Two Hundred Chests of Tea

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Appeal No. : 22 U.S. 430

Appellant : Two Hundred Chests of Tea

Judgement :

Two Hundred Chests of Tea - 22 U.S. 430 (1822)
U.S. Supreme Court Two Hundred Chests of Tea, 22 U.S. 430 (1822)

Two Hundred Chests of Tea

22 U.S. 430

APPEAL FROM THE CIRCUIT

COURT OF MASSACHUSETTS

SYLLABUS

In a libel of information under the sixty-seventh section of the Collection Act of 1796, c. 128, against goods on account of their differing in description from the contents of the entry, it is not necessary that it should allege an intention to defraud the revenue.

A question of fact as to the rate of duties payable upon certain teas, imported as bohea. That term is used in the duty act in its known commercial sense, and the bohea tea of commerce is not usually a distinct and simple substance, but is a compound, made up in China of various kinds of the lowest priced black teas. But by the duty acts it is liable to the same specific duty, without regard to the difference of quality and price.

This was a libel of information filed in the Circuit Court of Massachusetts against two hundred chests of tea alleging that on 8 September, 1819, the collector of the customs for the port of Boston seized at that port the said chests of

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tea as forfeited for having been unlawfully imported at the port of New York in the ship *Ontario* on 29 June, 1819, from Canton, in China, as being that kind and denomination of teas commonly called bohea teas, and afterwards transported coastwise to Boston in the original chests and packages, and there entered as bohea, and that on such seizure and examination, according to law, the chests and packages were found to differ in their contents from the entries, and the teas contained in them to be of a different kind and quality of black teas, and not bohea teas, as represented in the entries. The claim interposed by T. H. Smith stated that the teas in question

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were imported and entered by him at the port of New York as bohea teas and that they are of the kind and denomination called bohea teas, and not of a different kind or quality of teas. The district court pronounced a decree of condemnation upon the testimony taken in the cause, which was affirmed *pro forma* in the circuit court upon appeal, and the cause was thereupon brought to this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

The two hundred chests of tea in controversy in this suit were imported into the City of New York in the ship *Ontario* from China and entered there at the custom house and the duties regularly secured as bohea teas. They were afterwards transported coastwise to Boston, and upon examination there, under the direction of the collector of the district, they were seized as forfeited under the Collection Act of 2 March, 1799, ch. 128, s. 67, on account of their differing in description

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from the contents of the entry. The libel states the facts specially, but contains no allegation of an intention to defraud the revenue. Upon this state of the case, the libel is assailed for a supposed defect arising from the absence of such an allegation. But we think this objection cannot be sustained. The libel follows the language of the enacting clause of the act, which inflicts the forfeiture, and the exemption from forfeiture when the collector or the court shall be satisfied that the difference between the entry and the packages "proceeded from accident or mistake, and not from an intention to defraud the revenue," being found in a separate proviso, is properly matter of defense, to be asserted and proved by the claimant, and is not, according to the course of adjudications in this Court, essential to the structure of the libel itself. This objection, then, may be dismissed without further observation.

Another question of more serious importance is whether the examination and seizure authorized by the 67th section of the act are not limited to the collector of the district where the goods were originally entered and the duties secured, upon importation, and so the case made by the libel is not within the purview of the act, whatever might be the authority of the collector to seize for forfeitures generally, and to assert the claim in a libel properly framed for such a purpose. The decision of this question would require a very minute and critical examination of the whole revenue and coasting acts, and as the Court can satisfactorily

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dispose of the cause upon the merits, in point of fact it is deemed unnecessary to institute so laborious an inquiry.

The claim admits that the teas were imported and entered as bohea teas, and asserts that they are of the kind and denomination called bohea teas, and not of a different kind or quality of teas, and this forms the main point in controversy between the parties. One of the earliest acts of Congress, the act of 20 July, 1789, ch. 2, imposes duties on teas in the following words:

"On bohea tea, per pound, six cents; on all souchong or other black teas, per pound, ten cents; on all hyson teas, per pound, twenty cents; on all other green teas, per pound, twelve cents."

