

was an obscurity about it, as originally written, which required to be removed before the contract between the parties could be rightly interpreted, and for this purpose only was testimony *dehors* the written agreement received. Under the operation of this rule, the larger portion of plaintiff's testimony was excluded.

The plaintiff having failed to deliver the articles contracted for within the time limited for their delivery, there can be no recovery in this action, and judgment must be entered for the defendants for costs.

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BABSON v. ROBERTSON, Collector.

(Circuit Court, S. D. New York. January 25, 1888.)

CUSTOMS DUTIES—CHARGES AND COVERINGS—ACT OF MARCH 3, 1883—TIME OF TAKING EFFECT.

Section 7 of the tariff act of March 3, 1883, repealing the statutes which provided for duties on charges and coverings, and prohibiting the assessment of duties on such charges and coverings, did not take effect until July 1, 1883.

(*Syllabus by the Court.*)

At Law. Action to recover back custom duties.

The plaintiff, during the period between March 3 and July 1, 1883, made various importations of Portland cement, from Germany. The goods were invoiced, and entered for consumption as "free on board," and the invoice and entered value included packing and transportation charges. The collector assessed a duty of 20 per cent. upon the entered value, including charges, and refused to receive or consider new consular invoices in which the charges were separately stated. This action was brought to recover the duties assessed upon the charges. At the close of plaintiff's case counsel for defendant moved for the direction of a verdict in favor of the defendant, on the ground that the duties had been properly assessed by the collector, and that, at the time the goods were entered, charges were dutiable by law, inasmuch as section 7 of the tariff act of March 3, 1883, abolishing duties on charges, did not take effect until July 1, 1883.

*Hartley & Coleman*, for plaintiff.

*Stephen A. Walker*, U. S. Atty., and *W. Wickham Smith*, Asst. U. S. Atty., for defendant.

LACOMBE, J., (*orally.*) Of course acts take effect from the day of their passage, unless the law-makers express the intention that they shall take effect at some other time. This particular act of 1883 provides particularly, as to different parts, especial dates upon which those parts shall take effect. It is now contended that the use in section 7 of the word "hereafter" is conclusive and controlling of the question, and determines that, as to the provisions embodied in that section, the act was to take

effect March 3, 1883,—the day of its passage. In my opinion no such single word in a statute would be sufficient to determine the question. An examination of the whole act in all its parts should be resorted to before we undertake to say what was the expressed intention of congress as to the date when it should take effect. The earlier sections, from 1 to 5, are mainly concerned with internal revenue matters, and provide for the taking effect of the act on different dates. The provision with regard to duties upon imports will be found in section 6 and those succeeding. Section 6 provides that on and after the first day of July, 1883, "the following sections shall constitute and be substituted for title 33 of the Revised Statutes," and then follows the enumeration of the various dutiable articles, with the rates of duty which they shall respectively pay. Then follows section 7, which is directed to removing the duty upon the packages, sacks, or boxes, or other coverings in which dutiable goods may come. Were there nothing here save section 6 and section 7, while it might seem somewhat remarkable that congress should have fixed upon different dates for the taking effect of these different provisions with regard to imports, there would not be sufficient to show a clear intention on the part of congress that the regulations with regard to coverings should not go into effect until the 1st of July. In my opinion, however, the next section is controlling of the question. Its sole purpose, when it is examined in connection with the section of which it is an amendment, indicates that it was part of the plan or scheme for relieving importers from the obligation of paying duties upon the coverings in which their goods come to this country, and that section expressly provides that the provisions it contains shall go into effect on and after the 1st day of July, 1883.

I am forced, then, to the conclusion that it was the clear intention of congress, and that they have expressed that intention with sufficient clearness to warrant holding, that the provisions in regard to the coverings went into effect on the 1st of July, 1883, and I shall therefore direct a verdict for the defendant, and give the plaintiff an exception.

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SMITH *et al.* v. GOOD.

(Circuit Court, D. Rhode Island. March 3, 1883.)

CONSTITUTIONAL LAW—AMENDMENT TO STATE CONSTITUTION—RIGHT TO QUESTION IN FEDERAL COURTS.

Act R. I. March 10, 1886, (Pub. Laws, c. 550.) provides that the question of the adoption of article 5 of amendments to the constitution, prohibiting the manufacture and sale of intoxicating liquors to be used as a beverage, shall be submitted to the people, the ballots counted by the governor, secretary of state, and attorney general, and the result authoritatively announced by the governor by proclamation. *Held*, in an action on a promissory note, given for the purchase price of such liquors, by the indorsee, who took it with full knowledge of the consideration, that the circuit court of the United States sitting in Rhode Island had no power to inquire into the question of the legal