

Taylor Vs. United States

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Appellant : Taylor

Respondent : United States

Judgement :

Taylor v. United States - 44 U.S. 197 (1845)

U.S. Supreme Court Taylor v. United States, 44 U.S. 3 How. 197 197 (1845)

Taylor v. United States

44 U.S. (3 How.) 197

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

It is the right of an officer of the customs to seize goods which are suspected to have been introduced into the country in violation of the revenue laws not only in his own district, but also in any other district than his own.

And it is wholly immaterial who makes the seizure, or whether it was irregularly made or not, or whether the cause assigned originally for the seizure be that for which the condemnation takes place, provided the adjudication is for a sufficient cause.

In the trial of such a case, the officers of the customs who made the seizure are competent witnesses.

A bill of lading, entry, and owner's oath concerning other goods than those seized, may be admitted as a link in the chain of evidence to show a privity between the parties to commit a fraud upon the revenue.

When a witness on the part of the United States stated that his firm were importers of cloths, and was asked upon a cross-examination to state the extent of their importations, to which he answered, "formerly we imported large quantities of woolens; for three or four years past we have imported but a few packages annually," it was a proper question on the part of the United States, "whether there was anything in the state of the market which caused the alteration."

It was also a proper question whether other goods than those seized were lying in the custom house at New York, under circumstances from which the jury might infer a connivance between parties inconsistent with fair dealing.

An invoice of other goods entered at another port, but marked like those seized, was also properly admitted as strengthening the evidence of the true ownership of packages with this mark.

To rebut the proof of a general usage of an allowance of five percent for measurement, other invoices were properly introduced in which there was no such allowance.

Where a witness was introduced to prove such usage, and had verified his own invoices, it was admissible to read a letter which had been addressed to the witness and was annexed to one of the invoices.

Revenue laws for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in a strict sense, penal acts, although they impose a penalty. But they ought to be so construed as most effectually to accomplish the intention of the legislature in passing them, instead of being construed with great strictness in favor of the defendant.

Concealment and undervaluation of goods are good grounds, amongst others, for a decision of the court that probable cause of prosecution existed.

The 68th section of the act of 1799 reaches cases where, by a false and fraudulent undervaluation, less than the amount of duties required bylaw has been paid as well as those where no duties at all have been paid.

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This was an information filed in the District Court of the United States for the Eastern District of Pennsylvania against sundry cases and pieces of cloths and kerseymeres, seized on land, as forfeited. The information contained thirteen counts.

The first and second were founded on the 50th section of the act of 1799, chap. 128.

The third on the 68th section of same act.

The fourth and fifth on the 66th section of same act.

The sixth, seventh, and eighth on the 4th section of the act of 28 May, 1830, chap. 147.

The ninth on the 14th section of the Act of 14 July, 1832, chap. 224.

The tenth on the same section as fourth and fifth.

The eleventh and twelfth on the same section as sixth, seventh, and eighth.

The thirteenth on the same section as ninth.

Upon the first and second counts the jury found a verdict for the claimants, and upon the remaining counts for the United States. The claimants were John Taylor, Jr., and William Blackburne & Co.

The claims filed were as follows:

"John Taylor, Jr., late of the City of New York, but now absent from the United States, by Edward Henry Bradbury, his attorney in fact, comes and claims the said goods, wares, and merchandise, in the said information and libel mentioned as his property, subject to the repayment of a certain advance or loan of sixty thousand dollars and upwards, thereon made to him by William Blackburne & Co., and the said John Taylor, Jr., by his said attorney, alleges, that at the time of the seizure aforesaid he was, and yet is the true and lawful owner of the said goods [wares] and merchandise, subject as aforesaid."

"JOHN TAYLOR, Jr."

"October 10, 1839 *Pr. pro* E. H. BRADBURY"

"Edward Henry Bradbury, being duly sworn, says, the facts above set forth are just and true, to the best of my knowledge and belief. I am the duly authorized attorney in fact of the above named John Taylor, Jr. He was absent from the United States at the time the seizure of the above mentioned goods, wares, and merchandise was made, and has ever since continued, and still is absent from the United States."

