

system to prevent evasions, relieves the present tax of the objection that it is arbitrarily retroactive.

Group 3. Although the bank accounts were opened before the passage of the Revenue Act of 1916, the record does not disclose whether the deposits, which were the sources of the credit balances at the time of the decedent's death, were made before or after 1916. If after, the tax was rightly laid, for reasons already stated, which support the tax with respect to the items in Group 2. As the suit is brought to recover taxes already paid, the presumption is that they were lawfully assessed and the burden rests on the taxpayer to prove the facts which establish their illegality. *Niles Bement Pond Co. v. United States*, 281 U. S. 357, 361; *Reinecke v. Spalding*, 280 U. S. 227, 232. As the taxpayer has failed to sustain the burden in this respect or to show that the wife had originally owned or paid for any of the items or to present any facts to support a recovery other than those stated, the judgment is

Reversed.

UNITED STATES *v.* RYAN.

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

No. 49. Argued October 26, 27, 1931.—Decided November 23, 1931.

1. Statutes designed to prevent fraud on the revenue are construed less narrowly, even though a forfeiture results, than penal statutes and others involving forfeitures. P. 172.
2. In R. S. § 3453, which provides for forfeiture of (1) taxable articles found in the possession, custody or control of any person for the purpose of being sold or removed by him in fraud of the internal revenue laws, (2) raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax, with intent to defraud the revenue, and (3) all tools, implements, instruments, and personal property whatsoever, in the

place or building, or within any yard or inclosure where such articles or raw materials are found, the phrase "such articles" in the third clause refers to the articles mentioned in both of the other clauses of the section, so that chattels associated with illicit possession, as well as those associated with illicit manufacture, are subject to forfeiture under the statute. P. 173.

3. The uniform construction given to a statute by the lower federal courts for more than sixty years is persuasive in determining its true meaning. P. 174.
 4. In adopting § 3453 in the Revised Statutes without substantial change of the section as amended seven years previously, Congress must be deemed to have adopted the consistent interpretation theretofore given the amended section by the courts. P. 175.
 5. A literal application of a statute which would lead to absurd consequences is to be avoided whenever a reasonable application can be given which is consistent with the legislative purpose. *Id.*
 6. The general words "all personal property whatsoever," as used in R. S. § 3453 to define what property is subject to forfeiture, must be construed, by application of the principle *noscitur a sociis*, to be limited in their meaning to chattels which have some relation to the tax evasion aimed at by the statute. P. 176.
 7. Bar fixtures and other saloon furnishings and equipment of a room in which tax-unpaid intoxicating liquors were dispensed are subject to forfeiture under R. S. § 3453. *Id.*
 8. A forfeiture under R. S. § 3453 of saloon furnishings and equipment seized in a place where tax-unpaid liquor was possessed for sale is not barred by the arrest and prosecution of the offender under the National Prohibition Act. *Id.*
- 44 F. (2d) 951, reversed.

CERTIORARI, 283 U. S. 816, to review a judgment reversing a judgment for the Government in a forfeiture proceeding under R. S. § 3453.

Assistant Attorney General Youngquist, with whom *Solicitor General Thacher* and *Messrs. John J. Byrne* and *Paul D. Miller* were on the brief, for the United States.

Mr. George D. Toole, with whom *Mr. C. S. Wagner* was on the brief, for respondent.

Section 3453 of the Revised Statutes contains three sentences. In 1864 and as amended in 1866, the section consisted of a single sentence. Conflicting judicial constructions were placed upon it. When carried forward into the Revised Statutes it was punctuated as it now stands. It declares the law as of December 1, 1873, the effective date of the Revised Statutes. *Dwight v. Merritt*, 140 U. S. 213; *Bate Refrigerating Co. v. Sulzberger*, 157 U. S. 1; *United States v. Bowen*, 100 U. S. 508. Under it only objects on which taxes are imposed, and evaded, are subject to seizure and forfeiture, as declared in the first sentence. Tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure, are subject to seizure and forfeiture only when associated with a manufactory of some kind, as declared in the second sentence of the statute. *In re Hurley*, 37 F. (2d) 397; *United States v. One Ice Box*, 37 F. (2d) 120; *United States v. Ten Bottles of Scotch Whiskey*, 48 F. (2d) 545; *United States v. Thirty-three Barrels of Spirits*, Fed. Cas. No. 16470; *United States v. Sixteen Barrels of Distilled Spirits*, Fed. Cas. No. 16300.

