

Tracy Vs. Swartwout

Tracy Vs. Swartwout

SooperKanoon Citation : sooperkanoon.com/79528

Court : US Supreme Court

Decided On : 1836

Appeal No. : 35 U.S. 80

Appellant : Tracy

Respondent : Swartwout

Judgement :

Tracy v. Swartwout - 35 U.S. 80 (1836)

U.S. Supreme Court Tracy v. Swartwout, 35 U.S. 10 Pet. 80 80 (1836)

Tracy v. Swartwout

35 U.S. (10 Pet.) 80

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Certain casks of syrup of sugar cane were imported into the port of New York, and the agent of the importers offered to enter them and bond the duties at the rate of fifteen percent *ad valorem*, but the collector, acting in entire good faith, under

instructions of the Secretary of the Treasury, refused to allow the syrup to be entered unless bonds were given at the rate of three cents per pound. The consignee refused to give the bonds for the higher duty, and the syrup remained in the possession of the collector for a long time, by which its value was greatly deteriorated. On the trial of the cause, evidence was offered and rejected by the court to show that the importer was not able to give bonds for the higher duty, but this inability was not made known to the collector at the time it offered to make the entry. The Treasury Department became afterwards satisfied that the legal rate of duties was fifteen percent *ad valorem*, and on payment of the duty at that rate, the syrup was delivered to the owner. An action was instituted against the collector to recover damages for the loss sustained by the deterioration of the syrup, and a verdict in conformity with the charge of the court was given for nominal damages only.

The circuit court properly rejected the evidence of the plaintiffs' inability to give the bond demanded by the collector. The fact of inability ought to have been made known to the collector at the time the bond was required.

The Secretary of the Treasury is bound by the law, and although in the exercise of his discretion he may adopt necessary forms and modes of giving effect to the law, yet neither he nor those who act under him can dispense with or alter any of its provisions. It would be a most dangerous principle to establish that the acts of a ministerial officer, when done in good faith, however injurious to private rights and unsupported by law, should afford no ground for legal redress.

Where a ministerial officer acts in good faith, he is not liable to exemplary damages for an injury done, but he can claim no further exemption, where his acts are clearly against law.

The collector has a right to hold possession of imported goods until the duties are paid or secured to be paid as the law requires. But if he shall retain possession of the goods and refuse to deliver them after the duties shall be paid or bond given or tendered for the proper rate of duties, he is liable for the damages which may be sustained by this refusal.

A court may not only present the facts proved in its charge to the jury, but give its opinion as to those facts for the consideration of the jury. But as the jurors are the triers of facts, such an expression of opinion by the court should be so guarded as to leave the jury free in the exercise of its own judgments. It should be made distinctly to understand that the instruction was not given as a point of law by which it was to be governed, but as a mere opinion as to the facts, and to which it should give no more weight than it was entitled to.

The correctness of every charge must depend upon the phraseology used by the court, and of course but little aid from adjudicated cases can be expected in a case like the present.

Page 35 U. S. 81

The collector in point of law had no right to demand a bond for more than the duties at the rate of fifteen percent *ad valorem*, and the plaintiffs were under no obligation to give bond in a greater sum. And the fact of having failed to give such illegal bond was not a circumstance which should have lessened the plaintiffs damages, nor, in point of law, should the good faith in which the defendant seems to have acted exempt him from compensatory damages.

In the argument of the case, the counsel for the defendant objected to the proceeding by writ of error, alleging that as the jury had found for the plaintiffs in the circuit court, the proper course would have been to move the court for a new trial on the ground of the insufficiency of the damages, and that error would not lie, as this was no more than an application to the court for new trial on that ground.

By the court:

"The objection that the proper remedy of the plaintiffs was by a motion for a new trial, and that the question now made on this writ of error is substantially a motion for a new trial seems not to be well founded. The amount of damages found by the jury is only referred to as showing that it considered its verdict as controlled by the direction of the court."

Some personal inconvenience may be experienced by an officer who shall be held responsible in damages for illegal acts done under instructions of a superior, but as the government in such cases is bound to indemnify the officer, there can be no eventual hardship.