"E. H. BRADBURY"

"Sworn, October 11, 1839, before me."

"PTR. CHRISTIAN, *Alderman* "

"William Blackburne & Co. claim the said goods, wares, and merchandise, in the said libel and information mentioned, as the sole property of them, the said William

Blackburne & Co., for the purpose of securing and paying an advance or loan thereon made by them to John Taylor, Jr., of sixty thousand dollars and upwards,

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for securing which said loan or advance the said goods [wares] and merchandise were delivered to them, long before the said seizure, by the said John Taylor, Jr., in whose possession they were as his property, and remained in their possession as aforesaid at the time of said seizure, without any notice or knowledge on their part that there was any allegation whatever, that the same had not been duly imported, and the duties paid or secured, or that the same were on any account liable to seizure, and under the full and entire belief, on their part, that the said goods [wares] and merchandise had been duly imported and entered, and the duties thereon paid or secured according to law."

"WM. BLACKBURNE & CO."

"October 10, 1839"

"Francis Blackburne, being duly sworn, says I am a member of the firm of William Blackburne & Co., mentioned in the foregoing claim. The facts stated in the foregoing claim are just and true, to the best of my knowledge and belief. The said firm of William Blackburne & Co., at and before the time of the seizure of the goods and merchandise mentioned in the said information and libel, was composed of William Blackburne, Francis Blackburne, Christopher John Blackburne, and Charles F. Shaw; since that time, the said Charles F. Shaw has retired from said firm and is no longer a member thereof."

"FRS. BLACKBURNE"

"Sworn, October 11, 1839, before me."

"PTR. CHRISTIAN, Alderman"

"And now, _____, comes John Taylor, Jr., and, by leave of the court first had, withdraws so much only of his claim heretofore filed in this case as relates to forty-

three pieces of cloths, part of the goods above mentioned, and on behalf of James Buckley, claims twenty-nine pieces of cloth, part of said forty-three pieces, as the property of the said James Buckley, and on behalf of John W. Bradbury, claims fourteen pieces of cloths, the residue of the said forty-three pieces, as the property of the said John W. Bradbury; and the said John Taylor, Jr., says, that the said Buckley and Bradbury are respectively the true, sole, and lawful owners of the respective parcels of cloth herein above claimed for them respectively, and, so being the owners, respectively consigned the said several parcels to the said John Taylor, Jr., who, as their consignee and factor, at the time of the seizure aforesaid, held, and is still entitled to hold the same, subject to the repayment of the advances made thereon by William Blackburne & Co., in whose actual possession they then were. And the said John Taylor, Jr., further says that the said Buckley and Bradbury are both resident in England, and were, at and before the time of said seizure, and now are, absent from the United States."

"JOHN TAYLOR, Jr."

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"John Taylor, Jr., being duly sworn, says, that the facts above set forth are true to the best of his belief."

"JOHN TAYLOR, Jr."

"Sworn and subscribed before me, February 12, 1840."

"WILLIAM MILNOR, Alderman"

In March, 1840, the case came on for trial. Some of the points of law which were raised are thus stated in the record: and the counsel of the said plaintiffs, to support and prove the issue on their part, called as witnesses John J. Logue, George Gideon, and William Cairns, who, being respectively sworn on their voir dire, testified that they went to Blackburne's store, and there assisted in making the seizure of the goods mentioned in the said information, the said Logue and

Gideon stating that they were, at the time of making said seizure, inspectors of the customs in the district of Philadelphia, and the said Cairns stating that he was, at the time of making said seizure, an inspector of the customs in the port of New York. Whereupon the said defendants objected to the admission of said Logue, Gideon, and Cairns, severally, as witnesses for the plaintiffs, they being interested in the event of the case. But the judge overruled the said objections and admitted the said witnesses, to which admission the defendants then and there excepted, and the said Logue, Gideon, and Cairns were thereupon severally sworn and examined on behalf of the plaintiffs, and proved the facts attending the seizure of the goods, and that certain original marks on packages containing the said goods had been erased, and among them the mark [B]F, which was originally upon one of said packages.

