this decision it appears that "the importer had a right to appeal to another board of appraisers, differently constituted; and if he did not choose to resort to them, he cannot with much grace afterwards complain that an over-estimate existed." It has been argued that the word "may," to be found in our statute, confers no obligation upon the importer to refer the difficulty to appraisers, and that no other expression but "shall" could have such binding effect. The answer to this objection is, that if the word "shall" had been used in the statute nothing could have been done, no payment could legally have been received by the collector, as long as such reference to appraisers had not taken place, even when all parties were agreed, which would be absurd. The interpretation, and the only rational one, is that it is optional for the importer either to refer his case to appraisers, in order to save his recourse, or to pay the dues, and there the matter ends For the above reasons, I am in favor of reversing the judgment appealed from (Berthelot, J., Circuit Court, Montreal). Both on the want of evidence and on law, the plaintiff's action should be dismissed.

Mackay, J —The appraisement in 1866 gave an advance of 33½ per cent. beyond invoice value. Rooney paid, although notified by defendant, that if dissatisfied he could get a second appraisal by two merchants. McLellan, one of the witnesses examined, proves clearly that the $185 40 in dispute was paid only after such offer to Rooney. He preferred to pay rather than have recourse to the arbitration of merchants The law referring to this case is found in Con. Stat. Ca. cap. 17. It enacts that the collector, if doubting the truth of invoice valuations, may order a custom-house appraiser to value the goods, and upon his appraisal the collector may insist on further duty, but the importer need not pay this unless he please. He may insist, before making any payment, upon a further appraisal by two merchants, upon whose report the duties are to be *finally settled*. Before this statute, the 10 & 11 Vic. (1847) cap. 31, ordered the duties to be finally determined upon merely one appraisement, by two appraisers appointed by the Government. So, the later law afterwards put into the Consolidated Statutes was an extra liberty to importers This law (by which this case and *Joseph* v. *Lewis* are to be disposed of) is ordered by itself to be interpreted in favor of an efficient collection of the revenue. Section 33 says that if the importer is dissatisfied with the appraisement made as aforesaid, he *may* forthwith give notice in writing to the collector, who *shall* select two discreet merchants, &c. "But," plaintiff says, "the act does not provide that it shall be final, if the importer fails to call for a second appraisement by merchants chosen by the inspector. The effect of the act is to give the importer the right to apply to a tribunal of summary jurisdiction if he chooses. He 'may forthwith,' &c , but neither directly nor by implication is he *compelled* to do so. For his right to apply to the ordinary tribunals for redress from illegal exactions is nowhere taken from him The distinction observable in the use of the two words, 'may' and 'shall,' in section 33 of our act, as applicable to the individual and the public officer respectively, is quite remarkable," says the plaintiff, and he adds, "there are nearly analogous cases in 9 Price, p. 310, and in 10 Price, p. 138. In one a landlord was authorized to lay a complaint before two justices on a certain subject, who were empowered to adjudge upon it. But it was held that he was not thereby prevented from applying to the court if he chose."

As to the two words, "may" and "shall," referred to, they are proper words in their places. Had "shall" been used where "may" is, the importer would have had one right less; and look at the absurdity it would have led to. The second appraisal, in all cases, would be necessitated, though the importer might be willing to submit to the first, though dissatisfied. The two words, "may" and "shall" have occurred in like places in other Customs Acts in all countries. Though the act may not expressly make the first appraisal final, that first appraisement may be rendered a finality, that is, if the importer pay; preferring to do so rather than go into further appraisement Standing as at the date of plaintiff's payment to defendant after the first appraisal, what right had plaintiff? Had he the right to elect to come here, *or* to go before the tribunal of the merchants? He might elect to come here, he says; but the court holds the contrary. If the plaintiff prevailed, the Dominion would not get the duties of the statute, but duties after the mode of the plaintiff resorting to this court. The plaintiff's case is very different from that of the landlord in the case in Price; and very different from *Sharp* v. *Warren* cited, where a summary remedy was given by statute, and it was insisted that the parties could not have recourse to their previous right to sue by action at law. But the court held the contrary, and that the objection could only have weight if the statute had been imperative. Looking at the Customs Act of the Consolidated Statutes, at its object, and the tribunal of merchants it erects, we cannot doubt that the plaintiff had to resort to that tribunal if dissatisfied, and could resort to no other. That was and is a tribunal well fitted to dispose of such cases. The work to be done in such cases requires inspection of all manner of goods. How could this court perform such work? Then the duties are to be *finally* those of that tribunal (sec 33), and very properly. It concerns the public that the revenue be promptly gotten in. But under plaintiff's system enormous sums of customs duties money might be put into the *limbo* of the ordinary law courts, and enormous amounts of customs duties money might have to be held by the treasurer as in suspense.

The plaintiff says that his views are correct, and that this may be established by a reference to the recent act consolidating and amending the customs laws, 31 Vic cap 6, sec. 45. This statute adds a new provision to the former one, namely, that the decision of the proper officers shall be held to be final, unless the importer give notice of his dissatisfaction and appeal to the minister of customs, whose decision shall thereupon be final, *unless suit be brought for the recovery back of the duties illegally exacted*, within sixty days after such decision; and it expressly enacts, "that no suit shall be maintained in any court for the recovery of any duties alleged to have been erroneously or illegally exacted, until