
Statement of the case.

GAY'S GOLD.

1. The treasury regulation, No. 22, forbidding all transportation of coin or bullion to any State or section declared by the President's proclamation to be in insurrection, was valid, and was authorized by the act of May 20th, 1862.
2. Gold coin in packages, and not used for travelling expenses, was merchandise in 1864, in point of fact, and was within the mischief to be remedied by the non-intercourse acts of July 13th, 1861, and May 20th, 1862.
3. The proclamation of pardon and amnesty of President Johnson, of December 25th, 1865, was limited to persons "who participated in the late insurrection or rebellion," and to the offence of "treason against the United States, or adhering to their enemies during the late civil war."
4. It did not, therefore, restore to a person not engaged in the insurrection property forfeited under the non-intercourse laws, although the property remained in court, in proceedings not concluded when the proclamation was issued.

APPEAL from the Circuit Court for the District of Louisiana; the case being this:

By a non-intercourse act of July 13th, 1861, it was declared that "all goods, and chattels, wares, and merchandise," coming from a State proclaimed by the President in insurrection, into other parts of the United States, should be forfeited.

The 3d section of an act of May 20th, 1862,* supplementary to the act of July 13th, 1861, just mentioned, enacted as follows:

"That the Secretary of the Treasury be, and he is hereby further empowered to prohibit and prevent the transportation in any vessel, &c., within the United States, of *any goods, wares, or merchandise of whatever character*, and whatever may be the ostensible destination of the same, in all cases where there shall be satisfactory reasons to believe that such goods, wares, or merchandise are intended for any place in the possession or under the control of insurgents against the United States; . . . and he may establish all such general or special regulations as

* 12 Stat. at Large, 404.

Statement of the case.

may be necessary or proper to carry into effect the purposes of this act; and if any goods, wares, or merchandise shall be transported in violation of this act, or of any regulation of the Secretary of the Treasury, established in pursuance thereof, or if any attempt shall be made so to transport them, all goods, wares, or merchandise so transported, or attempted to be transported, shall be forfeited to the United States."

By authority of the section thus above quoted, the Secretary of the Treasury, on the 11th of September, 1863, established, with the approval of the President, certain "Trade Regulations," by the 22d of which all transportation of coin or bullion to any State or section in insurrection was absolutely prohibited, except for military purposes, and under military orders, or under the special license of the President.

On the 25th of December, 1868, President Johnson issued a proclamation granting,

"Unconditionally, and without reservation, to all and every person who directly or indirectly participated in the late insurrection or rebellion, a full pardon and amnesty for the offence of treason against the United States, or of adhering to their enemies during the late civil war, with restoration of all rights, privileges, and immunities under the Constitution, and the laws which have been made in pursuance thereof."

With the acts and regulations already mentioned in force, one Denison, special treasury agent, seized, in March, 1864, a package of gold coin, amounting to \$5000, on board a steamer then lying at New Orleans, about to go up the river, and caused the gold to be libelled in the District Court, on the ground that it was being transported into a section of the country under the control of the rebels, in violation of the acts of non-intercourse, and of the Trade Regulations already referred to.

A claim was entered for the gold, on behalf of one Gay, by a certain Edwards, who made the necessary claimant's oath, denying in general terms that the gold was forfeited.

Gay was a merchant and planter, domiciled within the

Argument against the forfeiture.

Federal lines in Louisiana. He asserted himself to be a loyal citizen, and his technical loyalty was not denied.

The evidence showed that Edwards delivered the gold on board the vessel to one Freeman, and Edwards and Freeman were the main witnesses on behalf of claimant. Edwards testified that he delivered the gold to Freeman to be carried to Gay, who resided within the Federal lines, though near to the region declared by the proclamation of the President to be in insurrection.

Freeman seemed to have been an agent of Gay for the purchase of cotton, buying without regard to its location within rebel lines, and delivering it at New Orleans to Edwards, who was Gay's broker. He denied that there was any intent to use this special package of gold for that purpose, and said that he was to deliver it to Gay as directed by Edwards. Being asked on his examination where Mr. Gay got his cotton, the counsel of the claimant objected to the question as irrelevant, and told the witness not to answer; and he accordingly refused to answer; he also refused under like instructions to answer other questions, and when asked if he, the witness, had not said—as one witness in the case, N. B. La Pointe, swore positively that he had said to him—"that he was carrying the gold into the Confederacy to buy cotton with," answered that he "could not have told such a d—d lie, as the gold did not belong to him, and only took it as matter of accommodation to Mr. Gay." Freeman was apparently a man with no fixed occupation, having a room at the corner of Circus and Gravier Streets, in New Orleans, when he was in that city.

The District Court, on the 29th of April, 1870, dismissed the libel, and ordered the gold to be restored. The Circuit Court reversed the decree and condemned it. From this latter decree the claimant appealed.

