

adverted to, are in conflict with the power of Congress over the subject of commerce.

The judgment is reversed, with directions to dismiss the action against the appellant, with his costs against the city.

So ordered.

MR. CHIEF JUSTICE WAITE dissenting.

I cannot concur in this judgment. We have decided that a municipal corporation may collect reasonable compensation for the use of its improved public wharves and landing-places. Such a charge is in no just sense a tax or burden. The State of Maryland has seen fit to prohibit the city of Baltimore from making any such charge for landing and depositing the products of the State. That was all the State undertook to do. I am unable to bring my mind to the conclusion that the Constitution of the United States makes this the equivalent of a provision that all wharfage at the public wharves belonging to the city shall be free so long as the law as it now stands is in force.

PIERCE v. WADE.

Where in replevin judgment was rendered in favor of the plaintiff for a portion of the property delivered under the writ, and in favor of the defendant for a return of the residue, or its value, the same not being \$5,000, and the plaintiff sued out a writ of error to this court, *held*, that the writ must be dismissed for want of jurisdiction.

ERROR to the Circuit Court of the United States for the District of Kansas.

The facts are stated in the opinion of the court.

Mr. Nelson Cobb for the plaintiffs in error.

No counsel appeared for the defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This was a suit in replevin brought by Pierce and Reed, the plaintiffs in error, against Wade to recover a large number

of cattle branded in a particular way. In executing the writ, the marshal, by mistake, took from the defendant sixty-two head of Texas steers, not having the proper brand, and delivered them with the other cattle to the plaintiffs, on receiving the requisite bond. On the trial, it was found that the plaintiffs were the owners, and entitled to the immediate possession of all thus delivered over to them, except the Texas steers, taken by mistake. It was thereupon adjudged that they "have and recover from the said defendant the possession of all the cattle, . . . except sixty-two head of Texas steers;" and, as to these, it was adjudged that they be returned by the plaintiffs to the defendant, or if that could not be done, "that the defendant have and recover from the plaintiffs the said sum of \$1,400, the value thereof." From that judgment the plaintiffs below have taken this writ of error.

Upon this state of facts it is clear we have no jurisdiction. The matter in dispute is the sixty-two head of Texas steers, the value of which is only \$1,400. The plaintiffs recovered every thing else which they claimed, and the judgment against them is less than \$5,000. We have always held that when a case is brought here by the defendant below, the amount of the recovery against him is the measure of our jurisdiction, except when he has asked affirmative relief, and that has been denied. The same rule is applicable to plaintiffs in replevin suits, where the defendant gets judgment for a return of property taken and delivered under the writ, or its value.

Writ of error dismissed.

NOTE.—In *Pierce v. Tough*, error to the Circuit Court of the United States for the District of Kansas, submitted by the same counsel as was the preceding case, Mr. CHIEF JUSTICE WAITE remarked that, as the judgment was for \$2,000 only, the case was in all material respects like that of *Pierce v. Wade* (*supra*, p. 444), and that, for the reasons there stated, the writ would be dismissed.

So ordere