the final judgment below; and the whole cause will then be before the court. A court may at any time reverse an interlocutory decree.

The case was afterwards settled by the parties.

Pennington *v.* Coxe.

Internal taxes.

Sugar refined, but not sold and sent out of the manufactory, before the 1st of July 1802, is not liable to any duty, upon being sent out after that day.
Coxe v. Pennington, 1 W. C. C. 65, reversed.

This was a feigned issue, between Tench Coxe, a citizen of the state of Pennsylvania, and Edward Pennington, a citizen of the state of New York,
*34] to try the question, *whether sugar actually refined, but not sold and sent out of the manufactory, before the 1st of July 1802, is liable to any duty to the United States, upon being sent out after that day. (Reported, below, 1 W. C. C. 65.)

This question arose upon the act of congress, entitled "An act to repeal the internal taxes," passed April 6th, 1802. (2 U. S. Stat. 148.)

The declaration was upon a wager that the United States were entitled to collect the duty, and stated the following facts: That Pennington was a refiner of sugar, within the meaning of the several acts of congress imposing a duty on refined sugars; that he had refined a quantity of sugar between the 31st of March and the 1st of July 1802, which, if the act for repealing the internal taxes had not been made, would have been liable to a duty, exceeding in the whole, the sum of $2500; that he did, from day to day, enter in a book or paper kept for that purpose, all the sugar refined by him as aforesaid, but that he did not, on the 1st of October 1802, render any account of the sugar which he had so refined, to any officer of the revenue, nor did he produce to any such officer (though required) the original book or paper whereon the entries from day to day were made as aforesaid, nor did he, on the said 1st of October, nor at any time, before or since, pay or secure any duties upon the said quantity of sugar so refined by him as aforesaid, during the period aforesaid; that the same was not sent out of the manufactory before the 1st of July 1802, but that the whole had been since sent out, viz., on the 30th of September 1802. To this declaration, there was a general demurrer and joinder; and it was agreed, that no advantage should be taken of want of form in the proceedings.

The judgment of the circuit court of the district of Pennsylvania was for the plaintiff below, and the defendant brought the writ of error.

The act imposing the duty was passed June 5th, 1794 (1 U. S. Stat. 384), and is entitled "An act laying certain duties upon snuff and refined sugars." The 2d section enacts, that from and after the 30th of September 1794,
*35] "there be levied, collected and paid, *upon all sugar which shall be refined within the United States, a duty of two cents per pound." The third section directs, "that the duties aforesaid shall be levied, collected and accounted for," by certain officers therein described. The 5th section directs, that every refiner of sugar shall make true and exact entry and report in writing, at the office of inspection, of every house or building where

such business shall be carried on, and every pan or boiler, together with the capacity of each; and shall also give bond in the sum of $5000, with condition that he will enter in a book or paper, to be kept for that purpose, all sugar which he shall refine, and the quantities, from day to day, sent out of the building, where the same shall have been refined, and shall, on the first day of January, April, July and October, in each year, render a just and true account of all the refined sugar which he shall have sent out, from the time of the last account rendered, producing and showing therewith, the original book or paper, whereon the entries from day to day, to be made as aforesaid, have been made; "and he shall, at the time of rendering each account, pay or secure the duties which by this act ought to be paid upon the refined sugar in the said account mentioned."

By the 7th section, it is enacted, that every refiner of sugar shall, yearly, being thereunto required by an officer of inspection, make oath that the accounts which have been by him rendered of the quantities of refined sugar by him sent out of the building, have been just and true. By the 10th section, it is enacted "that all snuff and refined sugar, which shall have been manufactured or made within the United States, in manner aforesaid, after the said 30th day of September next, whereof the duties aforesaid have not been duly paid or secured, according to the true intent and meaning of this act, shall, upon default being made in the paying or securing of the said duties, be forfeited, and shall and may be seized, as forfeited, by any officer of the inspection or of the customs." By the 11th section, the refiner has the option to pay, upon rendering his account, "the duties which shall *thereby appear to be due and payable," with a deduction of six per cent. for prompt payment, or to give bond payable in nine months. [*36

By the 11th section, a drawback of the duties "hereby laid upon sugar refined within the United States" is allowed upon exportation to a foreign port. But by the 16th section, such allowance is not to be made, unless the exporter shall make oath that the duties have been paid or secured. The 20th section declares, it shall be lawful to export refined sugar directly from the manufactory, free from duty.

The 1st section of the repealing act of April 6th, 1802, enacts, "that from and after the 30th day of June next, the internal duties on stills and domestic distilled spirits, on refined sugars, licenses to retailers, sales at auction, carriages for the conveyance of persons, and stamped vellum, parchment and paper, shall be discontinued, and all acts and parts of acts relative thereto shall, from and after the said 30th day of June next, be repealed: Provided, that for the recovery and receipt of such duties as shall have accrued, and on the day aforesaid, remain outstanding, and for the payment of drawbacks, or allowances on the exportation of any of the said spirits, or sugars legally entitled thereto, and for the recovery and distribution of fines, penalties and forfeitures, and the remission thereof, which shall have been incurred before and on the said day, the provisions of the aforesaid acts shall remain in full force and virtue."

Ingersoll, for the plaintiff in error.—By the repealing act, no duties upon refined sugar are to be collected, but such as had accrued and remained outstanding, on the 30th of June 1802. The sugars in question were refined before, but were not sent out, until after that day; and the question is,

whether the duties upon them had accrued on that day, and then remained
*37] outstanding. We contend, that the duty is to be collected *only upon sugar sent out of the building in which it was refined; and to support this construction, we rely upon the general tenor of the act which imposed the duty. It is a rule of construction of statutes, that "every act, upon consideration of all the parts thereof together, is the best expositor of itself." 4 Inst. 325. And it is another sound rule, that words distributed into different sections, are to be considered, as if all were in one section. By this rule, the 5th section of the act of June 5th, 1794, is to be connected with the 2d. What is general in the 2d, is thus restricted and qualified by the 5th. The 2d section enacts, that the duty shall be levied, collected and paid, upon all sugar refined in the United States. If this section stood alone, it is admitted, that it would be conclusive against the plaintiff in error. But it is limited by the 5th section, not accidentally, but with a clear view to collection, and that it might not operate as a tax upon labor, but upon consumption. By this section two accounts are to be kept; one of the sugar refined, the other of the refined sugar sent out; but the duty is only upon that contained in the latter.

