

UNITED STATES *ex rel.* SHELLY *v.* ST. CHARLES CO.

(Circuit Court, E. D. Missouri. June 8, 1887.)

COSTS—SECURITY FOR, AFTER JUDGMENT.

Where a plaintiff has recovered judgment against a solvent defendant, and process is outstanding in the nature of an execution to collect the same, it is not proper to require the plaintiff to make a deposit to secure costs due a commissioner.

Mandamus Proceedings. Motion for security for costs.

E. B. Sherzer, for plaintiff.

Huff & Denison, for defendant.

THAYER, J., (*orally.*) In the case of the United States, at the relation of Shelly, against the county of St. Charles, a motion has been filed by the referee or commissioner to require the plaintiff to make a deposit to secure the costs. The case in question is a *mandamus* proceeding. An alternative writ has been issued. There has been a return to the writ, a hearing of the issues raised by the return to the alternative writ, and a peremptory writ has been awarded for a certain sum.

In that state of the case, the commissioner to whom certain issues arising under the return to the alternative writ were referred, moves that the plaintiff be required to deposit a certain sum to secure his costs. I think the court has power to make such an order, but I do not think that it is the correct practice to make an order of that kind when a case has reached the stage that this case is in. A peremptory writ is now outstanding which is in the nature of an execution, and it does not seem to me proper to require a plaintiff to make a deposit to secure the costs after he has recovered judgment, and process is outstanding, in the nature of an execution to collect the same; and especially is this true in a case where the defendant is shown to be amply solvent.

The judgment herein is a lien upon a large tract of land in St. Charles county, and the presumption is that the amount of the plaintiff's debt and all costs will be recovered. Under such circumstances I think it the correct practice to require the commissioner to await proceedings under the peremptory writ, unless such proceedings are unduly delayed. The motion, therefore, to require an additional deposit, will be overruled.

TRYON v. HARTRANFT.¹

(Circuit Court, E. D. Pennsylvania. 1887.)

CUSTOMS DUTIES—BOXES—ACT OF MARCH 3, 1883, § 7—APPRAISEMENT.

If an invoice of goods contains a statement that the value of the cartons, coverings, etc., of the goods, is included in the invoice value, and at the time of the entry the importer writes on the invoice the separate value of the cartons, coverings, etc., duty cannot be exacted on the entire invoice value, but must be charged upon the entire invoice, less the value of the cartons, coverings, etc.

At Law.

This was an action to recover the amount of customs duties alleged to have been wrongfully exacted from the plaintiff by the collector of the port of Philadelphia. The case was tried before Judge BUTLER, and a jury. In a special verdict the jury found as follows:

“SPECIAL VERDICT.

“The jury find: (1) In the year 1883 the plaintiffs were merchants in the city of Philadelphia, and the defendant was collector of the customs for the district of Philadelphia. (2) The plaintiffs imported into the port of Philadelphia, between May 15, 1883, and October 18, 1883, both inclusive, various lots of fire-arms, caps, and wads, which were duly entered at the custom-house. (3) All of the articles so imported were, for the purposes of transportation, incased in boxes and coverings, which were the usual and necessary coverings for that class of merchandise. Except in the case of two importations entered respectively on August 14, 1883, and September 20, 1883, each invoice contained a statement of the separate value of these boxes and coverings, written on the invoice at the time it was originally made out. In the case of the two importations of August 14, 1883, and September 20, 1883, the invoices contained no statement of the separate cost of the boxes, coverings, etc., written on the invoices at the time they were made out, but at the foot of each invoice were printed the words, ‘All charges for boxes, cartons, packing, etc., are included in the prices of the goods;’ and at the time of the entry of the merchandise the importer wrote in lead-pencil on the invoice of the entry of August 14, 1883, a statement of the separate costs of the boxes, coverings, etc., as follows:

Net cost of boxes, etc.,	-	-	-	-	-	-	£23-2-6	on caps
“	“	“	“	“	“	“	£10-8	“ “ wads

—And on the invoice of the entry of September 20, 1883, wrote in lead-pencil a similar statement, as follows:

Estimated cost of inside wrappers and boxes,	-	-	-	-	-	£24-7-6
On caps—Ditto on wads,	-	-	-	-	-	£10-8
						£34-15-6

“(4) The defendant, as collector, as aforesaid, exacted duty on the value of all the boxes and coverings at the same rate of duty that was payable by their contents. The plaintiffs, in order to obtain the said goods, paid the duty so exacted on the value of the boxes and coverings, and made due protests against the exaction thereof, claiming that the boxes and coverings were not dutiable. (5) The plaintiffs made due appeals from said decision of said col-

¹ Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.