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not be pursued at all, in consequence of the loss of register and loss of hands by the capture, either of which, it does not appear, could be supplied, I think, we are not warranted to overrule the verdict, or reverse the judgment.

Judgment affirmed.

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*Collector's commissions.*

The collector of the district of Petersburg was not, by the act of the 10th of May 1800, restricted to a commission of two and a half per cent. on the moneys by him collected and received, after the 30th of June 1800, on account of bonds, previously taken for duties arising on goods imported into the United States.<sup>1</sup>

THIS was a case certified from the Circuit Court of the fifth circuit, holden in the district of Virginia, where a question arose upon which the opinions of the judges were opposed.

The question was, whether the defendant, as collector of the customs for the district of Petersburg, was restricted to a commission of two and a half per cent. on any, or all of the moneys collected and received by him after the 30th of June 1800, on account of bonds previously taken for duties arising on goods, wares and merchandise, imported into the United States.

This question arose upon the 2d section of the act of congress, entitled "an act, supplementary to an act, entitled an act to establish the compensation of the officers employed in the collection of the duties on import and tonnage ;" passed on the 10th of May 1800. (2 U. S. Stat. 72.) The words of which are, "that in lieu of the commissions heretofore allowed by law, there shall, from and after the 30th day of June next, be allowed to the collectors for the districts of Alexandria, Petersburg and Richmond, respectively, two and a half per centum on all moneys which shall be collected and received by them," "for and on account of the duties arising on goods, wares and merchandise, imported into the United States, and on the tonnage of ships and vessels."

<sup>1</sup> "Courts of justice agree, that no statute, however positive in its terms, is to be construed as designed to interfere with existing contracts, rights of action, or with vested rights, unless the intention that it shall so operate is expressly declared, or is to be necessarily implied; and pursuant to that rule, courts will apply new statutes only to future cases, unless there is something in the nature of the case, or in the language of the new provision, which shows that they were intended to have a retroactive operation. Even though the words of a statute are broad enough, in their literal extent, to comprehend existing cases, they must yet be construed as applicable only to cases that may hereafter arise, unless the language employed expresses a contrary intention in unequivocal terms." Twenty per Cent. Cases, 20 Wall. 187; S. P. Sohn v. Waterson, 17 Id. 598-9. This is the construction that ought to have been given

to the legal tender acts; the writer fully concedes the constitutionality of these laws, but he is of opinion, with Judge GRIER (8 Wall. 626), that they have no application to existing contracts; the words of those statutes would be fully satisfied, by applying them to future cases only. The decision, however, in Hepburn v. Griswold, 8 Wall. 603, that they did not so apply, was overruled by the same court, in Knox v. Lee, 12 Id. 457; two new judges having been appointed with reference to their known opinions upon this question. From that time forth, the confidence of the people in the decisions of that high court, has steadily decreased; and culminated in the action of one of those judges, as a member of the Electoral Commission of 1877, of which both of the judges who composed the majority in Knox v. Lee, were members.

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*Breckenridge* (Attorney-General), in behalf of the United States, observed, that the words of the act appeared to him so plain, that they could not be elucidated by argument. He understood the language of the act to be, that only two and a half per cent. should be allowed on moneys received after the 30th of June. Although the collector may have done the greater part of his duty, by taking bonds for the duties, yet they were neither collected nor paid before that day. It cannot be deemed an unconstitutional act, as being *ex post facto*, because the prohibition of the constitution extends to criminal cases only. *Calder v. Bull*, 3 Dall. 386.

\*400] *\*Heth, defendant, in propriâ persona.*—Although it is a sound rule of construction, that when the words of a statute have a plain, distinct and reasonable meaning, no recurrence is to be had to intendment, inference or implication; yet, when the words of a statute admit of two constructions (as in the present case they evidently do, or they would not now be under discussion), it cannot be improper to have reference to similar laws, and to inquire how they have been construed.