Contemporaneous construction is controlling. For a half century (1879-1930) the Bureau of Internal Revenue did not avail itself of the provisions of the statute to seize other than articles *per se* contraband, unless associated with a manufactory of some kind, so far as the reported cases disclose.

The language of the statute supports the construction given to it by the Circuit Court of Appeals.

In this case there was an election of remedies by the United States and the Government is bound thereby,

though the Circuit Court found it unnecessary to base its decision upon this ground, urged in the trial court.

A prosecution was instituted under the National Prohibition Act. The property involved herein was seized by a prohibition enforcement agent armed with a search warrant issued under the provisions of the National Prohibition Act. The seizure was adopted and the property was in *custodia legis*, stored in a public warehouse, when it was again seized by the United States Marshal under a warrant and monition issued in this libel proceeding. The person in charge of the place where the property was first seized was indicted by the grand jury for violation of the National Prohibition Act, the fourth count charging him with the maintenance of a common nuisance in violation of Title II of that Act.

Under the facts the National Prohibition Act governs as it does in transportation cases. *Richbourg Motor Co. v. United States*, 281 U. S. 528; *Commercial Credit Co. v. United States*, 276 U. S. 226. Distinguishing *Various Items of Personal Property v. United States*, 282 U. S. 577. See also *United States v. One Ford Coupe*, 272 U. S. 321; *Herter v. United States*, 33 F. (2d) 400-402.

MR. JUSTICE STONE delivered the opinion of the Court.

Upon a libel filed by the United States in the District Court for Montana, praying the forfeiture of a bar, back bar, and other saloon furnishings and equipment, seized by federal prohibition agents, it was averred that, at the time and place of seizure, one Lewis had in his possession tax-unpaid intoxicating liquors for the purpose of selling or removing them in fraud of the revenue laws.

Respondent Ryan intervened, claiming the seized property as owner, and set up that none of it was designed for the manufacture of intoxicating liquors, or intended for use in violation of the National Prohibition Act, or subject

to forfeiture. At the trial it appeared from the evidence that at the time and place of seizure, the place being a so-called soft drink parlor, in fact used for the sale of intoxicating liquors as beverages, tax-unpaid liquor was possessed for sale and was being sold by Lewis. At the close of the evidence, both sides having moved for a directed verdict, the court withdrew the case from the jury and gave judgment for the Government, which the Court of Appeals for the Ninth Circuit reversed, holding that the forfeiture authorized by R. S. § 3453, 26 U. S. C. § 1185, is confined to chattels seized in places in which raw materials are manufactured into taxable articles in fraud of the revenue. 44 F. (2d) 951. This Court granted certiorari, 283 U. S. 816, to resolve the conflict between the decision below and that of the Court of Appeals for the Second Circuit, in *United States v. Ten Bottles of Scotch Whiskey*, 48 F. (2d) 545.

The only questions presented here are whether the seized articles are within the definition of the statute and whether forfeiture of them under § 3453 is barred by the arrest and prosecution of Lewis, who controlled or possessed them, for his violation of the National Prohibition Law.

Section 3453¹ contains three clauses. The first authorizes forfeiture of taxable "articles" found in the posses-

¹ R. S. § 3453. "All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such

sion, custody or control of any person "for the purpose of being sold or removed by him in fraud of the internal revenue laws." The second authorizes forfeiture of "raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax," with intent to defraud the revenue. The third forfeits "all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found." To support the respondent's contention it is necessary to read the phrase "such articles" in the third clause as not referring to the taxable "articles" possessed with intent to defraud the revenue described in the first, but only to the "articles of a kind subject to tax" mentioned in the second, read to mean taxable articles which have been manufactured on the premises. That the phrase should be taken to refer to the articles mentioned in both clauses would seem to be an admissible construction, less restrictive of its natural meaning than that urged.

We are not called upon to give a strained interpretation in order to avoid a forfeiture. Statutes to prevent fraud on the revenue are construed less narrowly, even though a forfeiture results, than penal statutes and others involving forfeitures. *United States v. Stowell*, 133 U. S. 1, 12; *Smythe v. Fiske*, 23 Wall. 374, 380; *United States v. Hodson*, 10 Wall. 395, 406; *Cliquot's Champagne*, 3 Wall. 114, 145; *Taylor v. United States*, 3 How. 197, 210.

manufactured articles, or with design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made."

