

The court below was right in refusing a limitation of liability and in holding that the applicants for employment who had been told to return on the morning in question were entitled to awards in this proceeding; but it erred in denying awards according to the rules recognized in admiralty to the surviving employees and personal representatives of deceased employees of Kellogg & Sons, and remitting them to their remedy under the New Jersey Compensation Act. The decree is therefore reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.

*Reversed.*

MR. JUSTICE BRANDEIS and MR. JUSTICE STONE join in so much of the opinion as holds that limitation of liability was rightly refused. They concur also in the conclusion that Kellogg & Sons are liable in this proceeding, but they do so upon the ground that the owner having invoked, as stated, the jurisdiction in admiralty, it cannot be surrendered in favor of that under the workmen's compensation law of the state.

MR. JUSTICE SUTHERLAND is of opinion that the petition in No. 444 is not well founded and that the decree should be affirmed.

MR. JUSTICE CARDOZO took no part in the consideration or decision of these cases.

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CALLAHAN *v.* UNITED STATES.

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

No. 576. Argued March 14, 1932.—Decided April 11, 1932.

1. One who aids and abets importation of intoxicating liquor contrary to § 3 of Title II of the National Prohibition Act, which prohibits unlicensed importation, violates § 593 (b) of the Tariff

Act of 1922, which provides that if any person knowingly assists in importing into the United States any merchandise contrary to law, he shall be punished as therein specified. P. 516.

2. Section 29 of Title II of the National Prohibition Act, which provides that "Any person . . . who . . . violates any of the provisions of this chapter, for which offense a special penalty is not prescribed, shall be fined . . ." etc., is superseded as to forbidden importation of liquor (for which the Act does not otherwise prescribe a penalty) by § 593 (b) of the Tariff Act, a later statute fixing a special penalty. P. 517.  
53 F. (2d) 467, affirmed.

CERTIORARI, 284 U. S. 614, to review a judgment affirming a conviction and sentence for violation of the Tariff Act of 1922 by aiding and abetting importation of intoxicating liquor contrary to law. See *United States v. Newton*, 36 F. (2d) 425.

*Mr. Louis Halle*, with whom *Mr. Milton R. Kroopf* was on the brief, for petitioner.

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

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The petitioner was indicted under § 593 (b) of the Tariff Act of 1922,<sup>1</sup> for aiding and abetting the importation of intoxicating liquors contrary to law, the specified illegality being violation of Title II, § 3, of the National Prohibition Act.<sup>2</sup> In support of a demurrer he asserted

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<sup>1</sup> U. S. C., Tit. 19, § 497. "If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise, contrary to law . . . the offender shall be fined in any sum not exceeding \$5,000 nor less than \$50, or be imprisoned for any time not exceeding two years, or both. . . ."

<sup>2</sup> U. S. C., Tit. 27, § 12. "No person shall . . . import . . . any intoxicating liquor except as authorized in this chapter. . . . Liquor

the indictment set forth an offense under the prohibition act and failed to charge one under the cited section of the tariff act; and was duplicitous as including offenses under both statutes. The demurrer was overruled, trial and conviction followed, and petitioner was sentenced under § 593 (b). The circuit court of appeals affirmed the judgment, and this court granted certiorari.

We are asked to hold that one who violates the prohibition act by importing liquor, may not be indicted, tried and sentenced under the tariff act, which makes the importation of "any merchandise<sup>3</sup> contrary to law" a criminal offense. The phrase "contrary to law" as used in the later act is unqualified and taken in its natural meaning signifies "contrary to any law," and hence contrary to the earlier prohibition act, so that a violation of that act would be an offense within the other.

The petitioner urges that the National Prohibition Act deals specifically with intoxicating liquor, prohibits its importation and provides a penalty therefor; whereas the tariff act is concerned with a wholly separate subject and the penal section 593 (b) aimed at unlawful importation should not be construed as repealing the earlier special statute. (*Ex parte Crow Dog*, 109 U. S. 556, 570; *Rodgers v. United States*, 185 U. S. 83, 87-89; *Washington v. Miller*, 235 U. S. 422, 428.) This argument overlooks the fact that the National Prohibition Act prescribes no special penalty for importation in violation of its provisions. Section 29 of Title II, an omnibus section fixing penalties for violations for which no special penalty is

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for nonbeverage purposes . . . may be . . . imported . . . but only as herein provided, and the commissioner may, upon application, issue permits therefor. . . ."

<sup>3</sup>Section 401 of the Tariff Act (U. S. C., Tit. 19, § 231) provides: "The word 'merchandise' means goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited."

prescribed, is the only one under which punishment could be imposed for illegal importation.<sup>4</sup> The language used is sufficiently broad to include specific penalties fixed in other sections of the statute and also such as might be imposed by separate legislation. The tariff act, a later statute, fixes a definite penalty for one of the violations grouped in the penal section of the earlier act. In this respect it superseded the general provisions of the prior statute embracing the same subject. *Cook County National Bank v. United States*, 107 U. S. 445; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1, 22. The indictment charged an offense under the Tariff Act and the judgment must be affirmed.<sup>5</sup>

*Affirmed.*

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UNITED STATES *v.* SCHARTON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MASSACHUSETTS.

No. 621. Argued March 22, 1932.—Decided April 11, 1932.

Section 1110 (a) of the Revenue Act of 1926 sets a general limitation of three years upon the prosecution of "any of the various offenses arising under the internal revenue laws . . . *Provided*, That for offenses involving the defrauding or attempting to defraud the United States . . . in any manner, the period of limitation shall be six years. . . ." *Held*:

1. That the six year limitation is confined to cases in which fraud is made an ingredient by the statute defining the offense; and that it does not apply to the offense of wilfully attempting to evade

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<sup>4</sup> U. S. C., Tit. 27, § 46. "Any person . . . who . . . violates any of the provisions of this chapter, for which offense a special penalty is not prescribed, shall be fined for a first offense not more than \$500. . . ."

<sup>5</sup> See *Kurczak v. United States*, 14 F. (2d) 109; *Dickerson v. United States*, 20 F. (2d) 901; *Gorsuch v. United States*, 34 F. (2d) 279.