The first section of the act of 14th February 1795 (1 U. S. Stat. 416), says, “that in lieu of the commissions heretofore by law established, there shall be allowed to the collectors of the duties on import and tonnage, on all moneys by them respectively received on account of the duties aforesaid, arising on tonnage, and on goods, wares and merchandise, imported after the last day of March next, to wit,” “to the collector of Bermuda Hundred” (which office was then holden by the defendant), “two per cent.” This act raised his commission from one to two per cent.; which two per cent. he charged only on the duties that arose on importations made after the last day of March 1795; and one per cent. only on the money received on bonds, payable after that day for goods imported before.

The act of 3d March 1797 (1 U. S. Stat. 502), raised the defendant's commissions from two to three per cent. in precisely the same language as that of the last act; and of course, it received from him the same construction, and in both instances, that construction was acquiesced in by the treasury department.

The next act upon the subject, and that which next precedes the act in question, is that of 2d March 1799 (1 U. S. Stat. 704), entitled “an act to establish” (a word not used in the titles of the former acts) “the compensations of the officers,” &c., the second section of which runs thus: “that from and after the last day of March next, and in lieu of the fees and emoluments heretofore established, there shall be allowed and paid for the use of the collectors, naval officers, and surveyors, the fees following, that is to say,” &c. (to the collectors of sundry ports, not including the defendant), “and to the collectors of all other districts, three per cent. on all moneys by them respectively received on account of the duties arising on goods, &c., imported into the United States, and on the tonnage of ships and vessels,” whereby the defendant's commissions were established at three per cent. A difference of phraseology will be observed between this and the two former laws. This section says, “that from and after the last day of March next,” certain commissions shall be “allowed and paid” on all moneys received on account of duties arising on goods “imported into the United States,” and not as before, “imported after the last day of March, next.”

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Yet this difference of phraseology made no difference at the treasury, in the construction of this law, until very lately.

The next act is that upon which the present question arises ; the second section of which says, "that in lieu of the commissions heretofore allowed by law, there shall, from and after the 30th day of June next, be allowed to the collectors, &c., two and a half per centum, on all moneys which shall be collected and received by them, for and on account of the duties arising on goods, wares and merchandise, imported into the United States, and on the tonnage of ships and vessels." There is no difference between the words of this act, and those of the act of 1799, excepting that the present act uses the words "collected and received," and the act of 1799, uses the word "received" only. But the word "collected" is believed to be merely an accidental tautology, which cannot alter the meaning of the section.

Neither of the last two, like the former laws on the same subject, confines, by express words, the commissions to the moneys received for duties arising on goods imported after a certain date ; but the word *after*, is placed in a different part of the sentence ; yet all these laws received the same construction at the treasury, for at least five months after this last act had passed ; a construction which, as the defendant still contends, was perfectly correct.

\*The collector can receive no higher or lower commission upon the moneys "collected and received," upon the duties arising on the tonnage of a vessel, than upon the merchandise imported in such vessel. The section of the law in question confines the change of commissions to the money arising on goods imported after the 30th of June, and on the tonnage of vessels, as strongly as if the words "after the 30th of June," had immediately followed the word "imported." The participle "arising," must refer to the time when the section is to take effect, *i. e.*, "from and after the 30th of June next." The duties arise when the goods are landed, and when the bonds are taken. To what time the words "arising" and "imported" relate, is not, perhaps, at first view, very obvious ; but the date is found in the preceding part of the section. The only period mentioned throughout is "the 30th day of June."

The true reading of this section must be thus : "There shall be allowed on all moneys to be received for duties arising on goods imported after the 30th of June next." To speak of duties "arising" after the 30th of June 1800, on goods imported and landed before that day, would be absurd ; for the duties "arise" as soon as secured, though not received until a distant period. The word "imported," stands without any sign of time, and may be past, present or future, with equal propriety, unless resort be had to inference, and to the context. The language, to have been precise, should have been either "which may have been imported," or "to be imported." The word, however, standing without the explanatory signs, must receive that construction which is most consonant to justice, reason, and common sense.

By the 63d section of the collection law of 2d March 1799, it is enacted, "that the duties imposed by law on the tonnage of any ship or vessel, shall be paid to the collector, at the time of making entry of such ship or vessel ; and it shall not be lawful to grant any permit, or to \*unlade any goods, wares, or merchandise whatever, from such ship or vessel, until the said tonnage duty is first paid."

