

made in 1885, and in 1886 the hay, to recover which these several actions are brought, was cut and stacked on the land occupied by him. The land occupied by all the defendants is comprised in two tracts, not far distant, which lie on the margin and within the meandered line of Warner lake, near the south boundary of the state.

For the reasons given in the foregoing opinion, there must be a finding for defendant in each case.

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AMERICAN F. L. M. Co. v. BENSON *et al.*

(Circuit Court, D. Nebraska. 1887.)

WRITS—SERVICE BY PUBLICATION—ACT OF 1875—ACT OF MARCH 3, 1887.

By the act of March 3, 1887, the right given by the eighth section of the act of March 3, 1875, to bring in non-residents by publication in certain cases is expressly continued.

Motion to Dismiss, and suppress service by publication.

In December, 1886, this bill was filed for the foreclosure of a mortgage, in which the mortgagor and subsequent incumbrancers were impleaded as defendants. Subpœna was issued, and return served upon the subsequent incumbrancers, but not upon the mortgagor. In March, 1887, after the passage of the act of March 3d of that year, the usual affidavit was filed, showing a proper case for an order for the publication of notice of the suit to the mortgagor. The publication was accordingly made, and the proof thereof filed in the court. Thereupon the mortgagor filed his motion to set aside the order for publication. The parties plaintiff and the parties defendant were citizens of different states. In support of the motion to discharge the order for publication, it was insisted that under the act of March 3, 1887, a non-resident defendant could not be brought into court by publication.

*L. Q. C. Dosh*, for complainant.

*J. M. Woolworth*, for defendants.

BREWER, J. The motion to dismiss this cause for want of jurisdiction, and suppress the service by publication, is overruled. The right to proceed against a non-resident defendant in certain cases is given by section 8 of the act of 1875. The act of 1887, § 5, expressly provides that nothing in this act shall repeal or affect any jurisdiction or right mentioned in said section 8; hence the same right exists now as before said act of 1887 to bring in non-residents by publication in cases mentioned in said section 8 of the act of 1875. That right is all that is attempted to be enforced in this case.

LIEBENROTH *et al.* v. ROBERTSON.

(Circuit Court, S. D. New York. January 5, 1888.)

## CUSTOMS DUTIES—ALBUMS.

Rev. St. U. S. § 2499, as amended by act 1883, provides that if two or more rates of duty should be applicable to any imported article, it shall be classified for duty under the highest of such rates. *Held*, that photographic albums bound in leather, their interior part consisting of paper, are dutiable, under the provisions of Schedule M, par. 463, at 30 per cent. *ad valorem*, as articles not specially enumerated of which leather is a component part, and not under paragraph 384, or 385, or 388, providing, respectively, for duty on books or pamphlets, blank books, and paper manufactures not specially provided for.

At Law. Action to recover back customs duties.

Action by Adolph Liebenroth *et al.* against William H. Robertson, collector of revenues, to recover an alleged excess of duties paid in 1885 and 1886 on photographic albums.

Stephen G. Clark, for plaintiffs.

Stephen A. Walker, Dist. Atty., and McGrane Coxe, for defendant.

LACOMBE, J., (*orally.*) It is provided by section 2499 of the Revised Statutes, as it stands amended by the act of 1883, that if two or more rates of duty should be applicable to any imported article, it should be classified for duty under the highest of such rates. The articles in question here are photographic albums, the interior portion of which, intended for the insertion of the photographs, is made of paper, and the albums being bound with various materials, such as paper, leather, plush, cloth, wood, etc. The albums in the particular case now at bar, however, are covered with leather only. It is contended by the plaintiff, first, that the articles are covered by paragraph 384 of Schedule M, which enumerates books, pamphlets, bound or unbound, etc. This contention seems unsound, because upon the principle *noscitur a sociis*, the various articles covered by the enumeration of paragraph 384 seem to include only such as are printed or struck from plates or types. It is further claimed by the plaintiff that if not covered by paragraph 384, the articles are covered by paragraph 385, which provides for blank books, bound or unbound, and blank books for press copying. The testimony of the plaintiff Van Auw, however, indicates that these albums are not known in trade and commerce as blank books, and therefore they do not come within the enumeration of that paragraph. The plaintiff next claims that if not covered by paragraph 385, they are covered by paragraph 388, which is as follows: "Paper manufactures, or of which paper is a component material, not specially enumerated or provided for in this act, 15 per cent. *ad valorem*." The collector assessed duty at 30 per cent. *ad valorem* under the provisions of paragraph 463, as follows: "All manufactures and articles of leather or of which leather shall be a component part, not specially enumerated or provided for in this act, 30 per cent. *ad valorem*."