If the words of both sections were incorporated into one (and they are to be construed as if they were), it would read thus: upon all sugar refined within the United States, and sent out of the building, &c., there shall be levied, collected and paid, a duty of two cents per pound.

The account of sugar refined, but not sent out, was intended merely as a check. It was not to be delivered, but shown to the officer, and its purpose was to enable him, by comparing the amount refined with that sent out, and what remained on hand, to estimate the correctness of the account of sugar sent out, upon which alone the duty was chargeable. It was clearly the intention of the legislature, that the duty should be paid upon sugar, only in such circumstances as would show that the tax would fall upon the consumer, and not on the manufacturer.

But it will be contended, that there is a distinction between levying and collecting. That the duty is levied upon the whole, but is payable only on such as shall be sent out. But for this distinction there is not even an intimation in the act of congress.

*38] *It will be said, on the part of the United States, that there is no section but the 2d, which imposes the duty, and by that section it is imposed on all sugar refined. But why impose a duty, which is not to be collected? It is agreed, that the sending out is a prerequisite to the payment. What use can there be in imposing a duty, upon an article in circumstances which prevent its collection? If the duty arises from the act of refining only, the 5th section might be expunged, and the law would remain the same. That section is of no use, unless it operates upon the second.

The words "levied, collected and paid," in the 2d section, are commensurate, though not of the same meaning. The word "levied" applies to the act of the legislature, in imposing the duty. "Collected," refers to the act af the officer. "Paid," to the act of the party. "Levied" means the same as imposed. Each verb has the same subject: the same thing is to be levied, collected and paid. Nothing is levied, but what is to be collected; nothing collected, but what is to be paid; and nothing is to be paid, but on the sugar sent out. Hence, no duty is levied but upon sugar sent out.

There is no analogy between this duty and that upon goods imported. There, the duties are payable on the landing of the goods, and are payable even if the goods are destroyed as soon as landed. In such a case, a remission of the duties is matter of favor; but in the case of refined sugar, it is not so. The legislature did not intend, that the manufacturer should be the sufferer. The impost laws have no section restricting the general imposition. The bond to be given for the duties on sugar is to be payable in nine months after the time of sending out, not of refining: the bond given for impost is payable in six months after importation. Hence, if any analogy exists, the argument derived from *it is is favor of the construction that the duty is not imposed, until the sugar is sent out. [*39

A duty not to be paid is no duty. Suppose, the refining house should be burnt, and a quantity of refined sugar destroyed, no duty could be collected upon it. The relation of debtor and creditor had not arisen between the manufacturer and the United States: the duty had not accrued. That it be sent out, is descriptive of the subject-matter of the tax. It fixes a certain stage of the business of a manufacturer, at which the duty shall attach. It ascertains the quality and degree of refining, which otherwise might be the subject of much litigation. Sugar may not be fit to send into the market, and yet it may be strictly said to be refined.

The penalties and the duty must correspond. The duty of the manufacturer cannot exceed the penalty: the doctrine of relation will not extend to create a penalty or a forfeiture. The provisions of the old law are continued by the repealing law, only as to penalties and forfeitures, "which shall have been incurred before or on the 30th of June 1802." As no penalty or forfeiture for non-payment of the duty could be incurred, until after the sugar was sent out, and as the sugar was not sent out, until after the 30th of June, it is evident, no penalty or forfeiture, as to that sugar, could "have been incurred before or on that day." This shows that the provisions of the law to enforce the payment of duties on such sugar were not continued, and is a strong indication of the will of the legislature that none should be paid.

All the provisions in the act of 1794, subsequent to the 5th section, mention the subject of the duty as being sugar refined and sent out. Thus, the oath mentioned in the 7th section is to the truth of the account of sugar sent out. The drawback, the account to be rendered, the tax to be collected, and the bond for securing the duties, refer only to such sugar as shall have been sent out.

If there had been no express provision in the repealing act, and the duty had been repealed, generally, on the 30th *of June, no duty could have been due on sugars then refined, but not sent out. The repealing law creates no obligation on the refiner to render an account of sugars refined before and sent out after the 30th of June. If the duty was levied upon all sugars refined before that day, and payable at any future indefinite time, when they should be sent out, it would be necessary to keep an officer in pay as long as a single loaf remained in the building. All parts of the acts were to cease, after the 30th of June, unless saved by the proviso; and that relates only to the recovery and receipt of all such duties as had then accrued and remained outstanding, and such penalties and forfeitures as had then been incurred. [*40

The question then recurs, had these duties accrued, and were they re-

maining outstanding on the 30th of June? The word "accrued" must mean *arisen, due;* at least, due at present, payable in future. But if they were due, the officer had a right to call for payment or security. It cannot be said to have accrued, until it is to be paid or secured. But the words "remaining outstanding" are still stronger. "Shall have accrued and remain outstanding," that is, having before accrued, shall *remain* outstanding. These expressions imply that the duties had been fixed and their amount ascertained; that the relation of debtor and creditor had arisen, and that the duties remained unpaid, either through negligence or indulgence.

The effect of the construction contended for on the part of the United States would be to throw the whole of these duties upon the refiner, for he could not make a difference in price between the sugars refined before, and those manufactured after the 30th of June. This effect would be in direct hostility to the general principle of the legislature, which is apparent through the whole act, and which was to tax consumption and not labor.

The proviso in the repealing law either enacts or declares. It is evident, that it does not enact any new regulations, but merely declares the continuance of former provisions. The remedy given by the former act was only by action, or forfeiture. But no action would lie, nor would any forfeiture be incurred, until after the sugars were sent out. It is a rule, that upon
*41] a new statute which prescribes a particular remedy, no remedy can be *taken but that prescribed by the statute. *Stevens* v. *Evans*, 2 Burr. 1157.

But it will be objected, that the duties outstanding meant only those not bonded, because, when bonded, the debt is due by bond and not as a duty. But the law is not so; for a debt due by act of congress is at least of equal dignity with a debt due by bond, and cannot be extinguished by it.

Mr. Ingersoll cited *The Lead Company* v. *Richardson*, 3 Burr. 1341, to show that an act imposing a duty is not to be extended to other subjects than those expressly described.