In the course of the examination of the said witnesses, the following papers were produced and given in evidence, being the affidavit, warrant, and authority under which the seizure of the said goods was made, *viz.*: a list of the goods seized, affidavit of William Cairns, warrant of Alderman Milnor, authority from Georg Wolf, Esq. collector of the port of Philadelphia. It was also proved that the greater part of said goods were seized in an apartment in the second story of the house No. 26 Church Alley, adjoining the house No. 24 Church Alley, which apartment was occupied by the house No. 24 Church Alley, into which a doorway had been cut, the communication between said apartment and the remainder of the house No. 26 Church Alley being closed.

The counsel of the United States, further to prove the issue on their part, offered in evidence the bill of lading, entry, and owner's oath, taken on 16 of July, 1839, in the month preceding the seizure of the goods in question, of nineteen cases of goods (not part of the goods seized) marked [B]F 1 a 19. To all which the said defendants objected; but the judge overruled the objection, and admitted the same in evidence. Whereupon the said papers were read in evidence.

The counsel of the United States, further to prove the issue on

their parts, offered evidence to prove that William Blackburne & Co. had, in January, 1839, imported certain invoices (no part of the goods seized) into Philadelphia, and had entered them at the custom house there; that the goods so imported had been appraised above the invoice prices; that the importers had acquiesced in such appraisement; and that Francis Blackburne thereupon stated that he had passed 140 cases at New York at similar prices, and would cease importing goods here; the counsel stating that this was to be followed by evidence to show that he never did import into New York in his own name. All which evidence was objected to by the defendants, but was admitted by the court, to which the defendants then and there excepted; and the said evidence was thereupon given. And the plaintiffs further proved the admission of the defendant Taylor, that the said mark [B]F was the mark of said defendant Francis Blackburne, and that said Taylor, as the agent of said Blackburne, had paid freight at New York for packages of goods imported there with that mark; and further proved that no importations had been made at that port in the name of said Francis Blackburne, or of said William Blackburne & Co., previously to the summer of 1839, but that large importations had been made there in the name of the claimant, John Taylor, Jr. It was proved that the goods seized had been imported into New York, and entered and passed there, and the duties thereupon paid, but it was no part of the evidence or case of the United States, that there had been any fraud or connivance on the part of the officers of the custom house of New York with the importers of said goods.

Abraham I. Lewis was examined as a witness on behalf of the United States, and having stated that his firm were importers of cloths and kerseymeres, and that he had thereby a knowledge of their quality and value, he was asked on cross-examination to state the extent of the importations of his firm, and in reply, said: "Formerly, we imported large quantities of woolens; for three, four, or five years past, we have imported but a few packages annually." Whereupon the counsel of the United States, on reexamination, proposed the following question, *viz.*,

"Was there anything in the state of the market which caused the alteration which you have mentioned, in the amount imported by you within four or five years last

past?"

To which question the defendants objected. But the judge allowed the question to be put, saying the question may have a bearing on the case &c.; that it was but following out the question on the cross-examination. To which decision the defendants then and there excepted. Whereupon the said question was put to the witness, and answered by him.

The counsel of the United States further offered to prove by the oath of David Gardiner that certain goods marked [B]F, which had been imported into New York in the ship *Eutaw*, being the same on which defendant Francis Blackburne was alleged to have

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paid the freight as aforesaid, were still in the custom house at New York. To which the defendants objected. But the judge overruled the objection and admitted the evidence, to which decision the defendants then and there excepted. Whereupon the said evidence was given.

The counsel of the United States further offered in evidence an invoice of merinos (not part of the goods mentioned in the information) bought of Abel Shaw, entered in Philadelphia by William Blackburne & Co., by ship *Franklin*, on 19 August, 1839, marked [B]F, 35 a 53, offered as strengthening the evidence of the ownership of packages with this mark. To which the defendants objected. But the judge admitted the evidence, to which decision the defendants then and there excepted. Whereupon the said invoice was read in evidence.

And the counsel of the United States, in rebuttal, offered in evidence invoices of Blackburne, Taylor and Okie & Robinson to show the absence of any such custom as to the allowance of five p.c. for measurement, as had been testified to by the witnesses on the part of the defendants. Which evidence was objected to by the defendants. But the objection was overruled by the court, and the said evidence was admitted, to which decision the defendants then and there excepted. Whereupon said invoices were read.