Section 3453 is a reënactment of § 9 of the Act of July 13, 1866, c. 184, 14 Stat. 98, 111, amending § 48 of the Act of June 30, 1864, c. 173, 13 Stat. 223, 240. The earlier sections, like the present one, are each made up of three clauses, connected by the conjunction "and." In the first two acts, they constitute a single sentence; but in the present section the first clause appears as one sentence and the other two are combined in a second sentence. The first two clauses of all three acts are substantially the same. The third clause of the Act of 1864 provided for forfeiture of "all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles on which duties are imposed, as aforesaid, and intended to be used by them [persons intending to manufacture] in the fraudulent manufacture of such raw materials, shall be found . . ." The apparent purpose was to embrace within the forfeiture at least all personal property seized in the place where taxable articles are found, but the further qualification of the taxable articles as those "intended to be used . . . in the fraudulent manufacture of such raw materials," seems meaningless unless the phrase be transposed and read as meaning "and such raw materials intended to be used . . . in the manufacture of such articles." This is the substance of the amendment of 1866, when the third clause took its present form. We think the purpose of it was to remove the ambiguity and uncertainty of the quoted phrase, and not to restrict the forfeiture to chattels associated with the illicit manufacture, to the exclusion of those associated with taxable articles possessed with the purpose to sell or remove in fraud of the revenue, which were evidently intended to be confiscable by the section as originally drawn. We cannot assume that so radical a change, if intended, would have been expressed by language so plainly capable of the opposite construction as that of the Act of 1866.

Nothing in the legislative history is suggested to indicate that such was the intention and there is no such plain or obvious distinction to be made, in a section devised for the protection of the revenue, between articles associated with illicit manufacture and those associated with illicit possession, each equally frauds upon the revenue, as to be persuasive that the present act was designed to hit the first and not the second. The companion section, 3450, authorizing the forfeiture of vehicles and horses used for propelling them, made no such distinction. By it, vehicles used for transporting or concealing taxable articles with the prescribed intent are forfeitable, as well as those used to transport or conceal contraband raw material or implements of manufacture. See *Goldsmith-Grant Co. v. United States*, 254 U. S. 505; *United States v. One Ford Coupe*, 272 U. S. 321.

The separation by the revisers of the first clause from the other two by a period instead of a semicolon, retaining the conjunction "And," and the dropping of the conjunction "also" from the second and third clauses, are changes hardly substantial enough to warrant any changed construction of the section. *McDonald v. Hovey*, 110 U. S. 619, 629; *Anderson v. Pacific S. S. Co.*, 225 U. S. 187, 199; see *Buck Stove Co. v. Vickers*, 226 U. S. 205, 213.

If the point were more doubtful, we should hesitate to set aside, at this late date, the uniform construction given to the section with respect to this question by the lower federal courts for more than sixty years. *United States v. Quantity of Rags*, Fed. Cas. No. 16103 (1868); *Quantity of Distilled Spirits*, Fed. Cas. No. 11494 (1868); compare *United States v. Thirty-Three Barrels of Spirits*, Fed. Cas. No. 16470 (1868); *United States v. Thirty-Six Barrels of High Wines*, Fed. Cas. No. 16468 (1870); see *United States v. Eighteen Barrels High Wines*, Fed. Cas. No. 15033 (1871); *United States v. Quantity of Tobacco*, Fed.

Cas. No. 16106 (1872); compare *United States v. Distillery at Spring Valley*, Fed. Cas. No. 14963 (1873); *United States v. Sixteen Barrels of Distilled Spirits*, Fed. Cas. No. 16300 (1879); *United States v. One Ice Box*, 37 F. (2d) 120 (N. D. Ill. 1930); *contra, In re Hurley*, 37 F. (2d) 397 (W. D. N. Y. 1930); *United States v. Ten Bottles of Scotch Whiskey*, 48 F. (2d) 545 (C. C. A. 2d, 1931). By the adoption of § 3453 in the Revised Statutes, as of December 1, 1873, without substantial change of the section as amended in 1866, Congress must be considered to have adopted the consistent interpretation of the latter as authorizing forfeiture of non-taxed articles found in a place in which taxed articles are either possessed or manufactured with intent to defraud the revenue. *Sessions v. Romadka*, 145 U. S. 29, 41-42; see *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488.

