

STATUTE I.

July 14, 1832.

CHAP. CCXXXIII.—*An Act to amend the act entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned."* (a)

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That in all cases of fine, penalty, or forfeiture, mentioned and embraced in the act entitled "An Secretary of the Treasury of prescribe rules.

(a) Acts which have been passed relating to the mitigation and remission of forfeitures, penalties, and disabilities.

*Remission of fines, penalties, forfeitures, and disabilities :*

An act to provide for mitigating or remitting the forfeitures and penalties accruing under the revenue laws in certain cases, May 26, 1790, ch. 12. (Expired.)

An act to continue in force "An act to provide for mitigating or remitting the forfeitures and penalties accruing under the revenue laws, in certain cases," &c., May 8, 1792, ch. 35. (Obsolete.)

An act to continue in force for a limited time the acts therein mentioned, March 2, 1795, ch. 37. (Expired.)

An act directing the Secretary of the Treasury to remit fines, forfeitures and penalties, in certain cases, Jan. 2, 1813, ch. 7. (Obsolete.)

An act authorizing the admission, under certain circumstances, of vessels owned by citizens of the United States of America, with their cargoes, from British ports beyond the Cape of Good Hope, Jan. 27, 1813, ch. 14. (Obsolete.)

An act directing the Secretary of the Treasury to remit certain fines, penalties, and forfeitures therein mentioned, Feb. 27, 1813, ch. 33. (Obsolete.)

An act to provide for mitigating and remitting the forfeitures, penalties and disabilities accruing in certain cases therein mentioned, March 3, 1797, ch. 13.

[By the fourth section of this act, it was to continue in force for two years, and thence to the end of the next session of Congress. This section was afterwards repealed by act of Feb. 11, 1800, ch. 6.]

An act to repeal part of "An act to provide for mitigating and remitting the forfeitures, penalties and disabilities accruing in certain cases therein mentioned," and to continue in force the residue of the same, Feb. 11, 1800, ch. 6.

An act further to regulate the entry of merchandise imported into the United States, from any adjacent territory, March 2, 1821, ch. 14, sec. 3.

An act supplementary to and to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," passed second March, 1799, and for other purposes, March 1, 1823, ch. 21, sec. 35.

An act to amend an act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties and disabilities therein mentioned," July 14, 1832, ch. 235.

*Suits for fines, penalties, and forfeitures :*

An act to regulate the collection of duties on imports and tonnage, March 2, 1799, ch. 22, sec. 89.

An act further to provide for the collection of duties on imports and tonnage, March 3, 1815, ch. 93, sec. 5.

An act further to regulate the entry of merchandise imported into the United States from any adjacent territory, March 2, 1821, ch. 14, sec. 3.

An act supplementary to and to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," passed March 2, 1799, and for other purposes, March 1, 1823, ch. 20, sec. 35.

An act for the more effectual collection of the impost duties, May 28, 1830, ch. 147, sec. 7.

*Limitation of suits for fines, penalties, and forfeitures :*

An act for the punishment of certain crimes against the United States, April 30, 1790, ch. 9, sec. 31.

An act to regulate the collection of duties on imports and tonnage, March 2, 1799, ch. 22, sec. 89.

An act in addition to an act entitled "An act for the punishment of certain crimes against the United States, March 26, 1804, ch. 40, sec. 3.

An act for the regulation of seamen on board the public and private armed vessels of the United States, March 3, 1813, ch. 42, sec. 14.

*Distribution of fines, penalties, and forfeitures :*

An act to regulate the collection of duties on imports and tonnage, 1799, ch. 22, sec. 91.

An act to prohibit intercourse with the enemy, and for other purposes, Feb. 4, 1815, ch. 31, sec. 7.

An act further to provide for the collection of duties on imports and tonnage, March 3, 1815, ch. 93, sec. 5.

An act further to regulate the entry of merchandise imported into the United States from any adjacent territory, March 2, 1821, ch. 14, sec. 3.

An act supplementary to and to amend an act entitled "An act to regulate the collection of duties on imports and tonnage," passed March 2, 1799, and for other purposes, March 1, 1823, ch. 20, sec. 35.

*Decisions of the courts of the United States on the remission and distribution of the proceeds of penalties and forfeitures :*

Action of indebitatus assumpsit, was brought by the officers of the revenue cutter of the district of Delaware, for one half of the forfeiture incurred for a violation of the non-intercourse law, by a vessel seized by the collector of Delaware, on the information of the plaintiffs, and sent by him to the district of Pennsylvania for trial, where she was condemned, and the amount of the forfeiture was received by the defendant, the collector of the port of Philadelphia. *Held*, 1st. The information to induce a seizure need not be as full as the evidence in the case would authorize to condemn. It is sufficient if it induced the prosecution. 2d. It is not necessary that the officers of the revenue cutter should, where they gave the information, make a claim for a part of the forfeiture; or that they should take any part in the prosecution of the case, to entitle them to a portion of the proceeds. 3d. The consent of the plaintiffs that the vessel should be sent from the district of Delaware, to the district of Pennsylvania; or a disavowal by them, of having instituted this suit, does not constitute a waiver of their right to their share of the

act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," or in any act in addition to, or amendatory of said act, and not exceeding fifty dollars in amount, or value, the Secretary of the Treasury be, and he hereby

forfeiture. 4th. The defendant is not liable to the plaintiffs for such parts of the proceeds of the forfeiture as he had paid over to other officers of the custom-house for their shares, before notice of the claims of the plaintiffs. *Sawyer et al. v. Steele*, 3 Wash. C. C. R. 464.