Lincoln (attorney-general of the United States) and *Dallas*, for the defendant in error.—The whole question turns on the operation of the repealing act. If the duty had accrued and remained outstanding on the 30th of June, it was unaffected by the repeal. To show that the duty accrued on the act of refining the sugar, independently of the act of removing it, they relied, 1st. On the words and spirit of the act of 1794; and 2d. On the obvious meaning of other acts *in pari materia.*

I. The words and spirit of the act. Every revenue system consists of three parts: 1st. The subject of the tax: 2d. The time of payment: and 3d. The mode of collection. The act of 1794 discriminates between each of these, and the construction must not confound them.

1. The subject of the tax. The title of the act is general, "duties on snuff and refined sugar, not on the quality sold or sent out, but on the sugar refined." The 2d section is equally general, "upon all sugar which shall be
*42] refined within the United States." *The 3d section directs by what officers the "duties aforesaid" shall be collected. The 2d is the only section which imposes the duty, the 3d provides for its collection, and nothing is left for the object of the 5th, but to ascertain the time of the payment. The 10th section contemplates the duty as attaching on the act of

refining, and subjects the sugar to forfeiture, after removal, if the duty shall not have been duly paid or secured.

The subject, then, is refined sugar; and the process of refining being complete, the duty accrues. Without further provision, there could be no doubt, that all sugar refined between the 30th of September 1794, and the 1st of July 1802, would be liable to duty. Every subsequent provision respecting the time and manner of payment is consistent with this imposition of the duty. No express transfer is made of the duty from the act of refining to the act of removing; no substitution of the quantity removed for the quantity refined; no words restricting the general expression "all sugar refined within the United States." All the subsequent clauses respect the payment, not the imposition of the duty.

2. Time of payment. The duty attaches to the act of refining, but the fund for payment is created by the act of sale. Hence, the 5th section directs two accounts to be kept, one of the whole quantity refined, the other, of such as shall have been removed; and that, at the time of rendering the latter, the refiner "shall pay or secure the duties, which by this act ought to be paid, upon the refined sugar in the said account mentioned." This provision evidently is intended only to ascertain the amount which shall then be payable. The duties payable by this act are on all the sugar refined; if on *all*, it ought in strictness to be upon every part; but the United States say, we will accept a partial payment, in consideration that you have not yet sold the residue of the sugar. The quarterly account ascertains the amount of this partial payment; while the other regulations are intended *to enable the officer to ascertain the gross quantity refined. [*43

The terms of payment show how and when the duty shall be paid, but do not affect the subject of the tax. The legislature had power to give, or to refuse a credit; but the modification of the time or terms of payment does not create, and cannot discharge, the obligation to pay. It is but the common case of *debitum in præsenti, solvendum in futuro*. By the 20th section, sugar may be exported directly from the manufactory "free from duty." This shows that the duty had attached, but was not to be exacted.

3. The mode of collection must conform to the primary and secondary objects of the law. These were, 1st. A revenue from all refined sugars: 2d. Accommodation in payment.

For the primary object, it takes measures to ascertain the gross quantity refined. For the secondary object, it takes measures to ascertain the quantity removed in each quarter. For the first, it obliges the manufacturer to enter and report his house, and implements, with all additions made thereto, under a penalty and forfeiture; and to give a bond of $5000, to keep an account of all sugar refined, which is to be quarterly produced to the collecting officer. For the 2d, it obliges him to keep, and render quarterly to the officer, a daily account of refined sugar removed, which is to be substantiated by an oath, if required. Thus, all the provisions of the act harmonize with each other; but by an opposite construction, the duty is made incident to the time of payment, and not the time of payment incident to the duty. If what a man sells, and not what he refines, is the subject of the tax, the provision to ascertain the gross quantity refined is useless and vexatious.

It is true, that the two circumstances of refining and removing are

necessary, before payment can be demanded, *or a forfeiture for non-payment incurred; but the obligation to pay is coeval with the act of refining; the duty had then accrued, and must remain outstanding, until the removal of the sugar. The two circumstances are distinct in words and in purpose; the one creates the duty, the other fixes the time of payment. To connect them is to amplify, not only the words, but the sense of the legislature; but to keep them separate, preserves the intention of the law in consistency with its language.

Hypothetical arguments, extreme cases, and arguments *ab inconvenienti*, cannot alter the law. Such are the cases of the sugar being destroyed in the house; the necessity of keeping officers to collect the tax, and the sales of refined sugar, made in contemplation of their being free of duty, &c. If the sugar is destroyed, before removal, it is no longer refined sugar; and the duty being attached to the thing itself, is destroyed with it. The argument drawn from the supposed intention of the legislature to tax consumption, and not labor, applies only to the collection, not to the imposition, of the duty. The act of sending out, does not necessarily import sale. A manufacturer may remove the sugar to his own stores, separate from the manfactory, and would be liable to the duty. The legislature did not intend, that a sale should precede the imposition of the tax.

There is a case in 1 Anst. 450 (558), in which it was decided, that the duty had attached on the distillation of spirits, although the building and materials were destroyed, before the process was complete.

The words and spirit of the act are thus reconciled, and they are in unison with the repealing act, which meant to put all the internal taxes upon the same footing, up to the 30th of June. By the 3d section of the latter act, the owners of stills, of snuff-mills, the banks, retailers of wine and spirits, and the owners of carriages, are to pay the taxes up to that day; and if sugar refiners are to be excepted, it seems to be an exception, without any adequate reason. The objection which has been raised, that the duty upon sugars refined before and delivered after the 30th of June 1802, would fall upon the refiners, cannot avail them, because they received the duty upon
*45] sugars refined after the 6th of June 1794, and before *the 30th of September in that year, without being accountable for it.

II. The construction contended for, is supported by the obvious meaning of the words of other acts, *in pari materia*. The analogy exists in the terms of imposing the duty; in the accommodation of credit, and in the security for collection. In the following acts, imposing duties on imported articles, the words which create the imposition are, "levied, collected and paid," viz., August 10th, 1790, § 1 (1 U. S. Stat. 180); June 7th, 1794, § 1 (Ibid. 384); and January 29th, 1795 (Ibid. 411). In other acts, the words are "laid, levied and collected," viz., March 3d, 1797, § 1 & 3 (Ibid. 504); July 8th, 1797, § 1 (Ibid. 533); and May 13th, 1800, § 1 (2 Ibid. 84).