The Act of 10 August, 1790, ch. 39, varied the duties, but retained the same descriptions. The Act of 29 January, 1795, ch. 82, declared that "teas commonly called imperial, gunpowder, or gomee," should "pay the same duties as hyson teas." The Act of 3 March, 1797, ch. 64, laid an additional duty of two cents "upon all bohea tea." And the Act of 27 April, 1816, ch. 107, under which this cargo was imported, levies duties on "bohea, twelve cents per pound; souchong and other black, twenty-five cents per pound; imperial, gunpowder, and gomee, fifty cents per pound; hyson, and young hyson, forty cents per pound; hyson skin, and other green, twenty-eight cents per pound." The legislation of Congress here detailed exhibits a progressive discrimination in the kinds of green teas, but leaves

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the black teas with no other specific discrimination than that of bohea and souchong.

The argument on behalf of the United States is that the two hundred chests of tea, now in controversy are in reality simple congo tea, and not bohea; that the latter is a pure unmixed tea, entirely distinct from congo, and known in China by an appropriate name; that it is to this pure and unmixed bohea tea, that the successive acts of Congress refer, and not to any other mixed tea, though known by the common denomination of bohea. If we were to advert to scientific

classifications, for our guide on the present occasion, it is most manifest, from the works cited at the bar, that bohea is a generic term, including under it all the black teas, and not merely a term indicating a specific kind. But it appears to us unnecessary to enter upon this inquiry, because, in our opinion, Congress must be understood to use the word in its known commercial sense. The object of the duty laws is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. Whether a particular article were designated by one name or another, in the country of its origin, or whether it were a simple or mixed substance, was of no importance in the view of the legislature. It did not suppose our merchants to be naturalists, or geologists, or botanists. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic. And it would have been as dangerous as useless to attempt any other

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classification, than that derived from the actual business of human life. Bohea tea, then, in the sense of all our revenue laws, means that article which, in the known usage of trade, has acquired that distinctive appellation. And even if the article has undergone some variations in quality or mixture, during the intermediate period from 1789 to 1816, when the last act passed, but still retains its old name, it must be presumed that Congress, in this last act, referred itself to the existing standard, and not to any scientific or antiquated standard.

The true inquiry, therefore, is whether, in a commercial sense, the tea in question is known and bought and sold and used under the denomination of bohea tea. We think the evidence on this point is altogether irresistible. It establishes that the bohea tea of commerce is not usually a distinct and simple substance, but is a compound made up in China of various kinds of the lowest priced black teas, and the mixture is of higher or lower quality, according to the existing state of the market. Indeed, from the uniformity of its price in the midst of great fluctuations in the prices of all other teas, it seems rather to indicate the lowest quality of black teas, than any uniform compound. It is accordingly in proof, that old congo teas are often sold as bohea, and have sometimes been imported into our market

under that denomination. In short, whenever black teas are deteriorated by age or are of the lowest price, they are mixed up to form bohea for the market, and are suited to the demand and wishes of the

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purchasers. It is not meant to affirm that there is no such simple and distinct tea known as bohea. All that the evidence justifies us in saying is that this is not the common bohea of commerce. The latter may or may not be a simple substance, according to circumstances. The generic name "bohea," comprehending under it all the varieties of black teas whenever they are at the cheapest price in the market or are of a very inferior quality or are mixed up for sale, they lose their specific names and sink into the common denomination.

Such is the conclusion which, in the opinion of the Court, the evidence in this record justifies and requires. It is true that the Boston witnesses very strongly stated that the present teas are pure unmixed congo, and their testimony is entitled to very great consideration, from their personal respectability as well as their long experience. But the New York witnesses speak with equal positiveness and point, that the present teas are the common bohea of the market, and have been bought and sold as such without hesitation. These witnesses also are entitled to entire credit for the same reasons; they have had great experience, and are of unquestioned credibility. In this apparent conflict of competent and credible witnesses, the only way of reconciling the testimony is to suppose that they do not speak *ad idem;* that the Boston witnesses speak to the specific nature of the particular teas in controversy, and the New York witnesses to their known commercial denomination in their actual state. In