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It being admitted by the attorney-general, that the import-duties and the tonnage-duties must go hand-in-hand, no one can be at a loss for the time when the duties on the goods imported in any ship or vessel arose. It would be absurd, to say that the defendant was entitled to three per cent. upon the money received for the duties on the tonnage of the vessel which arrived and entered on the 20th of June, and only two a half per cent. upon the moneys which might fall due, and be collected and received by him after the 30th of June, for and on account of the duties which had arisen on the 20th of June, upon the goods imported in the same vessel.

Had it been the intention of congress to have raised the commissions of some collectors, and to have reduced those of others, for like services performed under a former law, they would have said, "that from and after the 30th day of June next, the commissions hereby allowed, shall be upon all moneys by them respectively received, for and on account of the duties on goods, &c., which may be then due to the United States, and outstanding upon bonds, or which shall arise on goods, &c., imported into the United States. But had such been the language of the law, it would have been unconstitutional, because *ex post facto*, and tending to impair the obligation of the contract which was made between the United States and the collectors, by the act of 1799. Yet the construction now contended for by the attorney-general, will give the law the same effect, as if its language had been as just stated; for it will take from the collector one-half per cent. on the amount of bonds, which were outstanding at his office on the 30th of June 1800, and which, of course, had been taken under the preceding act of 1799, by which his commission was established at three per cent.

This construction will also involve both absurdity and oppression.  
\*404] \*Suppose, a person, on the 29th of June 1800, had secured duties, by bonds, to the amount of \$500, payable at eight, ten and twelve months; and that ten other citizens had made entries on the same day, the duties on which amounted only to \$49 each, which, being under \$50, they were each obliged to pay down, and upon which the collector immediately received his commission of three per cent.; yet, if the late construction of the treasury be correct, the collector was entitled to receive only two and a half per cent. upon the bonded duties, although his responsibility and services were much greater than in the other cases, in which he received his three per cent. on duties which arose at the same time, on goods imported at the same time, and in the same vessel, and although the bonds were taken under the same law of 1799, which expressly established a commission of three per cent., from and after the last day of March, upon all moneys received for duties arising on goods imported into the United States, until a new provision should be enacted and go into operation; that is, in effect, until the 30th day of June 1800; for it never could have been the intention of congress, that compensation laws should apply to other cases than such as should originate after such laws should go into operation.

Another case will show how the present construction of the treasury might have proved extremely oppressive to the defendant. Suppose, that when he rendered his quarterly account to the treasury, up to the 1st of April 1800, there were then outstanding bonds for duties in his office, to the amount of \$150,000. He had a right to calculate upon receiving, in the course of the year, \$4500 for his commissions thereon, and to make his en-

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gagements accordingly. After making such engagements, the law interferes, to the utter ruin, perhaps, of the collector, who relied upon the faith of his government. If congress have a right to take away one-sixth part of the collector's compensation, for services already rendered, they may take the whole. The laborious and responsible part of those services is performed, when the bonds are taken. It consists in receiving the entries of merchandise, examining invoices, classing and estimating duties, and taking bonds, with responsible sureties, &c. Indeed, the residue of the services is mere matter <sup>\*</sup>of form, in many instances, for the bonds so taken are lodged in the bank where the moneys are "collected and received," though the collector acknowledges the receipt of them in his weekly returns. It can never be permitted to the United States, after these services are rendered, to say, we have changed our mind; instead of three per cent. you shall have but two and a half per cent. Such a conduct on the part of an individual would be treated with contempt and indignation; or were this a case between a state and one of its citizens, and the state should come into this court for relief, the court would not hesitate to compel the state to perform its contract. The constitution of the United States, Art. I., § 10, says, "no law impairing the obligation of contracts shall be passed."

If the treasury construction prevails, it will, in almost every instance, confine the operation of the act of 1799 to three months, instead of allowing it to operate until the next law took effect; for one-third of all the bonds taken in July 1799, for duties on European goods, and all the bonds taken for duties on wines and teas, did not fall due until July 1800.

