

## Statement of the Case.

prevent land, which might otherwise have been selected for the establishment of the college intended, from being previously selected by other grantees of the United States of unlocated quantities of land. No trust against the State could arise until proceeds from the sale of the property granted, or some portion of it, had been obtained and come into her possession. Whatever disposition she might subsequently make of the proceeds, in carrying out the object intended, or in defeating it, could have no bearing upon the title acquired by other parties from the sale of the lands. *Mills County v. Railroad Companies*, 107 U. S. 557; *Emigrant Co. v. County of Adams*, 100 U. S. 61; *Cook County v. Calumet & Chicago Canal Co.*, 138 U. S. 635, 655.

The judgment must, therefore, be

*Affirmed.*

PHELPS *v.* SIEGFRIED.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 655. Submitted January 7, 1892. — Decided January 11, 1892.

Invoices of merchandise entitled to free entry were required, in August, 1889, to conform to the requirements of sections 2853, 2854, 2855 and 2860 of the Revised Statutes.

*United States v. Mosby*, 133 U. S. 273, affirmed and applied.

THIS action was brought against the collector of customs at the port of San Francisco, to recover the value of ten packages of tea imported by the plaintiffs in August, 1889.

The complaint averred that the merchandise in question was entitled to free entry, but that, although plaintiffs had done everything the law required of them, the defendant, as collector of the port of San Francisco, had refused to allow entry of the said merchandise or to deliver the same to the plaintiffs except on the condition that plaintiffs should deliver to defendant a consular invoice from the United States consul at Yokohama, Japan, declaring the cost or value of said merchan-

## Argument for Defendants in Error.

dise in Japan, or should give a bond in \$100 conditioned for the delivery of such an invoice within a prescribed time. The complaint averred that there was no warrant of law for this action of the collector.

The defendant demurred to the complaint, but the court overruled the demurser. The defendant thereupon said that the facts in the case were fully set forth in the complaint, and that he could not answer further, whereupon judgment was entered for plaintiff, as prayed for in his complaint. This writ of error was sued out to review that judgment.

*Mr. Assistant Attorney General Maury* for plaintiff in error.

*Mr. John S. Mosby* for defendants in error.

The plaintiff in error relies on the case of *United States v. Mosby*, 133 U. S. 273, as decisive of this. It is admitted that that case is an authority in point. It is respectfully submitted that there was error in the judgment of the court on that question, and that it should be overruled. The decision in that case seems to have been based on a construction of sections 2853, 2854, 2855 and 2860, Rev. Stat., without reference to other sections that explain them. When all the provisions on the subject of consular invoices are read together as a whole, it is clear that they were never intended to apply to free importations; they are in fact repugnant to such a construction.

In *United States v. Mosby* the court says: "In addition to this, it is entirely clear that the question of determining whether goods to be shipped will, when imported into the United States, be free from duty is a question which could not be left to the determination of a consul." With all due respect it seems to be a *non sequitur* to say that a consul determines that imports are free of duty in a case where he is not called on to perform any official duty in regard to them. As the consul never hears of a shipment where he certifies no invoice, it is hard to see how it is left to him to determine whether the goods are free or dutiable, or where his judgment comes in.

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THE CHIEF JUSTICE: The judgment is reversed and cause remanded, with a direction to sustain the demurrer and to dismiss the action, upon the authority of *United States v. Mosby*, 133 U. S. 273.

*Reversed.*

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MAGONE *v.* ROSENSTEIN.

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

No. 145. Argued January 7, 8, 1892. — Decided January 11, 1892.

Soft wood boxes, imported from Sweden, containing parlor matches, or safety matches, are not subject to duty under the act of March 3, 1883, 22 Stat. c. 121, p. 488, § 7, p. 523.

*Oberteuffer v. Robertson*, 116 U. S. 499, affirmed and applied.

THE defendant in error imported into the port of New York from Sweden 301 cases of matches known as parlor matches, and ten cases of matches known as safety matches. The boxes contained about seventy matches each, and were made of very thin pieces of soft wood covered with paper, and so constructed that the receptacle containing the matches fitted snugly into the cover like a drawer and could be slid out of the cover at either end for the purpose of withdrawing the contents.

The defendant, as collector, classified the soft wood boxes for duty separately from the matches, and liquidated the duties on the boxes at the rate of 100 per cent *ad valorem*, the cost of packing not being included therein. The duty so levied on the parlor-match boxes amounted to \$315.43, and on the safety-match boxes to \$69.57.

The importer duly protested and brought this action to recover back the duties on the boxes paid in obedience to said assessment.

It was admitted by the counsel for the plaintiff in error that the undoubted effect of the testimony was to show that the