

curing terms have been fulfilled, the question of the applicability of the remission for good conduct to all the sentences may be waived, and the prisoner be lawfully discharged, without deciding it. He is discharged accordingly.

JULIUS WINKELMEYER BREWING Co. v. WHITNEY, Surveyor, etc.¹

(Circuit Court, E. D. Missouri. January 13, 1887.)

CUSTOMS DUTIES—CASTINGS OF IRON—PARTS OF ICE-MACHINE.

Iron castings, intended to form parts of an ice-machine, but which have to be put together after their arrival here, and to which other parts have to be added, in order to make a complete machine, are "castings of iron not specially enumerated or provided for," within the meaning of Schedule C of the tariff act of March 3, 1883, and are dutiable at one and one-fourth cents per pound.

At Law.

Suit to recover back \$417.75, duties paid under protest upon iron castings intended to form part of an ice-machine. All parts of the machine were not imported, and the parts imported had to be put together, and others added after their arrival in this country. The parts imported were classed as manufactures of iron, and a duty of 45 per cent. *ad valorem* charged, under clause 216 of Heyt's Compilation. The plaintiff claims that the goods were only dutiable, under the provisions of Schedule C of the tariff act of March 3, 1883, at the rate of one and one-quarter cents per pound, as "castings of iron not specially enumerated or provided for."

Shuman & Defrees, for plaintiff.

W. H. Bliss, for defendant.

TREAT, J. The testimony in this case does not vary the construction of the acts of congress reached by the circuit court of the United States for the Northern district of Illinois in the case of *Wolff v. Spalding*, 26 Fed. Rep. 609. Accepting the decision of that court as the proper construction of the revenue act, and duly considering the testimony offered, the court holds that the plaintiff is entitled to recover.

Judgment will be given accordingly, for the sum of \$417.75, and costs.

¹Edited by Benj. F. Rex, Esq., of the St. Louis bar.

DIECKERHOFF and others v. ROBERTSON, Collector.

(Circuit Court, S. D. New York. January 7, 1887.)

CUSTOMS DUTIES—ACTION TO RECOVER BACK—BILL OF PARTICULARS—AMENDMENT—REV. ST. U. S. §§ 2931, 3012.

In suits to recover duties illegally exacted by collectors of customs, while, notwithstanding the mandatory language of Rev. St. U. S. § 3012, which enacts that suit shall not be maintained unless the bill of particulars containing the matters specified be served within 30 days after due notice of the appearance of the defendant, amendments as to formal matters not involving substantial rights, which had been omitted or misstated by inadvertence, may be allowed, the court will not allow an amendment which will introduce a new cause; as, where two suits are brought, the transfer to one of them, brought within the short bar of 90 days from the decision of the secretary of the treasury, provided by Rev. St. U. S. § 2931, of the cause of action in the other, which was not brought until after the expiration of that limitation.

At Law. Motion to amend bill of particulars.

The moving affidavit of the plaintiffs showed: (1) That two suits between the same parties were pending,—one numbered 9,187, and the other 10,072. (2) The first suit was brought within 90 days after the decision of the secretary of the treasury on the appeal to him under section 2931, Rev. St. U. S. (3) The second suit was not commenced until more than a year had elapsed after the decision of the secretary of the treasury. (4) The plaintiffs did not know, at the time of the commencement of the first suit, that any decision had been made by the secretary of the treasury on their appeal, covering the entries in the second suit. (5) A bill of particulars in each suit was served within the statutory time. Section 3012, Rev. St. U. S. (6) The plaintiffs asked for an amendment to the bill of particulars in the first suit, by adding or transferring thereto 11 entries contained in the bill of particulars in the second suit.

Dudley F. Phelps, for the motion, cited *Pott v. Arthur*, 15 Blatchf. 314.

Henry C. Platt, Asst. U. S. Atty., opposed, cited Rev. St. U. S. §§ 2931, 3012; *Williams v. Cooper*, 1 Hill, 637; *Arnson v. Murphy*, 115 U. S. 579, 586; S. C. 6 Sup. Ct. Rep. 185.

WALLACE, J. Since the decision in *Pott v. Arthur*, 15 Blatchf. 314, this court has frequently exercised the power of permitting plaintiffs, in suits to recover duties illegally exacted by collectors of customs, to amend the bill of particulars as to essential contents, notwithstanding the mandatory language of section 3012, Rev. St. U. S., which enacts that the suit shall not be maintained unless the bill of particulars containing the matters specified be served within 30 days after due notice of the appearance of the defendant. In that case Judge BLATCHFORD construed the statute as directory merely, and allowed the dates of the invoices which had been omitted to be supplied by amendment. In subsequent cases, when a similar application has been made, the amendment sought has always been as to some formal matter, not involving any substantial rights of the defendant which had been omitted or misstated by inad-