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this way of considering the testimony, the conflict exhibits more a matter of apparent than real diversity of opinion. But if it be not thus reconcilable, it appears to us that the weight of the evidence is so strong, the teas of this description have been long imported into our market as bohea, that no court of justice would feel

itself authorized to inflict the forfeiture under the statute, upon a presumed intentional violation of its provisions. There is indeed something that applies still more forcibly to the claimant under these circumstances than applies in common cases. He came into the tea trade since the peace of 1815, and has been most extensively engaged in it. At the time of his first commercial enterprise, teas of this description were publicly and commonly imported into New York as bohea, and had acquired a known commercial character. He acted upon this settled usage, and if the present seizure can be sustained, he is to suffer for a forfeiture, which he had no adequate means to avoid, and could not have foreseen.

Then as to the intention of fraud. It is said that these teas were imported in congo chests, covered with a thin paper for the purposes of disguise, and that upon inspection it is clear that the original congo still remained in the chests. The circumstance that these are congo chests, whose structure is perfectly known would not justify the conclusion that there was an intention to defraud the revenue, since that structure might attract observation and thus lead to immediate

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detection. It would have been more natural to have disguised congo teas in bohea boxes. But the difficulty that lies in the argument derived from this source is that, upon opening the chests, the contents are proved to be exactly what the New York witnesses call "bohea" and the Boston witnesses "congo." So that the question of fraudulent disguise depends upon the fact, whether the tea be or be not bohea, and if it be settled to be the latter, then the suspicion from this circumstance vanishes. The same answer may be given to all the other circumstances relied on as badges of fraud. They become utterly unimportant if there was not a real misrepresentation of the quality of the tea.

There is one cogent fact which presses with peculiar weight in the consideration of this part of the case. It is that after the present seizure was made and the whole train of suspicions disclosed, the remaining teas, of the same denomination and importation, which were yet in the public stores at New York, underwent a strict examination there under the authority of the officers of the customs. The result of

that examination was an unequivocal opinion that they were the common bohea of commerce, and this result being communicated to the government, no further proceedings were thought necessary to vindicate its rights.

But another fact, which is decisive against the supposition of a fraudulent intention, is that the teas were purchased in China as bohea, at the usual bohea price, and upon their importation into

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New York, were there sold at the usual bohea price. They were sold at prices from thirty-one to thirty-six and a half cents per pound, when, at the same time, and in the same place, congo sold at forty-eight cents per pound. This is not a matter of doubtful or equivocal evidence; it is admitted and proved in the most positive manner. What then could have been the inducement to fraud? Men do not perpetrate frauds upon the revenue from the mere love of mischief, or the wanton disregard of duty. There must be some leading interest, some enticing object in view, to lead them to such a violation of social law and moral sentiment. In the present case, no such motive could exist, for the whole conduct of the party is at war with the supposition. Nay, more, the perpetration of the fraud would have been against his interest. We do not here allude to his private reputation as an opulent merchant, engaged in an extensive commerce in teas, nor to the powerful influence that, under such circumstances, public opinion must have upon him, in its stern and severe, though silent rebukes. But his immediate interest in the same trade and in the same voyage, would be sacrificed by such unworthy proceedings. He would hazard large interests upon a paltry saving in duties, from which he could in the end derive not the slightest benefit.

It has been said that unless the present libel can be maintained, a wide door will be opened for the admission of frauds in the importation of teas. If this be true, it forms no reason for a different judicial construction of the acts of Congress,

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much less for the enforcing a forfeiture where the facts will not warrant it. Congress can provide an easy remedy, by changing the specific duty to a duty *ad valorem,* a policy which has already obtained the sanction of other nations.

It is unnecessary to go further into the discussion of the merits of this case. The judgment of the Court is that the decree of the Circuit Court of Massachusetts, given *pro forma,* ought to be reversed, the libel of the United States be dismissed, and the 200 chests of tea be restored to the claimant. But the court are also of opinion that there was probable cause of seizure, and direct it to be certified upon the record.

Decree reversed.