The defendants produced and examined John Robinson of the firm of Okie & Robinson and Robert Walker to prove an alleged usage of trade in England to make a discount or allowance of five percent for measure on cloths and cassimeres; said Robert Walker being cross-examined, several invoices of his own importations into the port of New York were shown to and verified by him, and the said invoices were placed by plaintiffs' counsel in the hands of the counsel of the defendants, and one of said invoices was read by the counsel of the United States to the jury. The counsel of the United States, pending this cross-examination, offered to read to the jury a letter from one Waite to the witness, which accompanied and was annexed to one of the said invoices, and left therewith in the New York custom house, on which the goods had been entered, and referring to the said invoice. The reading of which letter in evidence was objected to by defendants. But the court admitted the same to be read to the jury; to which decision the defendants' counsel excepted. Whereupon the said letter was read in evidence.

And the counsel of the United States further offered in evidence the several invoices which had been shown to defendants' witness, Robert Walker, during his cross-examination, and had been verified by him, of goods consigned to and imported by said Robert Walker into New York, the said invoices having been shown to the counsel for the claimants, and one of them read to the court and jury, without objection on the part of the claimant to any of them, which

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being objected to by defendants, the judge said that he considered them to be already in evidence inasmuch as one had been read to the jury and the others shown to the witness Walker, verified by him, and shown to the counsel of the defendants, and all were offered for the same purpose, and that the papers should be considered in evidence. To which decision the defendants then and there excepted. Whereupon the said invoices were read to the jury.

And the judge charged the jury.

And thereupon the defendants' counsel excepted to the said charge generally and to every part thereof, and in addition to said general exception, and without prejudice thereto, specified the following exceptions, to-wit:

"That the judge, in his said charge, instructed the jury:"

"1. That the whole proceeding in the seizure of the goods in question was, and substantially, in conformity with the act of Congress."

"2. That the objections made to the proceedings are immaterial to the issue now trying."

"3. That the entry of the goods at New York, their appraisement at the custom house there, the payment of the duties according to that appraisement, and the delivery of the goods thereupon to the importers were not conclusive against the United States in this case."

"4. That the revenue acts mentioned in this information are not strictly penal laws."

"5. That the duties on the goods were not paid within the meaning of the 68th section of the act of 1799, although they had been passed at the custom house of New York, and the duties there assessed upon them had been paid, according to the value and prices in the invoice, if the jury should be of opinion that they were not invoiced at their fair and true cost and value."

"6. That the provision of the 66th section of the act of 1799, mentioned in the charge, was not repealed."

"7. That under the act of 1830, when a package or invoice has been made up with intention to defraud, the package or invoice (that is, the goods contained in the invoice) are forfeited."

"8. That the probable cause mentioned in the 7th section of the act of 1799 is not a cause existing and known to the persons by whom the seizure was made, antecedent to the seizure, and which was the warrant and ground of the proceedings. The probable cause intended by the act has no reference to the

seizure, but to the trial. There must be probable cause for the prosecution, not for the seizure, and the court is to judge of it by what appears to the court -- by what comes to the knowledge of the court on the trial of the prosecution."

"9. That the United States has shown probable cause for the

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prosecution, and that the *onus probandi* was thrown upon the claimants."

"10. That it was not necessary to affirm or deny the doctrine that there can be but one official appraisement of the goods, and that that must be made in the custom house at which the goods were entered."

"11. That the first step in the inquiry whether the goods are invoiced at their actual cost is to ascertain what was their actual cost, and how has this been done on the part of the United States? By certain appraisements made, in the first place, by official appraisers of the custom house of this city, and further by private appraisers selected for that purpose. If the opinions of Messrs. Stewart and Simpson (the official appraisers at the port of Philadelphia) have not the authority of an official appraisement or act, they have nevertheless the weight of the judgment of men accustomed to other goods of this description, and who, from the appointment, as well as their experience, may be presumed to have competent knowledge and skill in ascertaining their value. In this light the jury may consider their evidence and give credit to it accordingly."

