Peasler, (2 Cur., C. C., 235); *Thompson* vs. *Maxwell*, (2 Blatch. C. C., 391).

Persons importing merchandize are required to make their protests distinct and specific, to apprise the collectors of the customs of the nature of the objections made to the payment of the duties before it is too late to remove them or to modify the charge, and in order that the officers of the Government may know what they have to meet in case they decide to exact the duties, notwithstanding the objection, and expose the Government to the risk of litigation. For these reasons we are of the opinion that the second question presented for the consideration of the Court must also be answered in the negative, and consequently the plaintiff cannot recover in this case. Having come to that conclusion it is unnecessary to consider the question arising upon the merits The judgment of the Circuit Court therefore is reversed with costs, and the cause remanded, with instructions to issue a new venire.

TAYLOR *vs.* MORTON.

1. A case coming into this Court from the Circuit Court on a writ of error, issued under the 22d section of the Judiciary Act, when the record shows that no exception was taken below, is not to be treated like a case with a similar record which comes up from a State Court under the 25th section.
2. In a case which comes from a State Court, under the 25th section, it must appear by the record that some one of the questions stated in that section arose and was determined, otherwise this Court is wholly without jurisdiction and can only dismiss the writ
3. If the cause is brought up from a Circuit Court it is to be either affirmed or reversed, and it will of course be affirmed if the record does not present some ground of reversal.

This was a writ of error to the Circuit Court of the United States for the District of Massachusetts. It was like the case of

Curtis vs. *Fiedler*, (*supra*), an action of assumpsit against a collector of customs for exacting excessive duties on an importation of hemp from Russia. The questions raised and argued in the Court below were the same as those presented to the Circuit Court of New York, in *Curtis* vs. *Fiedler*; but they were decided differently, the verdict and judgment in this case being in favor of the defendant, and it was the plaintiff who took this writ of error. It did not, however, appear from the record that the ruling of the Court, on any question of law, was objected to on the trial, and there was no bill of exceptions which made either the evidence or the instructions of the Court a part of the record.

The same counsel appeared in this cause and in the other, namely:

Mr. Cushing and *Mr. Gillet*, for the Plaintiff below; and

Mr. Coffey and *Mr. Butler*, for the Defendant below.

Both cases were argued together. But on the part of this defendant in error the counsel suggested that the writ of error ought to be dismissed, without considering the questions attempted to be raised by the other side.

Mr. Justice CLIFFORD. This was an action of assumpsit, and the case comes before the Court upon a writ of error to the Circuit Court of the United States for the District of Massachusetts.

Suit was brought by the present plaintiffs against the defendant as the Collector of the Customs for the the Port of Boston and Charlestown, to recover back an alleged excess of duties exacted of the plaintiffs by the defendant on certain unmanufactured hemp imported by them from Russia in 1846. According to the transcript, the action was entered at the May Term, 1847, and was thence continued from term to term to the May Term, 1854, when the parties went to trial upon the general issue. Duties charged on the hemp were $40 per ton, whereas

it was insisted by the plaintiffs that the charge should have been but $25 per ton, because by the 6th and 7th articles of the Treaty between the United States and Russia, it is stipulated to the effect that no higher rate of duty shall be imposed on importations from Russia than on like articles from the most favored nations, and by the Tariff Act of the 30th of August, 1842, the duty imposed on manilla, sunn, and other hemps of India, was but $25 per ton. Evidence was introduced on both sides, but the record states that when the evidence was all in, it was agreed that the case should be taken from the jury and submitted to the Court, with authority to draw all such inferences of fact as a jury would be authorized to draw from the evidence, and that a verdict should be entered and judgment should be rendered for the plaintiffs or defendant, as the Court should think proper upon the law and the evidence.

Accordingly a report of the case was made and signed by the counsel of the respective parties. Whether the parties were ever heard upon this report does not very satisfactorily appear, nor does it appear that any decision was ever made by the Court. On the contrary, the record subsequently states that the *ad damnum* of the writ, on motion of the plaintiff, was increased, by leave of Court, from $2,000 to $2,500; and it also states, among other things, that the case was submitted under instructions from the Court to a jury duly sworn to try the same, who thereupon returned their verdict that the defendant did not promise in manner and form as the plaintiffs have declared against him. Judgment was accordingly entered for the defendant, and the plaintiffs sued out this writ of error and removed the cause into this Court. They did not, however, except to the instructions of the Court, and there is no bill of exceptions in the record, nor is there any assignment of errors of any kind. All that appears is the before-mentioned statement that the case was submitted to the jury under instructions from the Court, but the instructions are not given, and there is no error apparent on the face of the record.

1. When a suit is brought into this Court by a writ of error from a State Court under the 25th section of the judiciary act it

must appear on the face of the record in order to maintain the jurisdiction, that some one of the questions stated in that section did arise in the State Court, and that the question so appearing was decided in the State Court, as required in the same section; and if it does not so appear on the record then this Court has no jurisdiction to affirm or reverse, and the writ of error must be dismissed.

2. But the writ of error in this case was sued out under the 22d section of the judiciary act, which provides in effect that final judgments in a Circuit Court, brought there by original process, may be re-examined and reversed or affirmed in this Court upon a writ of error. Consequently, when a cause is brought into this Court upon a writ of error, sued out under that section, and all the proceedings are regular and correct, it follows from the express words of the section that the judgment of the Court below must be affirmed, although there is no question presented in the record for revision. *Minor et al.* vs. *Tellotson,* (1 Howard, 287); *Stevens* vs. *Gladding,* (19 Howard 64); *Suydam* vs. *Williamson et al.,* (20 Howard, p. 440).

The judgment of the Circuit Court, therefore, is affirmed with costs.