

was a prior claim upon the fund in his hands, and that he be directed to pay the same.

The court dismissed the petition, and the United States appealed.

The Solicitor-General for the United States.

There was no opposing counsel.

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

We are not satisfied that the certificates of indebtedness, on account of which the United States have assessed the taxes petitioned for, were calculated or intended to circulate or to be used as money. They were not, therefore, taxable as "circulation" under the third clause of sect. 3408 of the Revised Statutes.

Decree affirmed.

COUNTY OF MADISON *v.* WARREN.

Where, in a case tried by the court below, the record does not affirmatively show a written stipulation waiving a jury, the questions decided at the trial cannot be re-examined here on a writ of error.

ERROR to the Circuit Court of the United States for the Southern District of Illinois.

The case is stated in the opinion of the court.

Mr. Charles P. Wise for the plaintiff in error.

Mr. T. C. Mather for the defendant in error.

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

This is a case tried and determined by the court without the intervention of a jury. The record does not show any stipulation in writing waiving a jury. The errors assigned all relate to rulings of the court on the trial, excepted to at the time, and presented by a bill of exceptions. The rule is well settled, that if a written stipulation waiving a jury is not in some way

shown affirmatively in the record, none of the questions decided at the trial can be re-examined here on writ of error. *Kearney v. Case*, 12 Wall. 275; *Gilman v. Illinois & Mississippi Telegraph Co.*, 91 U. S. 603; *Boogher v. New York Life Insurance Co.*, 103 id. 90; *Hodges v. Easton*, ante, p. 408.

For this reason, and without passing on any of the questions presented by the assignment of errors, the judgment is

Affirmed.

NOTE. — *County of Alexander v. Kimball*, error to the same court as the preceding case, was submitted by *Mr. William B. Gilbert* for the plaintiff in error, and by *Mr. T. C. Mather* for the defendant in error. It involved the precise question decided in that case, and a judgment to the same effect was rendered.

RUSSELL v. WILLIAMS.

1. Section 21 of the act of July 14, 1870, c. 255, which provided that, in lieu of the duties then imposed by law, certain duties specified should thereafter be imposed on certain enumerated articles, did not repeal, as to such articles, sect. 6 of the act of March 3, 1865, c. 80, which declared that there should be thereafter paid on all goods the growth or produce of countries east of the Cape of Good Hope, when imported from countries west of that Cape, a duty of ten per cent *ad valorem* in addition to the duties imposed thereon when imported directly from the place of their growth or production.
2. The latter provision is a general commercial regulation, made to encourage direct importation from countries east of the Cape, as well as to benefit American shipping, and is applicable without regard to the regular duties imposed for purposes of revenue, and even where the articles are otherwise entirely free of duty.

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

The case is stated in the opinion of the court.

The Solicitor-General for the plaintiff in error.

Mr. Charles Levi Woodbury for the defendants in error.

MR. JUSTICE BRADLEY delivered the opinion of the court.

This is an action brought for the recovery of duties alleged to have been illegally imposed.