Suppose, the law had contained such a clause as this, "that from and after the 30th day of June next, in lieu of the duties heretofore imposed by law, on goods, &c., imported from Europe, subject to a duty of twelve and a half per cent. *ad valorem*, there shall be charged only a duty of ten per cent. *ad valorem*, upon all such goods, &c., imported into the United States." Suppose, a ship from London had arrived on the 13th day of June 1800; that all the cargo had been duly entered and discharged, before the end of the month, except one consignment of considerable value, and that, after the expiration of fifteen working days, such goods had been taken from on board, and stored agreeable to law. Upon the 1st of July, the assignee appeared before the collector, with his entry duly made out, and his sureties ready to enter into bonds for the duties. The collector contended for the duties at twelve and a half per cent. *ad valorem*; the consignee offered to secure the duties at ten per cent. *ad valorem*. Would this court say, that he was not bound to pay the twelve and a half per cent. duties, because, from <sup>\*</sup>neglect or design, he did not secure the payment of the duties, and take away his goods when the other importers did?

The difference of phraseology between the two former and two latter laws, on the same subject, was not the effect of a design to benefit one collector, and to injure another; but was merely owing to the different manner in which different men will ever express themselves, in defining the same subject-matter.

*Breckenridge* (Attorney-General), in reply.—No argument, in favor of the defendant can be drawn from the act of 1795 (1 U. S. Stat. 416), for the words there are expressly "on goods, &c., imported after the last day of

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March," but the words of the present act differ very materially; instead of saying, on goods imported after the 30th of June, it says, on moneys collected and received after the 30th of June. The difference of phraseology used by the legislature, when legislating on the same subject, evidently implies a difference of intention.

The word "arising," makes no difference in the construction of the sentence. It would have the same meaning, if that word were entirely left out. The expression "duties on goods" is the same, in effect, as the expression "duties arising on goods." That part of the sentence is only descriptive of the subject, or fund, out of which the moneys were to be received. The words of the act of 1797 (1 U. S. Stat. 502), which gave the defendant a commission of three per cent. are "on all moneys received on account of the duties arising on tonnage, and on goods, wares and merchandise, imported after the last day of March, in the present year." Here is the same remarkable difference in language, which was observed in the act of 1795; and which adds strength to the argument, that the variation of the expressions was not accidental, but intended to convey a different signification.

The words of the act of 1800 are not, that the collector shall receive only two and a half per cent. on the duties arising on goods imported after the 30th of June; but on all moneys collected and received, after that day, on goods imported at any time. Moneys due, by bond, <sup>\*407]</sup> are not moneys collected and received. The actual collection and receipt of the money, was the only act which could entitle the collector to his commission, under either law; and if collected and received after the 30th of June, only two and a half per cent could be demanded.

JOHNSON, J.—This is an amicable suit, instituted to try the question, whether the defendant, lately collector of the port of Petersburg, was, after the 30th day of June 1800, entitled to retain three per centum on the amount of sums received by him after that time, upon bonds for duties taken between that period and the last day of March 1799. The claim of the defendant is founded upon the act of March 2d, 1799, "to establish the compensations of the officers employed in the collection of the duties," &c. And the opposition on behalf of the government, is founded on the act of May 10th, 1800, supplementary to the one mentioned.

The whole difficulty results from the vague signification of some of the expressions made use of in the latter act; which, so far as may be material to the present decision, are contained in the following extract from the 2d. section: "That in lieu of the commissions heretofore allowed by law, there shall, from and after the 30th day of June next, be allowed to the collectors for the districts of Alexandria, Petersburg and Richmond, respectively, two and a half per centum on all moneys which shall be collected and received by them," "for and on account of the duties arising on goods, wares and merchandise imported into the United States, and on the tonnage of ships and vessels."

On behalf of the United States, it is contended, that the rights of the collectors of duties, with regard to their compensation, are absolutely submitted to the will of congress; that congress has uniformly increased or diminished that compensation, as circumstances suggested the expediency of

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such a measure, without regarding any supposed limitation of their right to do \*so, imposed by the claims of their officers; that it has been the [\*408 uniform policy of the government, to apportion the commission to the actual receipt of money; and therefore, whatever may have been the proportion of their labor or responsibility, their right to compensation was not consummated, before the actual receipt of the duties, and the amount of their commission remained liable to be increased or diminished, at the will of congress; that in passing their act of May 10th, 1800, they had a right to give it a retroactive operation; and the latter words of the 2d section, "arising on goods imported," will bear, and ought to receive, such a construction.