"And thereupon the counsel for the said claimants did then and there except to the aforesaid charge and opinions of the said court, and inasmuch as the said charge and opinions, so excepted to, do not appear upon the record, the said counsel for the said claimants did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the said judge aforesaid should be put to the same, according to the form of the statute in such case made and provided."

"And thereupon the aforesaid judge, at the request of the said counsel for the claimants, did put his seal to this bill of exceptions, pursuant to the aforesaid

statute in such case made and provided."

"JOS. HOPKINSON [L.S.]"

MR. JUSTICE STORY delivered the opinion of the Court.

This is a writ of error to the judgment of the Supreme Court of the Eastern District of Pennsylvania affirming the judgment of the district court founded upon an information *in rem* against certain cases of cloths and cassimeres seized on land in the said district. The cause was tried by a jury, who returned a verdict for the United States, upon which the judgment was rendered.

The information contained thirteen counts. The first and second counts were founded on the 50th section of the Duty-Collection Act of 1799, chap. 128; the third count was founded on the 68th section

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of the same act; the fourth, fifth, and tenth counts were founded on the 66th section of the same act; the sixty, seventh, eighth, eleventh, and twelfth counts were founded on the 4th section of the Act of 28 May, 1830, chap. 147; and the ninth and thirteenth counts were founded on the 14th section of the Act of 14 July, 1832, chap. 224. The claimants put in a plea or answer denying the allegations in the information, upon which an issue was tendered and joined, and tried by the jury.

At the trial, certain exceptions were taken to the matters ruled, and to the charge given by the learned judge who presided at the trial, the form and frame of which exceptions, as propounded by the counsel, we do not propose to examine, and the questions submitted to us arise from the matters of law thus ruled and contained in his charge. With the comments of the learned judge upon the evidence, except so far as they involved matters of law, we have nothing to do, as they were submitted solely for the consideration of the jury in weighing the evidence, of which they were the proper and final judges.

In the course of the argument in this Court, an objection was insisted on that the seizure itself upon which the information is founded was irregularly and improperly made, it having been made by the collector of the customs of the port of Philadelphia when it should have been made by the collector of the customs of the port of New York. And some reliance in support of this objection seems to have been placed upon the supposed intention of the 68th section of the Duty-Collection Act of 1799, chap. 128. But if any reliance could be placed thereon (as we think it could not), it would be completely removed by the 70th section of the same act, which makes it the duty of the several officers of the customs to make seizure of all vessels and goods liable to seizure by virtue of that act or any other act respecting the revenue, as well without as within their respective districts. So that it is plain from this provision that a seizure made by any officer of the customs of any district would be good, although made within any other district. And the whole structure of the act shows that any officer of the customs had a perfect right to seize goods found in his own district, and indeed that it was his appropriate duty.

But the objection itself has no just foundation in law. At the common law, any person may, at his peril, seize for a forfeiture to the government, and if the government adopts his seizure and institutes proceedings to enforce the forfeiture, and the property is condemned, he will be completely justified. So that it is wholly immaterial in such a case who makes the seizure, or whether it is irregularly made or not, or whether the cause assigned originally for the seizure be that for which the condemnation takes place, provided the adjudication is for a sufficient cause. This doctrine was fully recognized by this Court in [Hoyt Gelston](#), 3 Wheat. 246,

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[16 U. S. 310](#) , and in [Wood v. United States](#), 16 Pet. 342, [41 U. S. 358](#) -359. And from these decisions we feel not the slightest inclination to depart.

Indeed, if the objection could under any circumstances be maintainable, it was matter that should have been propounded as preliminary matter in the nature of a plea in abatement of the information, and could constitute no point before the jury upon pleadings addressed to the merits of the case and involving the direct

question of forfeiture or not.