In all these acts, the imposition of the tax necessarily precedes the collection; hence, we may infer, that when the legislature used the same words in the act of 1794, they intended, that the tax should be laid before the time of collection, and that from the time of the imposition, until paid or secured, the duty should be considered as outstanding. An outstanding duty can mean nothing more than a duty laid, but not collected or secured. As to bonded duties, it was not necessary that the provisions of the act of 1794

should be continued in force, because a suit might have been maintained on the bond, notwithstanding the repeal; hence, it is evident, that by the expression "duties which shall have accrued and remain outstanding," the legislature could not mean bonded duties. What is the situation of the duties upon goods imported before bond given? They have attached upon the goods, and remain outstanding. A debt has accrued: the relation of debtor and creditor has arisen between the importer and the United States.

There is no difference between the case of the refiner of sugar and the distiller of spirits. In the latter, the act of distillation furnishes the subject of the tax; the removal *designates the time of payment. Between [*46 the distillation and removal, the duty remains outstanding. (1 U. S. Stat. 387–8, § 14 and 17.) The inspector is to estimate the gross quantity, by which he is to regulate the penalty of the bond, but the condition is to pay in nine months the duties upon such part as shall be removed in three months from the date of the bond. Had not the duties accrued when the bond was given? And yet does not the payment in fact, and in amount, depend on the removal within three months?

In the case of sales at auction (1 U. S. Stat. 397), the duty accrues at the time of sale, to be paid at the end of the quarter. So, in the instance of the carriage tax (Ibid. 373). Why, then, should it not attach on the sugar as soon as refined, when in all other cases, it attaches at a period antecedent to the time of payment.

In the act laying duties upon goods imported (1 U. S. Stat. 24), the duties are said to accrue from the time specified for their commencement, not from the time when they were to be paid or secured.

Again, in the case of snuff, the terms and conditions are the same as in the case of sugar. By the first section, the duty is laid on snuff manufactured for sale, not on snuff sold; and by the fourth section, the account of the quantity manufactured is to be exhibited. By a subsequent act (1 U. S. Stat. 426), the duty is transferred from the snuff to the mill. A license is to be granted, and a bond given for payment of the annual rate of the tax, in three instalments. This act shows that the employment of the mill, and not the sale of the snuff, was the object of the tax. The first section says, that the former duty shall cease on the last day of March, and shall not thenceforth be collected, and the 16th section provides for the recovery of such duties as shall then have accrued. Yet, the snuff, then manufactured, although not sent out, in fact, paid the duty; and in law, what could be referred to, but snuff manufactured and not removed? There could be no idea that the repeal of the duty applied to a bond given which had extinguished the duty.

Upon the whole, then, we find the repealing act perfectly correspondent to the words and spirit of the imposing act, and to analogous provisions *in pari materia*. *The refiner was bound to pay, or secure, [*47 before removal. But a bond was tantamount to a payment of the duty; it was a matter of option with the refiner. It released the sugar from a specific lien, or liability to forfeiture; and it changed the nature of the debt and the remedy. A discontinuance of the duty could not cancel the bond, nor render a provision to recover it necessary. The proviso, therefore, was not more calculated for a bond payment, than for a cash payment. But it is consistent, operative and necessary, if we suppose the

legislature contemplated the recovery and receipt of duties which had accrued, when the sugar was refined, but which, according to pre-existing arrangements, must remain outstanding as duties, and which were not to be paid or secured, until removal of the sugar.

The duty to be paid was upon all sugar refined. But the duty on refined sugar was not discontinued, until after the 30th of June. The sugar in question was refined sugar, before the 30th of June: to exempt it from duty, therefore, is to discontinue the duty before the day of the repeal.

There can be no question as to the remedy; for if the duty had accrued, all the pre-existing remedies were continued.

If, then, we consider the words and spirit of the imposing act, the general nature and operation of a revenue system, the analogy of provisions *in pari materia*, and the words and spirit of the repealing act, little doubt can remain, that the legislature meant to impose the duty on the act of refining, and not the act of removing the sugar, and therefore, that the duties upon the sugar in question had accrued, and remained outstanding on the 30th of June 1802.

Harper and *Martin*, in reply.—The question has been truly stated to be, at what time did the duties upon refined sugar accrue? To ascertain this, all the provisions of the imposing act are to be considered in one view. This is the general rule of construction of all written instruments, and results from the principle that such instruments are only the evidence of the will of the maker. *General expressions may be restricted by other parts of the instrument, or by its general import.

*48]

It is true, that the 2d section lays a duty upon all sugar which shall be refined within the United States, to be levied, collected and paid after the 30th of September 1794. If no time is fixed for the commencement of an act, it operates from the time of passing. By the strict construction of this section, it applies as well to those sugars refined after the passing of the act, and before the 30th of September, as to those refined after that day. But it is evident from the subsequent provisions of the act, that such was not the intention of the legislature. The act, therefore, cannot be construed strictly; and resort must be had to the other parts to ascertain its meaning.

If the duty was to be levied upon all sugar refined, the legislature would have directed a bond to be given for the duties on all such. Why should an account be rendered to the officer of all the sugar sent out, and not of all refined?

The general system of the excise laws was to tax, not the means of living, but the consumption of the article.

In respect to the impost, the duties are not due, while the goods are in the ship on the passage. The analogy is between goods landed, and refined sugar sent out. This is the decisive act which evidences that the sugar is for consumption. The expressions "recovery and receipt," in the repealing law, are not applicable to an unascertained duty; the term in such a case, would have been collection. In the revenue system, this difference is taken.

There is no analogy to the other cases mentioned, because the legislature have used different expressions, and therefore, it is reasonable to infer that they meant to enact different provisions. Wherever they meant that the

duty should be laid at the time of the manufacture, they have so expressly declared.

In the case from Anstruther, the duty was laid upon wash, *totidem verbis*, and therefore, although the wash *was destroyed before the process of distillation was complete, yet the court decided, that the duty had [*49 attached. But here, we contend, that no duty is laid upon refined sugar, not sent out. The only inference from the case is, that the court judged from the general purview of the act; and that is what we contend ought to be done in our case.

It is an important consideration, that the penalties and forfeitures apply only to the sugar sent out. Hence, it may be strongly inferred, that the duty was laid only on such. The entry and report of the house, the number and capacity of the pans, boilers, &c., and the daily account of sugar refined, were only provisions enabling the officer to check the account of the quantity sent out.

