

Opinion of the Court.

of the attitude of the government toward pioneers and others who took timber from government lands for domestic use, and that which declared that no verdict could be returned in favor of the government except for the value of the lumber manufactured. In these there was obvious error. Although there was no direct evidence of the value of the standing trees, yet it did appear that they were manufactured into lumber, and that the lumber had commanded a price of from eight to nine dollars a thousand feet, and when the government proved or defendant admitted that he cut and carried away some of the timber on this tract, the government was entitled to at least a verdict for nominal damages. As to any further right of recovery, see *Wooden-ware Co. v. United States*, 106 U. S. 432; *Benson Mining Company v. Alta Mining Company*, 145 U. S. 428.

Nor were the observations of the court in reference to the attitude of the government justifiable. Whatever propriety there might be in such a reference, in a case in which it appeared that the defendant had simply cut timber for his own use, or the improvement of his own land, or development of his own mine, (and in respect to that matter, as it is not before us, we express no opinion,) there certainly was none in suggesting that the attitude of the government upheld or countenanced a party in going into the business of cutting and carrying off the timber from government land, manufacturing it into lumber, and selling it for profit; and that was this case. There is no pretence that the defendant cut timber for his own use; he says himself he sold it all. He ran a saw-mill, cut timber, manufactured it into lumber, and made profit out of the sale of the lumber. There is nothing in the legislation of Congress or the history of the government which carries with it an approval of such appropriations of government property as that.

The judgment must be reversed, and a new trial ordered.

Reversed.

Statement of the Case.

California. Submitted April 21, 1893. Decided May 1, 1893. BREWER, J. : This case is so nearly like the case just decided, that it is unnecessary to refer to the facts in detail. There also appears in this a further matter of error, in that the court, over the objections of the government, permitted the defendants to introduce evidence that their mill was not profitable. Certainly, whether they made money or not, does not affect the right of the government to recover, or the measure of recovery.

The judgment in this case will also be *Reversed, and a new trial ordered.*

Mr. Assistant Attorney General Parker for plaintiffs in error.

No appearance for defendants in error.

 UNITED STATES *v.* DUMAS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 230. Submitted April 20, 1893. — Decided May 1, 1893.

An order of the Postmaster General, made in the exercise of the discretion given him by the act of June 17, 1878, 20 Stat. 140, c. 259, § 1, withholding commissions from a postmaster, and allowing a stated compensation in place thereof, in consequence of alleged false returns in the postmaster's accounts, is not final and conclusive in an action by the United States against the postmaster and the sureties on his bond, to recover moneys alleged to be illegally withheld; but is competent evidence on the part of the government, which may be explained or contradicted by the defendants.

THIS was an action brought by the United States to recover from Anna M. Dumas, and the sureties on her official bond, money alleged to have been illegally retained by her while postmaster at Covington, St. Tammany Parish, Louisiana.

It appears from the record that Anna M. Dumas was postmaster at the above-named place from January 1, 1881, to August 3, 1885, and that on October 1, 1883, a bond, in lieu of a former one, was executed. This bond was in the usual form, and was given to insure the faithful performance of her