In the course of the trial, several objections to the competency of certain witnesses and to the admissibility of certain evidence offered on behalf of the United States were taken by the claimants. In the first place, an objection was taken to the competency of John J. Logue, George Gideon, and William Cairns, called to support the issue on behalf of the United States, they being officers of the customs and the persons who made the seizure of the goods in controversy. By the 71st section of the Duty-Collection act of 1799, chap. 128, the *onus probandi* to establish the innocence of the property is thrown upon the claimant in all cases where probable cause is shown for the seizure and prosecution. And by the 89th section of the same act, it is provided that when, in any prosecution on account of a seizure, judgment shall be given for the claimant, if it shall appear to the court before whom such prosecution shall be tried that there was a reasonable cause of seizure, the court shall cause a certificate and entry to be made thereof, and in such case the person making the seizure, or the prosecutor, shall not be liable to any action, suit, or judgment on account of such seizure and prosecution. The argument, therefore, on behalf of the claimant is that these witnesses are incompetent, they being interested in the event of the suit and being liable to an action at the suit of the claimants if reasonable cause for the seizure was not established, and that their testimony in effect would conduce to establish such reasonable cause.

Several answers may be given to this objection. In the first place it is not true that the mere liability of a party to an action in one event of a suit will constitute of itself an absolute or universal objection to his competency. There are many exceptions to the rule on this subject, founded upon necessity or public policy or the remoteness, the uncertainty, or the contingent nature of the liability. The present case falls directly within these exceptions. The witnesses were acting as the agents of the government in making the search and seizure; they alone could give testimony as to the facts attending such search and seizure, and were therefore witnesses from necessity, and their acts being adopted or authorized by the government, public policy requires that the government should have the means of

enforcing its own rights through the instrumentality of their testimony. Their competency for such purposes falls directly within the reasoning of the court of King's Bench in the case of *The King v. Williams*, 9 Barn. & C. 549, and the case of [United States v.](#)

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Murphy, 16 Pet. 203, where the subject was considered very much at large.

In the next place, the witnesses were not objectionable in point of competency on account of any interest in the event of the cause. Their interest, if any they had, as informers or otherwise, in the forfeiture, was completely removed by the provision of the 91st section of the Duty-Collection act of 1799, chap. 128, which, when they are used as witnesses, takes away from them the share of the forfeiture to which they would otherwise be entitled. In the event of the suit, therefore, they had no interest, for the suit was solely to enforce the forfeiture. The question whether there was probable or reasonable cause for the seizure, constituted no part of the issue to be tried by the jury. So far as it respected throwing the *onus probandi* upon the claimants, it was a matter solely for the consideration of the court in the progress of the trial, and collateral to the main inquiry, although of great importance in regulating the nature and extent and sufficiency of the evidence. And so far as respected the certificate and entry of reasonable cause to protect the seizers from future liability for the seizure, it was no part of the issue, and, indeed, was an act to be done by the court before whom the prosecution was tried, only in case judgment upon the verdict should pass for the claimants, and it therefore was plainly an act to be done and inquiry to be had posterior to the trial.

In the next place, the objection taken was to the competency of the witnesses, as such, for any purposes in the cause. They were not called by the government as witnesses to give evidence of matters showing reasonable or probable cause for the seizure, but as witnesses generally "to support the issue on the part" of the government. If competent for any purpose upon the trial, they could not be rejected generally, and that they were competent to prove

"the facts attending the seizure of the goods, and that certain original marks on packages containing the said goods had been erased, and among them the mark [B]F, which was originally upon one of the said packages,"

cannot, in our judgment, admit of any just doubt. It could make no difference as to their admissibility for these purposes, that collaterally these facts might bear upon the question of probable or reasonable cause or not.

In the next place, there was another and independent ground upon which their competency is clear. It is that they were acting under a search warrant in making the search and seizure, which would undoubtedly, under the 68th section of the same act, be a complete protection to them against all liability to any suit therefor, unless indeed in a case where the witnesses acted from malice, and also without probable cause, and the absence of either would exonerate them from all liability. So that in this view their liability was remote, contingent, and uncertain.

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Upon all these grounds we are of opinion, that the witnesses were clearly admissible.

