

were entered for duty at a lower value,—two sets of invoices being used, one for the purchaser in Canada, and the other for the company's broker at the port of entry.

Held.:—That the oils were undervalued.

2. The company, having changed their manner of doing business in Canada, and having established a warehouse at Montreal, which became the centre and distributing point of their Canadian business, exported oils from Rochester to Montreal in wholesale lots. The invoices showed a price which was not below the fair market value of such oils when sold at wholesale for home consumption in the principal markets of the United States.

Held.:—That there was no undervaluation.

3. When goods are procured by purchase in the ordinary course of business and not under any exceptional circumstances, an invoice disclosing truly the transaction affords the best evidence of the value of such goods for duty. In such a case the cost to him who buys the goods abroad is, as a general rule, assumed to indicate the market value thereof. It is presumed that he buys at the ordinary market value.

4. It is not the value at the manufactory, or the place of production, but the value in the principal markets of the country, *i.e.*, the price there paid by consumers or dealers to dealers that should govern. Such value for duty must be ascertained by reference to the fair market value of such or like goods when sold in like quantity or condition for home consumption in the principal markets of the country whence so imported.

5. Goods seized for fraudulent undervaluation were released upon a deposit of money. The importer made no claim by notice in writing under the 198th section of "The Customs Act, 1883," but there was no question that he claimed the goods. Subsequently he submitted evidence to show there was no ground for the seizure, and the Minister, having considered such evidence, and having heard the parties, acquitted the importer of the charge of fraudulent undervaluation, but found there had been an undervaluation of these and other goods. No proceedings were

taken to condemn the goods within the three years mentioned in section 207 of "The Customs Act, 1883." On petition to recover the money deposit it was

Held.:—That the Minister had waived the notice of claim required by section 198 of the said Act.

Quære.:—Does section 198 apply to a case where money is deposited in lieu of goods seized?

6. The additional duty of 50 per cent. on the true duty, payable for undervaluation under sec. 102 of "The Customs Act of 1883," is a debt due to Her Majesty which is not barred by the three years prescription contained in sec. 207, but may be recovered at any time in a Court of competent jurisdiction.

Quære.:—Is such additional duty a penalty?

CIRCUIT COURT.

MONTREAL, Oct. 15, 1890.

Coram OUMET, J.

PETIT V. THOMPSON, and THOMPSON, opposant.

Procedure—*Venditioni exponas*.

HELD.:—That a copy of judgment or order attached to a writ of execution *fi. fa.* issued from the Circuit Court for the district of Montreal, and designated a writ of *venditioni exponas*, is not such a writ within the meaning of the C. C. P.

The opposant Thompson filed an opposition to a pretended writ of *venditioni exponas* such as was issued from the Circuit Court, district of Montreal, on an order from Charland, J., alleging that the so-called writ was not a writ of *venditioni exponas* within the meaning of the law, and that the procedure was wholly irregular.

W. S. Walker, for opposant, cited Arts. 545, 662, and 663, C. C. P.; *Lush's Practice*, p. 520; *Badgley's Practice*, pp. 255 and 256; *Stephen's Com.* vol. 3, p. 585; *C. S. L. C.*, Cap. 83, Sec. 169; *Bouvier's Law Dict.*, p. 641.

OUMET, J., was decidedly of the opinion that the present procedure of the Circuit Court of the district of Montreal, was objectionable and irregular, no matter what had been the custom in the past, and the writ of *venditioni exponas* which it had been the practice to issue by this Court, could not be looked upon or considered as such a writ within the