It is said, that every revenue system consists of three parts; the subject of the tax, the time of payment, and the mode of collection. All these parts would be included in the 5th section, if the words "two cents per pound" had been introduced. It contains the subject of the tax, and provisions for the collection and payment.

As to the title, it is no part of the law, and is not to be considered in construing the act. But if it was, it is so general and indefinite, no argument can be derived from it.

The act ought to be construed favorably for the manufacturer. Penal laws, and laws giving costs, are to be construed strictly. Multitudes of cases are to be found, where general words shall be construed in favor of him on whom a penalty is imposed, but never against him.

No argument can be drawn from the 14th section, because the drawback is allowed only upon sugars which have paid the duty, and no duty is to be paid but upon sugars sent out. So, in the 10th section, the forfeiture is only of sugars on *which the duty has not been duly paid; but no duty is [*50 payable but upon sugar removed.

But it is said, that the contrary construction harmonizes the system. If the duties are payable upon sugars refined, but not removed, why not render an account of those refined as well as of those sent out? Why do none of the penalties apply to the former, but all to the latter?

As to the idea of *debitum in præsenti, solvendum in futuro;* if the sending out is a condition precedent, no debt accrues, until the sugar has been sent out. If I am bound to A., to pay a sum when A. shall return from Rome, it is not a debt, until he has returned; and if he never returns, it is no debt.

In the case of impost, the duties accrue at the moment when they become payable. They must be paid or secured, when application is made for a permit, to land them. If they are destroyed, before landing, or application for the permit, no duties have accrued, and none are to be paid. With regard to distilled spirits, the bond is to pay the duty upon all such spirits as shall be removed, during the next three months. If no spirits are removed, during that time, nothing is due upon the bond. The duty upon sales at auction does not accrue, until the purchase-money is paid. It is a part of the price. The carriage tax accrues at the time of payment; and if not duly entered, and the duty paid, a penalty is incurred.

As to snuff, the construction of the 4th section of the act of June 6th, 1794, ought to be the same as that of the 5th section respecting sugar. There has been no legislative construction, or judicial decision, that the duties upon snuff manufactured after the 3d of March 1795 (the date of the repealing law as to snuff), and before the 30th of March (when the duty was to cease), and not sent out until after the 30th of March, were payable. The gentlemen have said that those duties have been paid; the fact may be so, but that cannot alter the law.

*51] *As the penalties and forfeitures respecting sugars not then sent out, ceased on the 30th of June, the legislature must have meant to provide for the recovery and receipt of such duties only as could be collected without penalties and forfeitures. These could only be upon sugar removed before that day.

February 22d, 1804. MARSHALL, Ch. J., delivered the opinion of the court.—In this case, a single point is presented to the court. The plaintiff in error was a refiner of sugar, in the city of Philadelphia, and had a large quantity of refined sugars in his refinery, on the 1st of July 1802. In April 1802, congress passed an act to repeal the internal taxes. The first section of the repealing law enacts "that from and after the 30th day of June next, the internal duties," &c.

To recover the duty on sugars refined before the 30th of June, and sent out afterwards, this action was brought. The single question is, whether the duty had then accrued, and was on that day outstanding? This is admitted on both sides; and the repealing law is to be construed, as if it had passed on the 30th of June, to take effect immediately, and the proviso had been expressed in words of the present tense, thus; "provided, that for the recovery and receipt of such duties as have now accrued, and now remain outstanding, the provisions of the aforesaid act shall remain in full force and virtue."

Had the duty accrued, and was it outstanding, in contemplation of the legislature, on sugars refined, but not sent out of the building in which the operation was performed? The solution of this question depends on the construction of the act by which the duty was imposed.

This act passed in June 1794, and is entitled "An act laying certain duties on snuff and refined sugars." The first section imposes a duty on snuff, which shall be manufactured after the 30th of September then next ensuing, and the second section is in these words: "And be it further enacted, that from and after the said 30th day of September next, there be

*52] levied, collected *and paid, upon all sugar which shall be refined within the United States, a duty of two cents per pound."

The fourth section of the act contains provisions respecting the duty on snuff, and the fifth section, after making several regulations requiring the refiner of sugars to report the building and utensils to be employed in the manufacture, and to give bond with condition that he shall keep books in which he shall enter daily the sugars refined, as well as those sent out, proceeds to enact, "that he shall, on the first day of January, April, July and October, in each year, render a just and true account of all the refined sugar which he or she shall have sent out, or caused or procured to be sent out, from the first time of his or her entry and report aforesaid, until the

day which shall first ensue, of the days above mentioned, for the rendering of such account, and thenceforth successively, from the time when such account ought to have been, and up to which it shall have been, last rendered, until the day next thereafter, of the days above mentioned, for the rendering of such account, producing and showing therewith the original book or paper, whereon the entries from day to day, to be made as aforesaid, have been made; and he or she shall, at the time of rendering each account, pay or secure the duties, which, by this act, ought to be paid upon the refined sugar in the said account mentioned."

Other sections of this act have been relied on by the counsel on both sides, and the phraseology of the law, in other acts, said to be *in pari materia*, has been brought into view. They have not been unnoticed by the court in forming the opinion now to be delivered; but as the case depends principally on the just construction of the sections which have been quoted, those sections only are stated for the present.

That a law is the best expositor of itself; that every part of an act is to be taken into view, for the purpose of discovering the mind of the legislature, and that the details of one part may contain regulations restricting the extent of general expressions used in another part of the same act, are among those plain rules laid down by common sense for the exposition of statutes, *which have been uniformly acknowledged. If, by the application of these rules, it shall appear, that the duty on refined [*53 sugars did "accrue, and was outstanding," before the article was sent out of the building, then the refiner is unquestionably liable to pay it, notwithstanding the repeal of the law by which it was imposed.

To support the proposition, that the duty did accrue, the words of the second section of the act for imposing it have been relied on. These words are, "that from and after the 30th day of September next, there be levied, collected and paid, upon all sugar which shall be refined within the United States, a duty of two cents per pound." These words, it is said, contain an express charge upon all the sugars to be refined within the United States. It is admitted by the counsel for the plaintiff in error, that such would be the operation of the section, if unexplained, and not restrained by other parts of the law.

