MARSHAL SHARPE'S DEADLOCK.

The Collector of the Port and the Marshal of the District on Their Muscle.

Important Decision by Judge Blatchford.

THE COLLECTOR TRIUMPHANT.

We give below the decision of Judge Blatchford, rendered yesterday in the United States District Court, on the question, recently argued, whether the Collector of the Port or the Marshal of the District shall have custody of goods and property seized under government process:—

THE COLLECTOR TRIUMPANT.

The United States vs. One Case, containing Silks and other Property.—Judge Blatchford yesterday rendered his decision in the above case. The learned Judge says:—The libel of information in this case avers that the property proceeded against was "seized on waters navigable from the sea by vessels of ten or more tons burden by the Collector of Customs for the Port and collection district of the city of New York, as forfeited to the United States for violations of the 24th and 68th sections of the act of March 2, 1799, in relation to duties on imports and tonnage. The prayer of the information is, that due process issue in that behalf, as well of attachment, to bring the said property within the custody of the court, as of monition, to all parties in interest, to appear on the return of such process and duly intervene herein, by claim and plea to the premises," and that the property be condemned by decree of forfeiture to the use of the United States.

On the filing of the libel of information a writ was issued to the Marshal of the Southern district of New York, commanding him to attach the property and to detain it in his custody until the further order of the court respecting it, and to give due notice, &c. The writ was returnable September 27, 1870. The return to it made by the Marshal on that day was as follows:—

THE MARSHAL'S RETURN.

I certify that after due diligence I have been unable to attach the property described in the within monition, and to detain the same in my custody. GEORGE H. SHARPE,
United States Marshal.

An affidavit is now presented to the Court on the part of the United States made by a deputy collector of customs at the port of New York. It sets forth that such deputy collector has, under the Collector, the care and custody of all goods seized within this district on account of alleged violations of the customs revenue laws, and of the institutions of proceedings for the recovery and enforcement of fines, forfeitures and penalties under such laws; that there has been ever since April, 1869, and was for a long time prior thereto, in the Custom House at the port of New York, a room especially assigned for the storage of seized goods; that there are employed in said room a storekeeper, an opener and packer and a laborer, all under salary; that until recently, ever since April, 1869, and for a long time prior thereto, it was the custom, where goods had been seized and placed in the seizure room and a suit had been instituted for their condemnation, for the Marshal of the district to call at the Custom House and make inquiry if the goods were in the possession of the Collector, and thereupon to make return upon the monition of the attachment of the goods proceeded against; that some few months since the Marshal made claim to remove from the seizure room and from the custody of the Collector goods against which he held a monition; that thereupon such deputy collector was led

TO INVESTIGATE THE LAW,

and to consult with the District Attorney of the United States; that such investigation and consultation resulted in the Collector's deciding to retain possession of the goods until final adjudication, unless otherwise ordered by the Court; that after some time had elapsed, and after various attempts to procure the submission of the question to the decision of the Court, the Marshal, on the presentation of a monition, and in one or two instances of an alias monition, demanded possession of the goods therein described; that thereupon said deputy collector gave to the Marshal a certificate signed by him in substance as follows:—

COLLECTOR'S CERTIFICATE.

This may certify that the goods (giving marks, &c.) described in the monition now exhibited to me by the United States Marshal, dated ——, are in the seizure room of the Custom House, and in the custody of the Collector of the port of New York. In accordance with section 31 of the act of July 18, 1866, and acting under the advice of the United States District Attorney, the Collector declines to deliver the same to the order of the United States Marshal, but holds the same to abide adjudication, subject to the order of the Court; that a certificate, the same in substance as the foregoing, was given in the present case to the Marshal or his deputy upon his presenting the monition and demanding the goods proceeded against; that a like certificate has been given in like circumstances in other cases which have been instituted since this question was first raised; that all the goods seized are kept in a fireproof room, without any charge for storage or insurance, the only expense being cartage to the seizure room and cooperage for leaking casks; that it has been the practice of such deputy collector to require in all cases where goods for which a suit has been commenced have been for any cause released a direction for their release from the Marshal; that such was the practice in April, 1869; that the deputy collector has continued to require such direction as being evidence of the direction of the Court in the premises, and also evidence that the Marshal has received all fees and costs to which he is entitled, and that it has been the practice to deliver goods which have been condemned to the Marshal or his order for sale. An alias monition, with directions like those in the original motion as to the attachment and detention of the property has been issued in the case to the Marshal. On the records in the cause and the foregoing affidavits a motion is now made to the Court, on the part of the United States, for an order that such alias monition be so modified, in respect to the clause therein contained, commanding the Marshal to attach the property and to detain it in his custody until the further order of the Court respecting it, as to conform to the provisions of the thirty-first section of the act of July 18, 1866 (14 U. S. Stat. at Large, 186), or that he make return thereto, stating the fact that such property was found in the custody of the Collector, and is left in his custody under the provisions of said act. Such motion is made on notice to the Marshal, and is opposed by the Marshal.

Judge Blatchford then enters upon a review of the course of legislation and judicial decision on the subject involved. He concludes at follows:—

JUDICIAL REVIEW.

Nor is the question one which involves the jurisdiction or authority of the Court over the *res* that is prosecuted, or its jurisdiction over the suit in *rem*. The property having been seized as forfeited, and the seizure having been adopted by the United States by bringing the suit *in rem* to enforce the forfeiture, the Court has jurisdiction to decree such forfeiture, and jurisdiction and authority to order the property, under the 86th section of the act of 1799, to be delivered to the claimant on appraisement and bond and the payment of duties, and to cause the property, under the 90th section of the same act, if not bonded, to be, when condemned, sold by the Marshal or other proper officer of the Court, even though the property remains in the possession of the Collector until adjudication.

The views of Mr. Justice Story and of Chief Justice Taney are sound in reference to a case where, in fact, the Collector, and not the Marshal, is to have custody after process. The property is, in contemplation of law, after process, in the custody of the Court, although the Marshal does not take it into his custody, provided it remains in custody, under a seizure for forfeiture, while the proceedings in court against it are pending. The Collector is

ITS OFFICIAL KEEPER

for the Court, after process, and the Court has after process as full control over it in the hands of the Collector, and as full power to compel obedience by the Collector to all orders of the Court respecting it, as if it were in the hands of the Marshal under process. Such appears to have been the view of Judge Betts in respect to custody by the Collector after process under the rules of this Court in regard to the summary proceedings *in rem* in behalf of the United States where the matter in demand did not exceed fifty dollars; and it is a necessary view in respect to all property prosecuted for forfeiture, where the custody after process is given by statute to the Collector.

It follows that not only is the provision of the fourth section of the act of 1792 abrogated by the act of 1866, but the ninth rule in admiralty, in view of the provision of the act of 1866, does not apply to cases like the present one. Such cases are, in the language of the rule, "otherwise provided for by statute."

THE MARSHAL'S DUTY.

Such being the interpretation of the act of 1866, what relief is to be granted on the motion in this case? I think the proper course is to amend the alias monition so that it shall command