At the same time, that I admit the correctness of the prefatory observations of the attorney-general, my mind is led to adopt a conclusion unfavorable to the construction which he contends for. The rights of the collectors of duties, as to their compensation, are certainly submitted to the justice and honor of the country that employs them, until consummated by the actual receipt of the sums bonded in their respective offices; but where an individual has performed certain services, under the influence of a prospect of a certain emolument, that confidence which it is the interest of every government to cherish in the minds of her citizens, a confidence which experience leaves no room to distrust in our own, would lead to a conclusion, that it could not have been the intention of the legislature, to defeat a reasonable expectation of her officer, suggested by her own laws. Unless, therefore, the words are too imperious to admit of a different construction, it will be gratifying to the court to be able to vindicate the justice of the government, by restricting the words of the law to a future operation.

That it is the policy of the United States, in granting compensations to her revenue officers, to limit the consummation of their right to the actual receipts of money, is evident, from a view of all her acts on that subject. But it is observable, that every end of that policy is answered, in this case, because the claim of the defendant is founded upon the actual receipt of money \*arising upon bonds taken while the compensation was at three per [\*409 cent. His claim has no relation to the amount bonded, but to the amount actually received upon the bonds taken prior to the last act.

Upon considering the question, therefore, upon the construction of the act, I confine myself to the single inquiry, how far the government has exercised its power, in reducing the compensation to the defendant, from three to two and a half per cent. The words of the act, "arising on goods imported," although, in themselves, very indefinite in point of time, will receive a precise signification in this respect, by supplying the words "heretofore," to give them a past, or "hereafter," to give them a future signification. If it be necessary, that the court should make an election between these words, in order to complete the sense, its choice will be immediately determined, by recurring to two well-known rules of construction, viz., that it ought to be consistent with the suggestions of natural justice, and that the words should be taken most strongly "*contra proferentem.*"

But there are other considerations which will lead to a conclusion, without supplying any supposed deficiency in the wording of the sentence. There is nothing, either in the terms made use of, or in the professed object of the law, necessarily retrospective; but the general intention of the act, as well as the signification of the word arising, both point to a future opera-

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tion. Besides which, where it can be shown, that a government has once adopted a certain rule of justice for its conduct, it is fair to infer, that in legislating afterwards upon the same subject, it intended to pursue the same rule, unless the contrary shall be clearly expressed; and in the act of March 3d, 1797, which varies the compensation of the revenue officers in several particulars, that alteration is expressly restricted to take effect only with regard to future importations. I am of opinion, that the defendant shall have judgment.

\*410] **WASHINGTON, J.**—The point submitted by the circuit court of Virginia to this court is, whether the defendant, as collector, was restricted to a commission of two and a half per cent. on any, or all of the moneys collected and received by him, after the 30th of June 1800, on account of bonds previously taken for duties arising on goods, &c., imported into the United States.

The solution of this question must depend upon another: does the 2d section of the act of the 10th of May 1800, extend to duties which arose upon goods imported before, and received after, the 30th of June, in that year? or is it to be restricted to duties arising on goods which should be imported after that period?

I am strongly inclined to the opinion, that every part of this section is future, and that a literal construction will render it entirely prospective upon the whole subject. The time at which the substitution of two and a half for three per cent. is to take place, as well as that of collection and receipt, are certainly future, and there is, I think, as little doubt, that those receipts can only apply to duties which should arise after the same period, the word arising being clearly future, in relation to the time specified in the section. The word “imported,” though past, in relation to the duties which were to arise on the goods imported, may, nevertheless, be future, in relation to the period when the charge of commissions was to take effect, and I think it ought to be so construed in this case, because the duties arise either immediately upon the importation of the goods, or upon the performance of some acts which, in contemplation of law, are immediately to follow the importation.

