

Chace v. Vasquez.

state the actual cost of the goods as required by law. Whether this suspicion be well founded or not, is not matter of inquiry. So far as respects the authority of the collector to direct the appraisement, he is governed altogether by his own opinion of the grounds of suspicion. Whether these suspicions were well or ill founded, and the consequences resulting therefrom, will depend upon after inquiry before the appraisers, and their decision thereupon. But the collector cannot be called upon to avow, or show the grounds upon which his suspicion rests. The law has vested him with an uncontrolled discretion on this subject, to be regulated and governed by his own opinion, of the sufficiency of the grounds on which he suspects the invoice to be below the true value or actual cost of the goods.

These answers must, accordingly, be certified to the circuit court, upon the questions submitted to this court.

CERTIFICATE.—This case came on to be heard, on the certificate of the difference of opinion of judges, &c.: On consideration whereof, this court is of opinion, and directs it to be certified to the said circuit court, that the words “true *value,” in the 11th section of the act of congress of the 20th of April 1818, do mean the actual cost thereof to the importer, [*428 at the place from which the same was imported; and that the second question, upon which the opinions of the said judges were opposed, viz., whether, if the collector did, in fact, suspect that the goods were invoiced below the current market value thereof, at the place from which they were imported, but did not suspect that they were invoiced below the true and actual cost thereof to the importer, the collector had a right to direct an appraisement? be answered in the negative; and do also direct it to be certified, that the third question, on which the opinions of the said judges were opposed, viz., whether, if, in the opinion of the collector, there was just ground to suspect that the goods were invoiced below the current market value of the same, at the place from whence they were imported, then the said collector had a right to direct the same to be appraised in the manner prescribed in the eleventh section of the before-mentioned act of congress? be likewise answered negatively.

*CHACE and others, Appellants, v. VASQUEZ, Consul-General of [*429 Portugal, Respondent.

Appeal.

On a libel *in personam* for damages, if the court decree that damages be recovered, and that commissioners be appointed to ascertain the amount thereof, no appeal will lie from such a decree, until the commissioners have made their report; this not being a final decree.

APPEAL from the Circuit Court of Maryland. The libel in this case was *in personam* against the owners of the private armed vessel La Fortuna, stated to be owned by American citizens, for the recovery of damages for the illegal seizure, &c., of the Portuguese ship Monte Allegre and cargo, which, by a previous decree of the court, had been restored to the libellants, no damages having been claimed in the libel *in rem*. (7 Wheat. 250.)

A decree *pro formâ* was taken for the libellants in the circuit court, and commissioners were ordered to be appointed to assess the damages; but the

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appeal was taken before the commissioners were appointed, upon the ground that no libel could be sustained *in personam*, in such cases.

*February 15th, 1826. *D. Hoffman*, for the respondent, stated, *430] that the appeal might be considered as well taken. The case of the *The Palmyra*, 10 Wheat. 502, was distinguishable from this, as the damages there claimed were a part only of an entire decree *in rem* and *in personam*; but that here the sole inquiry is, whether any libel *in personam* could be sustained, which was an objection that covered the whole libel, and the entire decree; that although the report of the commissioners, when made, might be appealed from, yet the inquiry was only as to the amount; and that if no libel could be sustained, and expensive and tedious investigation would be saved, by first establishing the point that a libel *in personam* cannot be sustained in such cases.

THE COURT were of opinion, that the case was embraced by the principle decided in the case of *The Palmyra*, since an appeal would still lie from the damages, when ascertained; but that, had the decree of the circuit court dismissed the libel, such decree would have been final.

Appeal dismissed.

*431] *MILLS, Plaintiff in error v. The PRESIDENT, DIRECTORS and COMPANY OF THE BANK OF THE UNITED STATES, Defendants in error.

Notice of non-payment.—Rule of court.

No precise form of notice to the indorser of a promissory note is necessary;¹ and it is not necessary to state, in the notice, who is the holder; nor will a mistake as to the date of the note vitiate the notice, if it convey to the party a sufficient knowledge of the particular note which has been dishonored.²

It is not necessary, that the notice should contain a formal allegation, that it was demanded at the place where payable; it is sufficient, that it state the fact of non-payment of the note, and that the holder looks to the indorser for indemnity.³

By the general law, demand of payment of a bill or note must be made on the third day of grace, but where a note is made for the purpose of being negotiated at a bank, whose custom is to demand payment, and give notice on the fourth day, that custom forms a part of the law of the contract; and it is not necessary that a personal knowledge of the usage should be brought home to the indorser, for that purpose.

The general rule of law, requiring proof of the title of the holders of a note, may be modified by a rule of court, dispensing with proof of the execution of the note, unless the party shall annex to his plea an affidavit that the note was not executed by him.⁴

ERROR of the Circuit Court of Ohio.

¹ *Reedy v. Seixas*, 2 Johns. Cas. 337.

² A notice of non-payment is insufficient, if there be two or more notes in existence, and over-due, to which it would equally apply. *Cook v. Litchfield*, 9 N. Y. 279. But a notice is sufficient, if it reasonably apprise the indorser of the particular instrument in which he is sought to be charged, though he may have indorsed several notes of like tenor, only distinguished by a number on the margin, which is not referred to in the notice. *Hodges v. Shuler*, 22 N. Y. 114. A notice is sufficient, though

the note be misdescribed, if there be no other in existence to which the description could be applied, and the indorser could not have been misled. *Cayuga County Bank v. Worden*, 1 N. Y. 413; s. c. 6 Id. 19. s. p. *Bank of Cooperstown v. Woods*, 28 Id. 545, 551.

³ See *Ransom v. Mack*, 2 Hill 587.

⁴ *Odenheimer v. Stokes*, 5 W. & S. 175; *McAdams v. Stilwell*, 13 Penn. St. 90. And see *Miller v. Weeks*, 22 Id. 89; *McGovern v. Hoesback*, 53 Id. 176.