

The opportunities, facilities, and inducements for persons to evade the internal revenue laws, and the frequent violations that escaped without detection and punishment, induced congress to enact very comprehensive, specific, and stringent measures for the prevention and punishment of frauds in regard to the tax on whisky and tobacco, so extensively manufactured and sold. To make this purpose still more effectual the bureau that has charge of the collection of such taxes, is invested with the authority to prescribe regulations that may be deemed necessary to secure the proper observance and execution of the law.

In applying and enforcing such laws, where they impose an absolute forfeiture for fraud, the courts adopt a liberal construction, so as to accomplish, as far as possible, the well-considered and necessary measures devised and enacted by congress to secure the effectual collection of the public revenue. The experience of the officers of the internal revenue, and the facts that so often appear on trials in the courts, show that it is very difficult to prevent frauds in regard to the tax on whisky and tobacco, on account of the various and numerous artifices resorted to by wrong-doers, and the extent of the territory in which such offenses can be easily committed, often with impunity. As long as taxes are imposed upon these articles, so largely manufactured, sold, and used by the people, the most stringent enforcement of the law is necessary to prevent frauds, and suppress crime. In criminal cases the courts may properly be influenced by mitigating facts and circumstances, and temper their judgments with mercy; but in civil proceedings to enforce forfeitures imposed by positive statutes they cannot, on account of the peculiar hardship or apparent injustice of the case, exercise a discretion in the matter by mitigating the severe penalties of the law. When property becomes liable to forfeiture under the positive provisions of a statute, owners who have in no way participated in the frauds which caused the forfeiture, must seek redress from the wrong-doers who unlawfully used the property with which they were intrusted; or they can apply to the officers of the government invested with the authority to remit forfeitures. In this proceeding *in rem* the mules and wagon are considered as the offenders, and are liable to forfeiture without any regard whatsoever to the personal misconduct or responsibility of the owner. The principles of law upon this subject are clearly and fully announced in *Distillery v. U. S.*, 96 U. S. 395, and cases cited. Let a decree of condemnation be drawn in conformity with this opinion.

THE NITH.

THOMPSON *et al.* v. THE NITH.

(District Court, D. Oregon. August 30, 1888.)

1. SHIPPING—CARRIAGE OF GOODS—BILLS OF LADING—EXPLANATION.
The term "rusty" in a bill of lading is a statement of fact, and not an article of the agreement, and is therefore open to explanation or contradiction.
2. SAME—STOWAGE—SALT OVER IRON.
Salt should never be stowed over iron, where there is any chance that water may come through from above onto the salt.
3. SAME—CARGO AROUND MAINMAST.
Cargo, and particularly salt, stowed around the mainmast, ought to be dunnaged away from the mast, so that if any water comes through the mast-coat it will not come in contact therewith.
4. SAME—NON-DELIVERY—MEASURE OF DAMAGES.
The measure of damages for the non-delivery of goods is their value at the port of destination, with interest on that amount from the time the delivery ought to have been made.
5. SAME—BILL OF LADING—BURDEN OF PROOF.
The bark Nith received a lot of Swedish iron in bars and bundles at Liverpool for carriage to Portland, and upon its discharge here the iron was found to be badly damaged, and corroded with rust from salt water. The master signed a bill of lading for the iron in "good order and condition," with the qualification, "Bars and bundles rusty," and it appearing that Swedish iron, at Liverpool, was generally more or less covered with a light atmospheric rust, which did not affect its commercial value, and that the usage was to insert "rusty" in bills of lading therefor from Liverpool to this port, *held*, the burden of proof is on the carrier to show that the iron was otherwise affected than by atmospheric rust at the time of its receipt by the vessel.
6. SAME—PERILS OF THE SEA—DILIGENCE TO REPAIR INJURY.
Admitting that the breaking of the mast-coat during a storm, in which the decks are flooded, whereby a stream of water goes down the mast into the hold, is a peril of the sea, the exercise of proper skill and diligence would lead to the discovery of the rust, and secure the repair of the same in a less period than 12 or 18 hours.

(Syllabus by the Court.)

Edward N. Deady and *Horace B. Nicholas*, for libelants.
C. E. S. Wood, for claimant.

DEADY, J. The libelants, Edward J. De Hart and William Honeyman, doing business as partners under the firm name and style of Thompson, De Hart & Co., bring this suit against the British bark Nith on a contract of affreightment to recover damages in the sum of \$3,700.17 for a violation thereof.

It is alleged in the libel that in February, 1887, the libelants shipped on the bark, then lying at the port of Liverpool, England, and bound on a voyage to the port of Portland, about 24 tons of Swedish iron, and 52 anvils, weighing about 7,017 pounds, in good order and condition, and worth at this port \$3,700.17, upon a contract with the master thereof that, in consideration of certain freight then paid by the libelants, he would deliver said iron and anvils to them at this port in like order and condition, loss and damage from the perils of the sea only excepted; that