Another objection was to the admissibility of a bill of lading, entry, and owner's oath, taken on 16 July, 1839, in the month preceding the seizure of the goods in question, of nineteen cases of goods (not part of the goods seized) marked [B]F, 1 a 19. Although this evidence was objected to and it was admitted, yet it does not appear upon the record that any exception was taken to the ruling. But without dwelling upon this, which was perhaps an accidental omission, it is proper to say that this evidence was not offered as a single, isolated document (for in that view it might be deemed at most as irrelevant and inconsequential for any purpose), but it was offered in connection with other documents and evidence to establish a privity between Taylor and Blackburne & Co. in other importations of a kindred character, and under a scheme of meditated fraud upon the revenue of the United States, of which these documents were a link in the chain. For this purpose they might be important and necessary, and although the whole evidence is not set forth in the

record, yet it is apparent from what is there found in reference to the next objection that the evidence had an intimate connection and bearing upon that which is there stated.

The objection here alluded to is in the record stated in the following words: "The counsel of the United States" -- [see the paragraph in the statement of the Reporter which is included within brackets]. Now we think the exception to this evidence was properly overruled, and the evidence admissible to establish the connection between Taylor and Blackburne in other importations as well as in the importation of the goods now in controversy, and also to displace any presumption that the acts of the one were not properly to be deemed attributable to any connivance with the other, or that they were not jointly interested in the same scheme of importations, and mutually cognizant of the designs of each other. What effect this evidence ought to have after its admission in the cause, taken in connection with the other evidence, was a matter for the consideration of the jury alone, but of its admissibility for the purposes above stated we entertain no doubt. It is, indeed, a strange omission in the record, that the other evidence in the case is not therein fully stated, nor the points, to which it was adduced, suggested, so that we are left to conjecture from very imperfect materials what was the true extent and bearing of the various matters excepted to as improper evidence.

Another objection is to a question put to Abraham J. Lewis, a witness on behalf of the United States, who, having stated that his firm were importers of cloths and kerseymeres, and that he had thereby a knowledge of their quality, was asked, on cross-examination, to state the extent of the importations of his firm, and in reply he said, "Formerly we imported large quantities of woolens; for

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three or four years past we have imported but a few packages annually." Whereupon the counsel for the United States, on reexamination, proposed the following question, *viz.:*

"Was there anything in the state of the market, which caused the alteration which you have mentioned in the amount imported by you within four or five years last past?,"

to which question the claimants objected; but the judge allowed the question to be put, saying it might have some bearing on the case, and that it was but following out the question put on the cross-examination. We think the decision of the court was perfectly correct, for the reason stated by the judge. The answer might show that the witness had ceased to import so largely, not from want of skill or capital, but for reasons which might connect themselves with the importations of the claimants. What the answer was we do not know, and certainly it could be no just ground of exception, that the answer was such as had no bearing either way upon the merits of the case, and *a fortiori* not, if favorable to the claimants.

Another objection was to the admissibility of the evidence of David Gardner, who was offered to prove that certain goods, marked [B]F, which had been imported into New York, in the ship *Eutaw*, being the same on which Francis Blackburne was alleged to have paid the freight, were still in the custom house at New York. We think that this evidence was properly admissible, for the same reasons as those which have been already stated. It was a part of the *res gestae*. If the other parts of the evidence were favorable to the innocence of the claimants in their various importations, then no conclusion against them could fairly be drawn from this fact. But if, on the other hand, strong circumstances of suspicion of fraud attached to other importations, then the circumstance, so contrary to the usual course of mercantile transactions in cases of perishable articles, or articles liable to depreciation or decay, of their remaining long in the custom house, might fairly be deemed to inflame those suspicions, especially if in the interval the government was on the alert to detect supposed frauds in other importations.

Another objection was to the admission of the evidence of an invoice of merinoes (not part of the goods mentioned in the information) entered in Philadelphia, by Blackburne & Co., and marked [B]F 35 to 53, offered as strengthening the evidence of the ownership of packages with this mark. In this view we can perceive no possible question as to the competency or propriety of the evidence.