A bond was given to T. S., the collector of the district of Petersburg, under the second section of the embargo act of the 22d of December, 1807, and a suit was afterwards brought by him on the same bond in the district court; and pending the proceedings, to wit, on the 30th of October, 1811, J. S., the collector, died; and judgment was recovered in favour of the United States, on the 30th of November, 1811. On the 26th of the same November, J. J. was appointed collector of the same district, and entered on the duties of his office on the 14th of December, 1811; until which time T. S., who was deputy collector under J. S., at his decease, continued as such to discharge the duties of the office. The judgment of the district court was subsequently affirmed by the circuit court. When the bond was taken, A. T. was surveyor of the district, and continued in that office until his death, which was after the commencement of the suit on the bond, and before judgment thereon, and was succeeded by J. H. P., who was appointed on the 30th of March, 1811, and entered on the duties of his office on the 16th of the same month. It was held, that the personal representatives of the deceased collector and surveyor, and not their successors in office, were entitled to that portion of the penalty which is, by law, to be distributed among the revenue officers of the district where it was incurred. There being no naval officer in the district, the division was adjudged to be made in equal proportions between the collector and surveyor. *Jones and others v. Shore's Executors and others*, 1 Wheat. 462; 3 Cond. Rep. 624.

The Secretary of the Treasury has authority, under the remission act of the 3d of March, 1797, ch. 13, to remit a forfeiture or penalty accruing under the revenue laws, at any time, before or after a final sentence of condemnation or judgment for the penalty, until the money is actually paid over to the collector for distribution. *United States v. Morris*, 10 Wheat. 246; 6 Cond. Rep. 90.

Such remission extends to the shares of the forfeiture or penalty to which the officers of the customs are entitled, as well as to the interest of the United States. *Ibid.*

The ship *Good Friends*, and her cargo of British merchandise, owned by Stephen Girard, a citizen of the United States, was seized by the collector of the Delaware district, on the 19th of April, 1812, for a violation of the non-intercourse laws of the United States then in force. The ship and cargo were condemned as forfeited, in the district and circuit court of the Delaware district. On the 29th July, 1813, Congress passed "An act for the relief of the owners of the *Good Friends*," &c., and a remission of the forfeiture was granted by the Secretary of the Treasury, under the authority of that act, with the exception of a sum equal to the double duties imposed by an act of Congress passed on the 1st of July, 1812. The collector was entitled to one moiety of the whole amount reserved by the Secretary of the Treasury, as the condition of the remission. *McLane v. The United States*, 6 Peters, 404.

Where a sentence of condemnation has been finally pronounced in a case of seizure, the Supreme Court, as an incident to the possession of the principal cause, has a right to proceed to decree a distribution of the proceeds, according to the terms prescribed by law. And it is a familiar practice to institute proceedings for the purpose of such distribution, whenever a doubt occurs as to the rights of the parties, who are entitled to share in the distribution. *Ibid.*

The duty of the collector in superintending the collection of the revenue, and of making seizures for supposed violations of law, is onerous and full of perplexity. If he seizes any goods, it is at his own peril; and he is condemnable in damages and costs, if it should turn out upon the final adjudication, that there was no probable cause for the seizure. As a just reward for his diligence, and a compensation for his risks; at once to stimulate his vigilance and secure his activity, the laws of the United States have awarded to him a large share of the proceeds of the forfeiture. But his right by the seizure is but inchoate; and although the forfeiture may have been justly incurred, yet the government has reserved to itself the right to release it, either in whole or in part, until the proceeds have been actually received for distribution; and in that event, and to that extent, it displaces the right of the collector. Such was the decision of the Supreme Court of the United States in the case of the *United States v. Morris*, 10 Wheat. 246. *Ibid.*

But whatever is reserved to the government out of the forfeiture, is reserved as well for the seizing officer, as for itself; and is distributable accordingly. The government has no authority, under its existing laws, to release the collector's share, as such, and yet to retain to itself the other part of the forfeiture. *Ibid.*

In point of law, no duties, as such, can legally accrue upon the importation of prohibited goods. They are not entitled to entry at the custom-house, or to be bonded. They are, ipso facto, forfeited by the mere act of importation. *Ibid.*

The Secretary of the Treasury may remit not only the interest of the United States, but of individuals, in penalties and forfeitures in certain cases, after suit brought, and before judgment. *United States v. Lancaster*, 4 Wash. C. C. R. 64.

