia?

AYERS, Atty. Gen. Well, I think there might be a good deal of discussion concerning that.

BOND, J. Well, we won't discuss it.

MCANDREW v. ROBERTSON.

(Circuit Court, S. D. New York. December 6, 1886.)

CUSTOMS DUTIES—IMPORTATION OF EMERY STONE—ACT OF 1883—WHEN IT TOOK EFFECT.

Emery stone, that arrived by vessel at the port of New York on June 30, 1883, too late to go into stores or bonded warehouse on that day, and that was not entered until July 2d, July 1st being Sunday, was not exempted from duties under the act of congress of 1883, (22 St. 488,) but was liable to the duty of six dollars per ton imposed by the act in existence prior to that act.

Action to Recover Duties Paid under Protest.

George B. Adams, for plaintiff.

Henry C. Platt, Asst. U. S. Atty., for defendant.

WHEELER, J. The plaintiff's goods,—200 tons of emery stone,—on which by law, prior to the act of 1883, there was a specific duty of six dollars per ton, arrived by the bark *Teresina Bruno* at the port of New York on June 30, 1883, at about 3 o'clock p. m., and too late to go into public stores or bonded warehouse on that day. The first day of July was Sunday. On the second day of July the goods were entered for consumption as free. They were passed as free on bond to pay such duties as they might be found liable to, and unloaded by the plaintiff. Afterwards the duty, six dollars per ton, was assessed and paid by the plaintiff, under protest that they were free under the act of 1883, and this suit is brought to recover the amount. By the act of 1883 (22 St. 488) it was enacted that on and after the first day of July, 1883, the following sections should constitute and be a substitute for title 33 of the Revised Statutes. Then follows a tariff of duties, in which emery stone is classed as free. By section 10 it is provided that goods in the public stores or bonded warehouses on the day when the act should take effect should be subject to no other duty than if the same were imported after that day, and that if the duties had been paid there should be a refund of the difference; and, by section 13, that the repeal of existing laws or modifications thereof by that act should not affect any act done or right accruing or accrued. It is not, and could not well be, claimed but that the right to duties on goods imported accrues on their arrival at the port of importation, with intent to unlade. *U. S. v. Lyman*, 1 Mason, 482; *Prince v. U. S.*, 2 Gall. 204; *Perots v. U. S.*, Pet. C. C. 256; *Meredith v. U. S.*, 13 Pet. 486; *U. S. v. Cobb*, 11 Fed. Rep. 76; *U. S. v. Benzou*, 2 Cliff. 512.

It is argued, however, that as goods imported prior to this time, and had gone to bonded warehouse, would come under the provisions of the new act, it must have been the intention of congress that these goods should, and that for this purpose the deck of the vessel should be considered the warehouse. This question must be deter-