This construction is, I think, considerably strengthened by a reference to former laws upon the same subject. The act of March 1797, is plain and express upon this point, by fixing the commissions allowed by that law to moneys received on goods imported after the last day of that month. The 2d section of the act of March 1799, was obviously intended to increase the \*411] commissions \*of some collectors, and to vary the relative compensations which had been allowed to the several collectors, by the former law; but there is no reason to believe, that it was intended to change the objects for which this compensation to the collectors generally was to be allowed. Yet this law does not, in express terms, confine the commissions to duties arising on goods imported after the specified day, as had been done in the preceding act, but is worded, in this respect, precisely like the law immediately under consideration.

It is hardly to be imagined, that over and above the increase of commissions allowed by the last law, for services after the 31st of March, to be wholly rendered, the legislature intended to increase the commissions allowed by the act of 1797, for services which had been in part performed before the

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31st of March 1799, without an expectation of such increase, and where nothing remained to be done but to receive the money. Yet this would be the case, if the increase be not restricted to goods imported after the specified day, The change of expression in the latter law, I take to be perfectly accidental; and, in construing one of them by the other, both being *in pari materia*, I feel myself constrained to read the latter, as if it had been expressed thus: "That after the last day of March 1799, there shall be the following commissions allowed on all moneys received by the collectors respectively, on account of duties arising on goods, &c., imported into the United States, after that day," &c.

The 2d section of the act of 1795 was clearly intended to diminish the compensation of some, and to increase that of other collectors, and can, with as little reason as in the former case, be construed to change the objects for which this compensation was allowed. Such a construction would have the effect raising the compensation of some collectors, and depressing that of others, for services partly performed at the same time, and in some instances, where those which remained to be done, in order to consummate the right to the commissions, were transferred from the collectors to the banks. This would I think, be unreasonable, \*and in the instances of diminished commissions, would be unjust. [\*412]

That the services performed, preparatory to the collection or receipt of the duties, were considered, by the legislature, as equal, at least, to the receiving of the money, is proved by the 4th section of the law of 1799, which provides, that whenever any collector should die or resign, the commissions to which he would have been entitled on the receipt of all duties by him bonded, shall be equally divided between the collector resigning, or the legal representatives of the deceased collector, and his successor, whose duty it is made to collect the same.

I cannot, therefore, consent to such an interpretation of this law, as to give it a retrospective operation, so as to deprive an officer of a compensation previously allowed by law, for services admitted by the legislature to deserve compensation, and to be in their nature severable, from the ultimate act of the money being received or collected, provided those acts are in reality performed. My opinion is, that the defendant is entitled to three per cent. on all moneys collected and received by him, after the 30th June 1800, on account of bonds previously taken, for duties arising on goods imported into the United States.

**PATERSON, J.**—The basis of this action is the statute of congress of the 10th of May 1800; and the question is, whether the defendant is restricted to a commission of two and a half per cent. on moneys collected and received after the 30th of June 1800, by virtue of revenue bonds, executed previously to that date? The words of the statute are, "that in lieu of the commission, heretofore allowed by law, there shall, from and after the 30th of June next, be allowed to the collectors of Alexandria, Petersburg and Richmond, respectively, two and a half per cent. on all moneys which shall be collected and received by them, for and on account of the duties arising on goods, wares and merchandise imported into the United States, and on the \*tonnage of ships and vessels." The defendant was late collector of the customs for the district of Petersburg, in the state of Virginia. [\*413]

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Words in a statute ought not to have a retrospective operation, unless they are so clear, strong and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied.<sup>1</sup> This rule ought especially to be adhered to, when such a construction will alter the pre-existing situation of parties, or will affect or interfere with their antecedent rights, services and remuneration; which is so obviously improper, that nothing ought to uphold and vindicate the interpretation, but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.

The word "arising" refers to the present time, or time to come, but cannot, with any propriety, relate to time past, and embrace former transactions. As to the word "imported," it may comprehend the past or future, or both, according to the subject-matter, and the words with which it is associated. Thus the word "arising," coupled with the words "on goods imported," shows, that the whole clause has a future bearing and aspect, and will not justly admit of a retroactive construction. According to this view of the subject, the commission of two and a half per cent. is to be restricted to moneys received by the collector of Petersburg, on account of the duties arising on goods, wares and merchandise which shall be imported after the 30th of June, when the act went into operation.