In order to determine the influence which other sections must necessarily have on this, it is proper to ascertain with precision, the import of the words which have been stated.

"There shall be levied, collected and paid," &c. Each of these words implies a charge upon the article, and if either of them had been used singly, no doubt could have been entertained that the article would have been burdened with the tax. They present to the mind distinct ideas, and when used together seem to designate distinct actions required by the law. It would not, perhaps, be assuming more than is warranted, to say, that either of them exclusively imports the creation and imposition of the duty. The word levy is selected for this purpose; and yet, in the succeeding section, the term is again used with a reference to that now under consideration, and very plainly designates the duty of the officer, not the operation of the act. The words of the third section are, "that the duties aforesaid shall be levied, collected and accounted for by the same officers," &c. The meaning [*54 *of the term in this section is by no means equivocal, and there does

not appear sufficient ground for saying, that it was used by the legislature, in the preceding section, in a different sense. Unquestionably, the requisition that a duty shall be levied, collected or paid, implies the existence of that duty: it seems to be as clearly implied by the one term as by the other. But, however this may be, they act on the same subject, and at the same time. The object of each verb is precisely the same. "There shall be levied"—on what? On "all sugars to be refined within the United States." There shall be "collected and paid"—from, and on what? "all sugars to be refined within the United States." It has, then, been very correctly said, that these words, though not synonymous, are certainly, as they stand in the sentence, co-extensive in their operation. They reach and embrace the same article, at the same time. If, then, the other parts of the act demonstrate that the words collected and paid, have not for their object all sugars to be refined, this section is necessarily restrained in its operation by those which follow, and designate more particularly what is, in the first instance, expressed in general terms.

That such is the real effect of the law is acknowledged. It is admitted by the counsel for the defendant in error, that the duties are not to be collected and paid on all sugars to be refined, but on all sugars to be refined and sent out of the building. It follows, then, that the general terms of the second section were intended by the legislature to be understood, in like manner, as if their intent had been expressly qualified, by adding the words "according to the regulations hereinafter prescribed;" or other words of similar import.

But admitting this view of the case to be correct, the great difficulty remains to be solved. It is contended by the defendant in error, that the fifth section neither imposes a duty, nor restrains to a more limited object the duty which was before imposed, and that its only effect is to prescribe the time of payment; that the duty on the article, taking the two sections together, constitutes a present debt, to be paid in future. On the other hand, the plaintiff *55] in error insists, that *the general terms of the second section are defined and restricted by the fifth, as well with respect to the object of the tax, as to the time of its collection and payment.

The court has felt great difficulty on this point. It is one on which the most correct minds may form opposite opinions, without exciting surprise. After the most attentive examination of the laws, and the arguments of counsel, a judgment has at length been formed, differing from that rendered in the circuit court.

The object of the act imposing the duty, being revenue, and not to discourage manufactures, it is reasonable to suppose, that the attention of the legislature would be devoted to the article in that state in which it was designed to be productive of revenue. There could be no motive for imposing a duty, never to be collected, or for imposing it on the article in that condition in which it might remain for ever, without yielding a cent to the treasury. The duty not being progressive, but complete in the instant of its commencement, being one entire thing, no purpose was to be effected, by charging it on an object from which it was not afterwards to be drawn. If, therefore, we find the whole attention of the legislature directed to the article in one state; if we find it productive only in one state; there is no

reason for supposing, unless the words require that construction, that the duty was imposed upon it in a different state.

All those provisions of the act, which are calculated to bring the money arising from this tax into the treasury, or to create any liability in the person who is to pay it, apply exclusively to sugars sent out of the building. Of those sugars only is an account to be rendered; on those only are the duties to be paid or secured. It can scarcely be imagined, that the legislature, if imposing a duty on all sugars refined, should entirely neglect to take any means whatever to secure the collection of that duty, and should postpone those means, until a subsequent event should happen, which might never occur.

*It is argued by the counsel for the defendant in error, that the happening of this event was certain, and that it was unnecessary for [*56 the legislature to perform any act which might occasion it, because the interest of the refiner was a sure pledge for his sending out the sugars he had refined. This is true; but the argument is not less strong, when urged, to prove that the legislature might rely on this interest to produce the state of things which would create the charge. If this interest was relied upon for the fact on which a duty should become payable, it might well be relied upon, to produce the fact on which the article should be chargeable with the duty; and it is, unquestionably, in the common course of legislative proceedings on the subject of revenue, to obtain security for the payment of duties, at the first convenient time after they shall have accrued.

If, as is contended for the defendant in error, the act of refining the sugar creates a debt to be paid when sent out of the building, then the refiner becomes immediately the debtor of the government, and his situation by sending out the sugar, is changed in no other respect whatever, than that the debt before created does by that fact become payable. The position to be proved is that A., the refiner of sugars, becomes the debtor of the United States to the full amount of the sugars refined, which debt does not accrue, but only becomes payable, on the fact of their being sent out of the building. Let this proposition be examined.

If A. becomes the debtor, by the mere act of refining, then he remains the debtor, until he shall be legally discharged. Suppose him to part with his manufactory and his capital stock, there being at the time of transfer a quantity of refined sugars in the building, which pass with it to the purchaser. If, by the act of refining, A. became the debtor of the government, which debt became payable, whenever the sugars should be sent out of the building, then A. would remain the debtor, notwithstanding his sale, and would be liable for *those duties, if the purchaser should send them [*57 out, without rendering any account of them, or securing their payment.

Yet this construction would be admitted to conflict with the obvious meaning of the law. Not only the persons who sends out the sugars is to account and pay for them, but if he fails to do so, the consequences of his failure fall entirely on himself. The sugar is forfeited, and if lost to the purchaser, his recourse could only be against the person from whom he purchased.

But let it be supposed, that A. sends out his sugars, and parts with his building, before the day on which the account is to be rendered, and the

duties paid or secured. Who, then, would be the debtor of the government? Who, in that case, would be liable for the duties that had thus accrued? It is believed, that only one answer could be given to this question. The person who sent out the sugars would unquestionably be liable for the duties on them, and if they should be seized for the non-payment of them, the purchaser would have recourse to him for compensation.

If these positions be correct, it would seem to be a plain and necessary deduction from them, that the fact of sending out the sugars, not the fact of refining them, created the debt, and that the person sending them out became the debtor.