Another objection was to the admissibility in evidence of certain invoices of Blackburne, Taylor, Okie & Robinson to show the absence of any such usage as to the allowance of five percent for measurement, as had been testified to by the witnesses on the part of the claimants. We see no just ground of exception to the admissibility of such evidence. The usage set up was of a general

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nature, and all evidence which went to establish the want of such generality, by proof of the nonexistence of such a deduction in invoices of similar nature -- where, if it was general and well known, it ought to be found -- was certainly admissible to rebut the presumptions derived from the adverse proof. The same answer may be given, and indeed applies more forcibly, to the evidence given by Robert Walker, a witness for the claimants, who, upon his cross-examination, verified several invoices of his own importations into the port of New York, and also a letter of one Waite, annexed to one of the invoices. The introduction of this letter was objected to, but it was an accompaniment of the invoice introduced without objection, and it was offered not in chief, but as qualifying and repelling the evidence offered by the claimants as to the five percent usage -- founded, among that of others, upon the very testimony of Walker. The other invoices verified by Walker were, for the same reason, in our judgment, equally admissible.

We have thus gone over the various objections taken to the competency and admissibility of the testimony in this case, some of which, considering all the circumstances of the case, can scarcely be treated otherwise than as being *inter apices juris*, and shall now proceed to examine the exceptions taken to the charge of the court. Of many of these it is unnecessary to take any special notice, since they have been already disposed of in the case of [Wood v. United States](#), 16 Pet. 342, or have incidentally fallen under notice in the preceding parts of this opinion. Upon the point that the revenue laws, on which the information was founded, were not, as the judge in the court below suggested, to be deemed penal laws in the sense in which that phrase is sometimes used, it may be proper to say a very few words. He treated the point as not of great importance in the case, as we think it was not, since it had no tendency to change the interpretation of the provisions of

the revenue laws then under his consideration. In one sense, every law imposing a penalty or forfeiture may be deemed a penal law; in another sense, such laws are often deemed, and truly deserve to be called, remedial. The judge was therefore strictly accurate when he stated that

"It must not be understood that every law which imposes a penalty is therefore, legally speaking, a penal law -- that is, a law which is to be construed with great strictness in favor of the defendant. Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in the strict sense, penal acts, although they may inflict a penalty for violating them."

And he added, "It is in this light I view the revenue laws, and I would construe them so as most effectually to accomplish the intention of the legislature in passing them." The same distinction will be found recognized in the elementary writers, as for example in Blackstone's Commentaries (1 Black.Comm. 88) and Bacon's Abridgment (statute I, 7, 8), and Comyns' Digest (Parliament R.

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13, R. 19, R. 20), and it is also abundantly supported by the authorities.

The main exception however to the charge is as to the ruling of the judge that there was probable cause of seizure, and that therefore the *onus probandi* to establish the innocence of the importation, and to repel the supposed forfeiture, was upon the claimants. We entirely concur in the opinion of the judge, in his views of the evidence as applicable to this point. He, and not the jury, was to judge whether there was probable cause or not to throw the *onus probandi* on the claimants; for the 71st section of the act of 1799, chap. 128, expressly declares that

"the *onus probandi* shall lie on the claimant only where probable cause is shown for such prosecution, to be judged of by the court before whom such prosecution is to be had."

In our judgment the circumstances were abundantly sufficient to justify him, nay, to require him to throw the *onus probandi* on the claimants. The extraordinary circumstances connected with the concealment of the goods, the prevarications and false statements of Blackburne, and the undervaluation of the goods, all required the most plenary proofs on the part of the claimants, to deliver the property from the perils by which it was surrounded. The original cost of the purchases could have been fully proved by the claimants, if the transactions were *bona fide* purchases, and they had the most ample means within their power to establish it. Taylor and Blackburne were so completely mixed up in these transactions, as principals and agents, or as joint principals, that the acts of the one might most justly be attributed to the other; and in fact they admit of no reasonable separation as to design or privity of cooperation.

There is but one other exception remaining, which requires any special notice. It is whether the 68th section of the act of 1799, chap. 128, was intended to reach, or does reach cases where, by a false and fraudulent undervaluation, less than the amount of duties required by law has been paid, or whether it applies only to cases where no duties at all have been paid upon the goods. In our opinion, the section was designed to apply equally to both cases. In the sense of that section all goods are forfeited on which, by fraud, all the duties shall not have been paid, or secured to be paid, which are by law required to be paid or secured thereon.

Upon the whole, the judgment of the circuit court is

Affirmed.