To fortify the foregoing construction, it may be added, that the words of a statute, if dubious, ought, in cases of the present kind, to be taken most strongly against the law-makers.

CUSHING, J.—The question referred to this court by the circuit court is, whether the defendant, as collector, by the act of the 10th of May 1800, was restricted to a commission of two and a half per cent. on any or all of the moneys collected and received by him, after the 30th June 1800, on account of bonds previously taken for duties arising on goods, wares and merchandise imported into the United States.

There was a prior act of congress, entitling the defendant to three per cent. on all moneys received on account <sup>\*414]</sup> of duties arising on goods imported into the United States, within his district; which act was in full force during the time those duties arose, and until the subsequent act in question of the 10th of May 1800, was to come into operation, which was the 30th of June following; and the question is upon bonds previously taken for duties arising on goods imported before the 30th of June. Upon this question, I am of opinion, that the collector has a right to the three per cent. allowed by the former law, on all moneys secured by bonds previously taken as aforesaid, for duties arising on goods imported before the 30th of June 1800; and that he is not restricted by the latter law to two and a half per cent. And that the general and true intent of the latter law was, to make a new allowance in lieu of the former only on duties arising on goods imported after the last law came into operation, and not to have a retrospective effect, to divest vested rights of the collector; it being unreasonable, in my opinion, to give the law a construction, which would have such a retrospective effect, unless it contained express words to that purpose.

<sup>1</sup> Quoted and approved by Justice BRADLEY, in *Sohn v. Waterson*, 17 Wall. 598. And see *Harvey v. Tyler*, 2 Id. 347.

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Whether the words "from and after the 30th of June," are in the beginning, middle or end of the sentence, the meaning, in this respect, appears to me the same; to give the collector a new allowance on goods imported after that time. When the former duties were secured by bond, the laws, I think, consider them, as far as regards the collector's allowance, as collected and received; the principal services being already done by securing the duties by bond.

MARSHALL, Ch. J., being one of the judges whose opinions were opposed in the court below, did not sit at this hearing.

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*Agents and factors.*

¶ foreign merchants send out, by their general agent, written orders to their factor in this country, to purchase tobacco upon their account, but to ship it in the name of the factor, and by those orders, the factor is referred to the verbal communications of the general agent, who undertakes to order the tobacco to be shipped in the name of another person, and declares he has authority from the foreign merchants thus to control and vary their orders; the factor is justified in obeying the new orders of the general agent, though contrary to the first written orders.

ERROR to the Circuit Court of the United States for the district of Maryland.

The action was brought by the plaintiffs in error, to recover from the defendant, Barry, the price of three cargoes of tobacco, purchased and shipped by Barry, for account of the plaintiffs, but which were captured on their way to Spain, and condemned. The ground of the claim was, that Barry had not strictly pursued his instructions as to the shipments.

The transcript of the record contained two bills of exception. In the first bill of exceptions, all the material facts of the case were stated, but the exception was taken only to the opinion of the court, who refused to suffer a witness to be sworn to prove the jury, to what was the true translation of a certain part of the Spanish instructions, as to which the parties differed, although the plaintiffs and defendant consented that the witness should be so sworn. This opinion, it is understood, was founded upon the idea, that the court, and not the jury, was the proper tribunal to decide the meaning and construction of all written evidence.

The facts stated in the first bill of exceptions, and which were referred to in the second, presented the following case: On the 27th of January 1798, Bernardo Lacosta, of Cadiz, in Spain, for and on behalf of the plaintiffs, who were also Spanish subjects, wrote and transmitted to the defendant, by the hands of Juan Alonzo Menendez Conde, a letter in the Spanish language, the following translation of which, purporting to be made by a sworn translator, was read in evidence to the jury.

\*" Cadiz, 27th January 1798.

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"To Mr. James Barry, Baltimore.

" My most esteemed friend:—I derive a particular satisfaction in introducing to you the bearer of this letter, Mr. Juan Alonzo Menendez Conde, who goes to Baltimore, as agent of the house of Messrs. Manella, Pujals & Co., of this place, principally interested in the importation of tobacco for this