Mr. E. T. Merrick, for the appellant:

1. There is really no proof that this money was intended for any place under the control of the insurgents. La Pointe's testimony is directly contradicted by Freeman.

Opinion of the court.

2. But even if the money was thus intended to be used, the case is not within either of the non-intercourse acts. Acts visiting persons with forfeiture are to be construed strictly. Now money is neither goods, wares, merchandise, or chattels.* Tomlin, citing 8th Reports,† and the old but good book *Termes de la Ley*,‡ thus says:

“Money hath been accounted not to be goods or chattels; nor are hares or hounds, such being *feræ naturæ*.”

3. But if neither of the preceding positions can be sustained, still at the time of the trial, the supposed offence of the claimant had been fully obliterated by the amnesty proclamation of December 25th, 1868, and there was no ground for the confiscation of the claimant's property, at the date of the trial and final decree in 1870.

Mr. C. H. Hill, Assistant Attorney-General, contra.

Mr. Justice MILLER delivered the opinion of the court.

The facts disclosed by the claimant's witness, Edwards, his manner of testifying, his relations with the forbidden traffic, and with Gay, leave little room to doubt that, whether the gold was intended to reach Gay's manual possession or not, it was destined to be used in purchasing cotton in the insurrectionary district. It is conceded that Gay was not a rebel, and was, technically at least, a loyal man. He could easily have come to New Orleans and made oath to his claim for the money, and given his own testimony as to the destination of the gold. It is probable that he, or he and Freeman, alone could have sworn knowingly on that subject, and his total silence is significant. Other testimony confirms the inference arising from these facts. We are of opinion that the Circuit Court, which heard the case on appeal, was right in holding that the gold was being transported to a place within the rebel lines.

The question is raised whether gold was within the mean-

* Law Dictionary, *verbo* “Chattels.”

† Page 33.

‡ Page 108.

Opinion of the court.

ing of the act of Congress prohibiting the "transportation of goods, wares, or merchandise intended for any place in the possession or under the control of insurgents against the United States."

The 22d Treasury Regulation on this subject expressly forbids all transportation of coin or bullion to any State or section declared to be in insurrection, except for military purposes, under military orders, or under special license from the President; and the question is, was the regulation authorized by the statute?

The words "goods, wares, and merchandise of whatever character," used in the act of 1862, undoubtedly have the same meaning as the words "goods and chattels, wares and merchandise," in the act of 1861. The word chattel, in its ordinary signification, includes every species of property which is not real estate or freehold,* and the words goods, wares, and merchandise are undoubtedly used in this statute to express the same meaning. But if there could under ordinary circumstances be any doubt on this subject, it is a well-known fact, of which this court can surely take cognizance, that in 1864 gold coin was an article of merchandise, and as such was bought and sold at fluctuating prices, and was the object of a large and active traffic. It would be folly to say that the court could not take notice of what all the world besides knew very well; and we must, therefore, hold that gold coin in package, carried from one person to another, and not used for paying travelling expenses, when intended for an insurrectionary district, was within the prohibition of both the statutes we have cited, as it was beyond doubt within the mischief intended to be prevented.

Some suggestion is made that the final proclamation of amnesty and pardon of the President, of December 25th, 1868, restores to claimant the right of property in this gold, if it had ever been forfeited. But general as the terms of that proclamation are, it is by those terms limited to persons who "participated in the late insurrection or rebellion," and

* 2 Kent, 342.

Statement of the case.

the offences which are pardoned are declared to be "treason against the United States, or adhering to their enemies during the late civil war." As there is no pretence that Gay, the claimant, was one of the persons thus described, or was guilty of, or charged with, the offence which was pardoned, the proclamation can have no application to him or to the present case.

DECREE OF THE CIRCUIT COURT AFFIRMED.

ROBINSON v. UNITED STATES.

1. Where a party agreed to deliver so many bushels of "first quality clear barley," the contract not stating whether the barley was to be delivered in sacks or in bulk, *i. e.*, loose, *held* that evidence was properly received to show a usage of trade to deliver in sacks; such evidence tending not to contradict the agreement, but only to give it precision on an important point where by its terms it had been left undefined.
2. There is no rule, in the nature of a rule of law, that a usage cannot be established by a single witness.

ERROR to the Circuit Court for the District of California; the case being thus:

In June, 1867, Robinson & Co., merchants of San Francisco, entered into a written agreement with Major T. T. Hoyt, assistant quartermaster of the United States, "to deliver," on his order, "1,000,000 bushels of first quality clear barley." The barley, according to the terms expressed in the contract, was to be delivered between the 1st of July, 1867, and the 30th June, 1868, at such times and in such quantities as might be required, for the use of the government troops, and at certain posts named; the precise points at those posts to be designated by the acting quartermasters at the posts themselves. But there was no specification in the instrument of any particular *manner* in which the barley was to be delivered, as whether in sacks or loose, and in what is known as "bulk."

Under this contract Robinson & Co. delivered, *in sacks*, all