KELLY *v.* HEDDEN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Argued December 13, 14, 1887. — Decided January 9, 1888.

The distinction between this case and *Whitney* v. *Robertson*, *ante*, 190, does not warrant a different disposition of it.

THIS was an action to recover back duties alleged to have been illegally exacted. It was argued with *Whitney* v. *Robertson*, *ante*, 190.

Mr. A. J. Willard and *Mr. H. E. Tremain* for plaintiff in error. *Mr. M. W. Tyler* was with them on their brief.

Mr. Solicitor General for defendant in error.

MR. JUSTICE FIELD delivered the opinion of the court.

This case, except in one particular, presents the same questions considered and determined in *Whitney* v. *Robertson*. The exceptional circumstance is this, that the act of 1883, under which the duties were levied and collected, to recover which the action is brought, declares that nothing in it "shall in any way change or impair the force and effect of any treaty between the United States and any other government, or any laws passed in pursuance of or for the execution of any such treaty, so long as such treaty shall remain in force in respect of the subjects embraced in this act." 22 Stat. 525. The most that can be conceded to this provision is, that it leaves a previous treaty relating to the same subjects unaffected by the act. Our observations in the former case, as to the effect of subsequent legislation in conflict with the stipulations of a treaty, are therefore inapplicable to the present case. But all other considerations as to specific exemptions in return for special concessions remain, in answer to the alleged contention

of the plaintiffs that articles, the produce and manufacture of the island of San Domingo should be admitted free of duty because similar articles, the produce and manufacture of the Hawaiian Islands, are thus admitted.

Judgment affirmed.

SEARL *v.* SCHOOL DISTRICT NO. 2.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

Argued December 20, 1887. — Decided January 16, 1888.

The proceeding, authorized by the statutes of Colorado, for condemning land to public use for school purposes, is a suit at law, within the meaning of the Constitution of the United States and the acts of Congress conferring jurisdiction upon the courts of the United States, which may be removed into a Circuit Court of the United States from a state court.

This was an appeal from a judgment of the Circuit Court, remanding a cause to the state court from which it had been removed. The case is stated in the opinion of the court.

Mr. Walter H. Smith for plaintiff in error. *Mr. A. T. Britton* and *Mr. A. B. Browne* were with him on the brief. *Mr. Samuel P. Rose* and *Mr. F. W. Owers* also filed a brief for same.

No appearance for defendant in error.

Mr. Justice Matthews delivered the opinion of the court.

On June 2, 1884, School District No. 2 in the County of Lake and State of Colorado filed a petition in the county court of that county against R. S. Searl, the owner of a certain lot of land in the city of Leadville, therein described, for the purpose of condemning the same to public use for school purposes, and praying that the amount to be paid as compensation therefor should be assessed according to the statute in