It is said that the construction urged by the Government is inadmissible because so broad as to lead to absurd results; that it would permit seizure of chattels having no relation to the taxable articles or their intended sale or removal, if anywhere in the same building or enclosure, and might include chattels possessed on the premises by others having no connection with the taxable articles or their intended sale or removal. But we do not so construe it. To do so would be to justify penalties having no relation to the offense, and the infliction of hardship on innocent persons unnecessary for the protection of the revenue. All laws are to be given a sensible construction. A literal application of a statute which would lead to absurd consequences is to be avoided whenever a reasonable application can be given which is consistent with the legislative purpose. *United States v. Katz*, 271 U. S. 354; *United States v. Jin Fuey Moy*, 241 U. S. 394; *United States v. Palmer*, 3 Wheat. 610, 631.

Notwithstanding the broad language of the section, we think it may be given a reasonable construction, and the

one most consistent with its apparent purpose, by the application of the principle *noscitur a sociis*. The taxed articles and the raw materials intended for manufacture are the principal things aimed at by the statute. Tools and implements by their use are connected incidents. By reason and analogy, as well as by context, we conclude that the general words "all personal property whatsoever" were intended to include chattels other than the specified tools and implements, but to be restricted to those which, like tools or implements, are related to one or the other of the principal things, or incident to their intended use or disposition in fraud of the revenue. See *United States v. Thirty-Three Barrels of Spirits, supra*. Here the seized articles, being the furnishings and equipment of a room in which tax-unpaid intoxicating liquors were dispensed, were incident to the sale, and were so related to the tax evasion at which the statute was aimed as to be clearly embraced within both its purpose and its words.

Respondent's objection that forfeiture under R. S. § 3453 is barred by the arrest and prosecution of the offender under the National Prohibition Act is without force. It is true that by the express command of § 26 of the National Prohibition Act, in all cases of arrest for transportation of intoxicating liquors, the transporting vehicle must be seized and proceedings for its forfeiture had under that section and not under R. S. § 3450. *Commercial Credit Co. v. United States*, 276 U. S. 226; *Richbourg Motor Co. v. United States*, 281 U. S. 528. But by § 5 of the Willis-Campbell Act of November 23, 1921, c. 134, 42 Stat. 222, 223, all penalties for violation of the revenue laws, not directly in conflict with any provision of the National Prohibition Act, are continued in force. See *United States v. One Ford Coupe, supra*. There is no question here of use of a vehicle for transportation, and there is nothing in the National Prohibition Act nec-

essarily or directly in conflict with the application given here to the provisions of § 3453.

Reversed.

SUN INSURANCE OFFICE *v.* SCOTT.*

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

No. 28. Argued October 22, 1931.—Decided November 23, 1931.

1. A provision in a policy of fire insurance prohibiting the placing of a chattel mortgage on the insured property without the consent of the insurer endorsed on the policy is valid, and its violation constitutes a complete defense to an action upon the policy for a loss. P. 180.
2. A loss payable clause attached to a policy of fire insurance, providing that any loss that may be proved due the assured shall be payable to the assured and a named bank, does not imply knowledge on the part of the insurer of the existence of a chattel mortgage on the insured property, nor does it constitute a waiver of a condition in the policy against mortgaging or a consent to a mortgage. P. 180.
3. The fact that an agent of the insurers, with knowledge of a chattel mortgage on the insured property, attached to each of three policies of fire insurance a loss payable rider making any loss under the policies proved due the assured payable to the assured and a named bank, is not sufficient to establish a custom giving to such a clause the effect of a consent on the part of the insurer to change of title or encumbrance of the insured property. P. 181.
4. Under § 9586 of the Ohio General Code, which makes a person who solicits or takes an application for insurance the agent of the company, "anything in the application or the policy to the contrary notwithstanding," knowledge of the insurer's agent of a chattel mortgage on property insured under policies of fire insurance containing chattel mortgage clauses may not be imputed to the insurers so as to constitute a consent on the part of the latter that the policies should remain in force notwithstanding the encumbrance. P. 182.

46 F. (2d) 10, reversed.

* Together with No. 29, *Norwich Union Fire Insurance Society, Ltd., v. Scott*, and No. 30, *Home Insurance Co. v. Scott*,