It has been argued, that the provision of the 5th section, which requires a daily entry to be made on the books, of the quantity of sugars refined, evidences an intention in the legislature, to impose a tax on the article immediately. But this argument did not appear to be much relied on, and it is too apparent, that the regulations of the 5th section were designed to furnish the means of detecting any fraud which might be attempted, in the account of sugars sent out of the building, to require that the court should employ any time in demonstrating the correctness of that construction.

The argument drawn from the 3d section, which uses the expression "the
*58] duties aforesaid," does not *appear to operate more in favor of the construction contended for by the counsel for the defendant in error. The section is employed, not in designating the tax to be collected, but the person to collect it, and the words have the same import, as if instead of "the duties aforesaid," the language had been changed, and the words "the duties imposed by this act" had been used.

The sections respecting drawbacks have been relied on by both plaintiff and defendant, as completely supporting his own construction of the act, but the court can perceive nothing in those sections in any degree affecting the case.

It has been stated by both parties, that all the revenue acts of the United States may be considered as *in pari materia*, as forming one connected system, and therefore, to be compared together, when any one of them is to be construed. In pursuance of this doctrine, they have been resorted to by the defendant in error, to show that the terms used in the 2d section of the act under consideration are such as in all those acts import the imposition of a duty. This is not questioned. It is not denied, that a tax is imposed, nor would this have been denied, if two of the three words used in the act had been omitted. It is the general phraseology of laws enacted for the purpose of raising money; but to reason by way of analogy, from the acts quoted to that under consideration, it would be necessary to show, that these general terms had been construed to be more extensive than the particular regulations which follow, for the purpose of carrying them into execution. It is not recollected, that this has been attempted.

It has been argued, that the duty on spirits of the home manufactory, is laid on their distillation, not on their removal, and that the legislature must, therefore, be presumed also to have imposed the duty on sugars, on the act
*59] of refining them, and not on the act of removal. *But the force of this argument is not admitted. Those political motives which induce the legislature to select objects of revenue, and to tax them under particular circumstances, are not for judicial consideration. Where the legisla-

ture distinguishes between different objects, and in imposing a duty on them, evidences a will to charge them in different situations, it is not for the courts to beat down these distinctions, on the allegation that they are capriciously made, and therefore, to be disregarded. It is the duty of the court, to discover the intention of the legislature, and to respect that intention. Where the provisions of two acts are so unlike each other, that the comparison exhibits only a contrast, instead of saying that their opposing regulations were designed to be similar, it would seem much more reasonable to say, that the one act exhibits a legislative mind materially variant in the particulars where the difference exists, from what is exhibited by the other.

Every regulation of the act imposing a duty on spirits distilled within the United States, respects exclusively the time of distillation, and they are all essentially variant from the regulations of the act imposing a duty on snuff and refined sugars. The duty on spirits is to be paid or secured previous to their removal. That on sugars, is not to be paid or secured until after their removal. The credit for the duties on distilled spirits is allowed from the date of a bond, to be quarter-annually given for all the spirits distilled, whether removed or not, so that the credit is as near as possible from the date of distillation. The credit for the duties on refined sugars is allowed from the date of a bond quarter-annually given for all the sugars removed from the building, so that the credit is as near as possible from the date of the removal. Spirits, having a duty imposed on them, at the time of distillation, are liable to seizure and confiscation, if removed without paying or securing the duty. *Sugars, not being liable for the duty until removed, are not seizable, nor confiscable, unless the refiner, after removal, shall have failed to pay or secure the duties which became payable at a given day after their removal. [*60

With respect to country stills, the tax is laid on the capacity of the still, and is to be paid, without regard to the quantity distilled, but if this tax should become oppressive, it may be discharged, by paying the duty on the quantity actually distilled. In this case, no respect whatever is paid to the removal of the spirits. Their distillation alone attracts the attention of the legislature. With respect to all refined sugars, no duty can ever be demanded, unless the demand be predicated on the fact of removal. Spirits being chargeable with the duty, when distilled, cannot be removed without a permit. Sugars being only chargeable when sent out, may be removed at the will of the refiner.

It is going very far indeed, to argue a sameness of intention from these dissimilar regulations. The court thinks it much more correct to say, that the intention of the legislature with respect to these different objects was entirely different, and that in the case of spirits, the duty was imposed on the distillation, while in the case of sugars, the duty was imposed on the removal.

It is not improbable, that the difference in the progress made in the two pursuits, and the greater degree of forbearance required by the one than by the other; or that the difference in the facility with which frauds might be practised in the two cases, might occasion this apparent difference in the time of imposing the duty on the article. But this, it is repeated, is a legislative, not a judicial inquiry; and if the difference exists, it must be respected, whatever may be the motives which produced it.

Some arguments have been drawn from the repealing law, which have too much weight to be unnoticed. *It has been said, that the provisions intended as a guard, to prevent frauds in the collection of duties on sugars sent out of the building, are dispensed with, so far as respects sugars refined before the 30th of June, but sent out after that day, and from thence it is argued, that the legislature could not have supposed sugars, under such circumstances, to be liable to a duty. The weight of this argument, if supported by the fact, is so apparent, that the counsel for the defendant in error controverts the fact itself, and not the inference drawn from that fact, if it be correctly stated.

*61]

It is, and must be, admitted, that the first part of the first section of the repealing law does away any forfeiture which was to be produced by the future operation of the act repealed. If, therefore, such forfeiture is retained, it must be by virtue of the saving in the subsequent part of the section. That saving clause is in these words, "provided," &c. It is contended, that the forfeiture of sugars sent out after the 30th of June 1802, and refined before that period, is preserved by this proviso. But this construction is deemed totally and clearly inadmissible. The forfeiture of the thing is not the recovery and receipt of a duty, but a punishment for the non-payment of it, and is never to be protected by a proviso extending only to remedies given for the recovery of the duty itself. To render this point still more clear, the proviso, in express terms, comprises fines, penalties and forfeitures incurred before the 30th of June. It is impossible to suppose, they would not have deemed it equally necessary to provide expressly for the preservation of those which might afterwards be incurred, if it was contemplated that the state of things introduced by the act admitted of such subsequent forfeitures. The force of this argument, therefore, remains undiminished.