A pardon of the President of the United States, after condemnation, as to all the interest of the United States, in the penalty incurred by a violation of the embargo laws, and directing all further proceedings on behalf of the United States to be discontinued, does not remit the interest of the custom-house officers in a moiety. *Ibid.*

Under the 91st section of the duty act of March 2d, 1799, ch. 22, the share of a forfeiture to which the collector, &c., of the district is entitled, is to be paid to the person who was the collector, &c., in the office at the time the seizure was made; and not to his successor in office at the time of condemnation, and the receipt of the money. *Buel v. Van Ness*, 8 Wheat. 312; 5 Cond. Rep. 445.

Until final judgment, no part of the forfeiture vests absolutely in the collector; but after final judgment, his share vests absolutely, and cannot be remitted by the Secretary of the Treasury. *The Hollen*, 1 Mason's C. C. R. 431.

If, pending the proceedings, a remission be made of the whole property forfeited, the whole title of

is authorized, if in his opinion the said fine, penalty, or forfeiture was incurred without wilful negligence or intention of fraud, to prescribe such rules and mode of proceeding, to ascertain the facts, as in his opinion may be convenient and proper, without regard to the provisions of the act above referred to; and upon the said facts, so to be ascertained as aforesaid, the said secretary may exercise all the power conferred upon him in and by said act, as fully as he might have done had said facts been ascertained under and according to the provisions of said act.

APPROVED, July 14, 1832.

Secretary to exercise power conferred by said act, &c.

STATUTE I.

July 14, 1832.

CHAP. CCXXXIV.—*An Act further to provide for the relief of distressed American seamen in foreign countries.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the sum of three thousand dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to the fund for the relief of distressed American seamen; and that the said amount be distributed among the owners, officers, and crew of the Spanish brig Leon, in such proportion as shall be directed by the President of the United States, for services rendered and losses incurred, in saving and transporting to the island of Cuba the officers and crew of the American ship Minerva, wrecked and burnt on the Bahama bank.

APPROVED, July 14, 1832.

Appropriation for distribution among the owners, officers, and crew of the Spanish brig Leon.

STATUTE I.

July 14, 1832.

CHAP. CCXXXVI.—*An Act for the relief of the invalid pensioners of the United States.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That an act, entitled "An act regulating the payments to invalid pensioners," approved the third day of March, one thousand eight hundred and nineteen, be, and the same is hereby, repealed.

APPROVED, July 14, 1832.

Act of March 3, 1819, ch. 81, repealed.

the collector is gone; if of a part only, his title attaches to the remainder, and, by a judgment of condemnation, becomes fixed and indissoluble. *The Margaretta*, 2 Gallis. C. C. R. 515.

If there is no informer, the United States have one-half, and the officers of the customs the other. If there is an informer, the informer has a fourth, and the custom-house officers a fourth. If the informer is an officer of a revenue cutter, the United States have a fourth, one-fourth to the custom-house officers, and the officer of the revenue cutter one-half. *Sawyer et al. v. Steele*, 3 Wash. C. C. R. 464.

The consent of the claimants that the vessel should be sent into another district for adjudication, or a disavowal by them of having instituted the suit, does not amount to a waiver by them, of their right to a share of the forfeiture. *Ibid.*

But the collector is not responsible for such part of the forfeiture as he may have paid over, bona fide, to other officers, for their shares, before notice of the plaintiff's claim. *Ibid.*

The Secretary of the Treasury has no power to remit penalties, unless in cases provided for by law. If he recites his authority under a special act, and remits in pursuance of that act, the remission, if unsupported by that act, cannot be supported under the general act of March 3, 1797, ch. 13. Under the act of February 27, 1813, ch. 33, the Secretary of the Treasury had no authority to remit penalties for goods subsequently imported, contrary to the non-importation act. Under the act of March 3, 1797, ch. 13, the district judge is bound, upon a petition for remission, to state the facts, and not merely the evidence of the facts; and the Secretary of the Treasury is bound by this statement of facts, and cannot legally act upon any other evidence. *The Margaretta*, 2 Gallis. C. C. R. 515.

The district judge, in stating such facts, acts judicially; and the proof before him must be made by competent, as well as credible testimony. A statement by the district judge that the claimant only swore to the facts before him, is no legal proof under the act of 1797, upon which the Secretary of the Treasury is authorized to remit. Under the act of February 27, 1813, ch. 33, the Secretary of the Treasury had no authority to make a remission of part only of the property forfeited; if he remitted at all, he was bound to remit the whole penalty or forfeiture. Neither under the act of 1797, nor the act of 1813, had the Secretary of the Treasury any authority to remit the collector's share of the forfeiture, nor any part of it, eo nomine. *Ibid.*

Fines imposed by the act of March 2, 1799, ch. 22, for obstructing officers of the customs, as well as penalties, are to be received by the collector of the customs, and distributed by him. *Ex parte Marquand*, 2 Gallis. C. C. R. 552.