

which under established practice are taxable as between party and party. And the opinion makes it clear that the decree directed to be entered below was intended to be an end of the whole matter. It is plain that the stockholders' application was denied and that the decree did not authorize or permit the taxation of costs as between solicitor and client.

The mandate required the execution of the decree. The District Court could not vary it or give any further relief. *In re Sanford Fork & Tool Co.*, 160 U. S. 247, 255. *Gaines v. Rugg*, 148 U. S. 228, 241. *In re Washington & Georgetown R. Co.*, 140 U. S. 91, 96. *Ex parte Union Steamboat Company*, 178 U. S. 317, 319. That court was right in holding that, by the decree of the Circuit Court of Appeals and the mandate of this court, the costs recoverable by the Trust Company were limited to those taxable between party and party.

*Decree of the Circuit Court of Appeals reversed and that of the District Court affirmed.*

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LUCAS, COMMISSIONER OF INTERNAL REVENUE, v. NORTH TEXAS LUMBER COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 92. Argued January 15, 16, 1930.—Decided February 24, 1930.

An option offered by one corporation to another to buy lands at a specified price was accepted late in 1916 by a notice from the vendee, in which it declared itself ready to close the transaction and pay the price as soon as the transfer papers were prepared by the vendor. The vendor did not prepare the papers, transfer or tender title or possession, or demand or receive the purchase price, until early in 1917, when the transaction was closed. *Held* that, as unconditional liability of the vendee was not created in 1916, the vendor, though it kept its accounts on the accrual basis, was not

entitled under §13 (d) of the 1916 Revenue Act to enter the purchase price as income of that year and to make return and have the tax computed on that basis, which clearly did not reflect 1916 income. P. 13.

30 F. (2d) 680, reversed.

CERTIORARI, 280 U. S. 538, to review a judgment of the Circuit Court of Appeals, which reversed an order of the Board of Tax Appeals, 7 B. T. A. 1193, sustaining a finding of the Commissioner of Internal Revenue.

*Solicitor General Hughes*, with whom *Assistant Attorney General Youngquist*, *Messrs. Randolph C. Shaw* and *J. Louis Monarch*, Special Assistants to the Attorney General, *C. M. Charest*, General Counsel, and *Shelby S. Faulkner*, Special Attorney, Bureau of Internal Revenue, were on the briefs, for the petitioner.

*Mr. Albert B. Hall*, with whom *Mr. Joseph J. Eckford* was on the brief, submitted for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

The respondent, a Texas corporation, for some time prior to 1917 was engaged in operating a sawmill, selling lumber and buying and selling timber lands. December 27, 1916, it gave to the Southern Pine Company a ten day option to purchase its timber lands for a specified price. The latter was solvent and able to make the purchase. On the same day title was examined and found satisfactory to the Pine Company. It arranged for the money needed and December 30, 1916, notified respondent that it would exercise the option. On that day respondent ceased operations and withdrew all employees from the land. January 5, 1917, the papers which were required to effect the transfer were delivered, the purchase price was paid and the transaction was finally closed.

Respondent kept its accounts on the accrual basis and treated the profits derived from the sale as income in 1916. The Commissioner of Internal Revenue determined that the gain had been realized in, and was taxable for 1917. The Board of Tax Appeals sustained his finding. 11 B. T. A. 1193. The Circuit Court of Appeals reversed the Board. 30 F. (2d) 680.

The gain derived from this sale was taxable income.<sup>1</sup> If attributed to 1916 the tax would be much less than if made in 1917.<sup>2</sup> Section 13 (d) of the Revenue Act of 1916 provided that a corporation keeping its accounts upon any basis other than that of actual receipts and disbursements, unless such other basis failed clearly to reflect income, might make return upon the basis upon which its accounts were kept and have the tax computed upon the income so returned.<sup>3</sup>

An executory contract of sale was created by the option and notice, December 30, 1916. In the notice the purchaser declared itself ready to close the transaction and pay the purchase price "as soon as the papers were prepared." Respondent did not prepare the papers necessary to effect the transfer or make tender of title or possession or demand the purchase price in 1916. The title and right of possession remained in it until the transaction was closed. Consequently unconditional liability of vendee for the purchase price was not created in that year. *Gober v. Hart*, 36 Texas 139. Cf. *United States v. Anderson*, 269 U. S. 422, 441. *American National Company v. United States*, 274 U. S. 99. The entry of the purchase price in respondent's accounts as income in that year was not warranted. Respondent was not entitled

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<sup>1</sup> § 2 (a), Act of September 8, 1916, 39 Stat. 756, 757. § 1200, Act of October 3, 1917, 40 Stat. 300, 329.

<sup>2</sup> § 10, Act of September 8, 1916, 39 Stat. 756, 765. § 201, Act of October 3, 1917, 40 Stat. 300, 303.

<sup>3</sup> 39 Stat. 756, 771.



Opinion of the Court.

281 U. S.

to make return or have the tax computed on that basis, as clearly it did not reflect 1916 income.

*Judgment reversed.*

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CHICAGO & NORTH WESTERN RAILWAY COM-  
PANY *v.* LINDELL.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT.

No. 193. Argued January 23, 1930.—Decided February 24, 1930.

1. Where the state law permits adjustment of the defendant's demand by counterclaim in the plaintiff's action, its adjustment by that method rather than by independent suit is to be encouraged in the federal courts. Pp. 16-17.
2. The practice of determining claims of shippers for loss or damage in suits brought by carriers to collect the transportation charges, is not repugnant to the rule of the Hepburn Act prohibiting the payment of such charges otherwise than in money. P. 17.
3. That Act ought not to be construed to put aside state laws and long established practice in respect of pleading in the absence of any plain intention of Congress to do so. P. 18.

ANSWER to a question certified by the Circuit Court of Appeals upon review of a judgment of the District Court allowing the loss suffered by the defendant through damage to an interstate shipment to be set off in an action by the carrier for the transportation charges.

*Mr. Nelson Trottman*, with whom *Messrs. Samuel H. Cady* and *Aaron M. Sargent* were on the brief, for the Chicago & North Western Railway Company.

*Mr. F. DeJournal* submitted for Lindell.

MR. JUSTICE BUTLER delivered the opinion of the Court.

October 17, 1925, appellee delivered to the railroad of the Southern Pacific Company at Kingsburg, California, a shipment of grapes for transportation to Chicago for