It has very properly been observed at the bar, that it was, most apparently, the object of the legislature, through their whole system of imposts, duties and excises, *to tax expense and not industry, and that, in the particular case of the duty now in question, this intent is manifested with peculiar plainness. The refiner of sugars never hazards the payment of the duty himself, because he is never to pay it, until they are presumed to be sold, by being sent out of the building in which they have been refined. In most other cases, it has been deemed sufficient to secure this object, by a credit, which will allow time for the sale of the article, after which the duty must be paid, whether the article be sold or not. But in the case of refined sugars, the refiner never can be liable for the duty, but on a fact which is considered, and properly considered, as evidencing a sale, after which a credit for the collection of the duty is still allowed him. With respect to the refiner of sugars, then, it must, on an inspection of the act, emphatically be said, that the legislature designed him to collect the duty from the consumer, but never to pay it from the manufacture ; that the tax should infallibly be imposed on expense, and never on labor. If this proposition be true, it furnishes an additional argument in favor of that construction which is believed to be correct.

*62]

If the duty is payable on sugars refined before the 30th of June 1802, whenever they may be sent out, that duty will fall on the refiner himself, because sugars refined before the 30th of June, must come into the market,

at the same price with those refined afterwards, and cannot sell, in consideration of the duty with which they are burdened, at a higher price than sugars admitted not to be chargeable with that duty. So far as this effect would be produced by the repealing law, it would occasion an oppression which the enacting law has manifested a particular solicitude to avoid.

This effect, it is said, is produced, in the case of those distilled spirits which are subjected to a duty on the quantity distilled or removed, and therefore, the refiner of sugars ought to be considered as receiving the same measure. But it has already been shown, that a difference is made in the first creation of the tax, between the distiller and the refiner; and the same difference may be perceived throughout. But if they were viewed with *precisely the same degree of favor, yet there is a difference between relinquishing a right which was complete, when the law [*63 under which it accrued ceased to operate, and one depending on a fact afterwards to happen.

The argument which controverts the proposition, that the legislature designed in no instance to subject the refiner of sugars to the tax on the article, till a sale should take place, is founded on the circumstance, that the refiner may be himself a retailer, and may remove his sugars from the building to his retail store, and thus become liable for the tax before the sale. But the fallacy of this argument is immediately detected. A person acting in two distinct characters must, in many respects, be considered as two distinct persons. The refiner, who is, in a different place, the retailer of sugars, must be considered as selling them from the manufactory, when he sends them out of it to his retail store. The law contemplates the fact exactly in the same manner, and must give to it the same effect, as if they had been sent to the retail store of a different person, and considers them as sold.

It has also been contended, that the proviso in the act would be unnecessary, and absolutely inoperative, unless it be construed to apply to the duties on the sugars remaining in the building on the 30th of June. Those duties which were bonded, cannot, it is said, be the object of the proviso, because they, in contemplation of law, are not outstanding: they are p id by the bond given by the debtor, and there remains only the duty on sugars not sent out, which is outstanding, and is to be preserved by this part of the act. It requires but a very slight attention to the subject, to perceive, that this argument is not entitled to the weight which has been attributed to it.

The act imposing the duty, does in terms speak of its being bonded, in contradistinction to its being paid. The duty is either to be paid, or secured by bond. To say, then, that a duty secured by bond was not outstanding, in contemplation of the legislature, but was paid, would be to violate the very words of the act.

*In addition to this circumstance, it ought to be observed, that the repeal takes effect at the close of the 30th of June, and the law [*64 has no existence on the 1st of July. Yet the duties on sugars sent out during the last quarter are to be secured or paid on the 1st of July. All admit, that there was no disposition to relinquish these duties. Of consequence, if the proviso could be necessary in any possible construction of the law, it was necessary in this case.

After the most attentive consideration of the acts of congress, and the arguments of counsel, the court is of opinion, that the duties on refined sugars remaining in the building on the 1st of July 1802, had not then accrued, and were not then outstanding. The judgment of the circuit court, which was in favor of the plaintiff below, must, therefore, be reversed, and judgment rendered for the plaintiff in error.

The Charming Betsy.

Alexander Murray, Esq., *v.* The Schooner Charming Betsy.

Marine trespass.—Probable cause.—Damages.—Expatriation.—Armed vessel.

An American vessel, sold in a Danish island, to a person who was born in the United States, but who had *bonâ fide* become a burgher of that island, and sailing from thence to a French island, in June 1800, with a new cargo purchased by her new owner, and under the Danish flag, was not liable to seizure, under the non-intercourse law of 27th of February 1800.[1]

If there was no reasonable ground of suspicion that she was a vessel trading contrary to that law, the commander of a United States ship of war, who seizes and sends her in, is liable for damages.[2]

The report of assessors appointed by the court of admiralty to assess the damages, ought to state the principles on which it is founded, and not a gross sum, without explanation.

An American citizen, residing in a foreign country, may acquire the commercial privileges attached to his domicil; and by making himself the subject of a foreign power, he places himself out of the protection of the United States, while within the territory of the sovereign to whom he has sworn allegiance.

Quære? Whether a citizen of the United States can divest himself absolutely of that character otherwise than in such manner as may be prescribed by law?

Whether, by becoming the subject of a foreign power, he is freed from punishment for a crime against the United States?

What degree of arming constitutes an armed vessel?

The facts of this case are thus stated by the District Judge in his decree.[3]

"The libel in this cause, is founded on the act entitled "an act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof" (27th February 1800, 2 U. S. Stat. 7); and states that the schooner (The Charming Betsy) sailed from Baltimore, after the passing of that act, owned, hired or employed by persons resident within the United States, or by citizens thereof, resident elsewhere, bound to Guadaloupe, and was taken on the high seas, on the 1st of June 1800, by the libellant, then commander of the public armed ship the Constellation, in pursuance of instructions given to the libellant, by the President of the United States, there being reason to suspect her to be engaged in a traffic or commerce contrary to the said act, &c. The claim and answer, replication and rejoinder, are referred to for a further statement of the proceed-
*65] ings *in this case, on all which I ground my decree. On a careful attention to the exhibits and testimony in this cause, and after hear-

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[1] And see Sands *v.* Knox, 3 Cr. 499.

[2] Maley *v.* Shattuck, 3 Cr. 458; s. c. 1 W. C. C. 245. And see The Eleanor, 2 Wheat. 345.

[3] In the district court of Pennsylvania, Peters, J.