This action was commenced by the plaintiffs in error in the Superior Court of the City of New York, and on the suggestion of the defendant that the suit was instituted against him for acts done by him under the revenue laws as collector for the District of the City of New York, and praying that the same should be removed to the Circuit Court of the United States for the Southern District of New York; the cause was so removed to October term, 1833.

The declaration was in trover for certain casks of syrup of sugar cane.

Special counts were added setting forth that the plaintiffs had imported certain casks of syrup of sugar cane on which the duty was fifteen percent *ad valorem*; that the plaintiffs were ready and willing and offered to enter the goods at the legal rate of duty and to give bonds accordingly, and to do every act necessary to making such entry. Nevertheless, the defendant, although he declared himself satisfied with the sufficiency of the offer or tender of the plaintiffs except as to the amount of duties, for which he required bonds in a much larger amount -- over three cents per pound -- for every pound of said syrup, and although

Page 35 U. S. 82

defendant then waived any further tender, nevertheless he refused to allow plaintiffs to enter and secure the duties on the syrup at the rate required by law, and refused to deliver the syrup for a long time -- over eighteen months -- when it was delivered upon payment of the duties at fifteen percent *ad valorem*, whereby plaintiffs were damaged by the deterioration of the property, &c.;, stating the damage specially. The defendant pleaded the general issue.

On the trial it was proved that the goods were consigned by plaintiffs to one F. A. Tracy, of New York, to sell for plaintiffs. That F. A. Tracy, by his attorney, J. S. Carpenter, the witness, offered to enter the goods shortly after the arrival at fifteen

percent *ad valorem*.

The collector said he had instructions from the department not to permit the entry at less than three cents per pound. The witness adds "he said he would permit the entry at fifteen percent *ad valorem*, but should require bonds at three cents per pound."

Sometime after this, Balestier, one of the plaintiffs, arrived in this country, and he went to the collector in company with the witness, E. A. Weeks, and then delivered him the letter set out in the bill of exceptions, making an offer of bonds at fifteen percent *ad valorem*, inquiring whether a formal tender of a bond or bonds as aforesaid was required. He exhibited the bills of lading, invoices, &c.; The collector said

"he could not act, he could not permit him to enter the goods upon the terms and at the rate of duty mentioned in the letter, because it was contrary to instructions from the department. . . . The collector did not refuse an entry to be made, but insisted that the goods should pay a higher rate of duty."

It appeared that the duties demanded were equal, if not greater, than the value of the goods; the consignee would not bond them, and plaintiffs offered to prove that they were unable to furnish bonds at the rate demanded by the collector.

The goods were put in a public store, and remained there a long time; they were finally delivered to the plaintiffs on their bonds, at the rate of fifteen percent *ad valorem*, "the department" having in the meantime changed its views of the law of July 14, 1832. Sec. 17.

Page 35 U. S. 83

After the foregoing evidence had been given, the plaintiffs procured several witnesses to prove that the syrup was worth from eight to ten cents per gallon less when given up by the collector than when the bonds were offered, in consequence of necessarily growing acid by standing.

The court charged the jury

"That admitting the merchandise in question to be subject to a duty of only fifteen percent *ad valorem*, yet the circumstances under which the dispute about the rate of duty arose ought not to subject the collector to the payment of more than nominal damages; that the collector was pursuing what he believed to be his duty, and whatever injury the plaintiffs sustained in not receiving their goods at an earlier day grew out of their own conduct in not entering the goods in the manner offered by the collector, at fifteen percent *ad valorem*, taking the bond, however, to secure the payment of three cents per pound; merely placing the case in a situation to have the question judicially decided as to the rate of duty; no intimation being given that it would occasion any inconvenience to the plaintiffs, to give the bond so required by the collector."

To this charge the plaintiffs' counsel excepted, and the jury found for plaintiffs six cents. The plaintiffs prosecuted this writ of error.

Page 35 U. S. 93

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

This case is brought into this Court by a writ of error to the Circuit court for the Southern District of New York. The suit was prosecuted in that court to recover damages from the defendant, who, as collector of the customs, had refused to allow the plaintiffs to enter and receive the payment of the lawful duties on certain casks of syrup of sugar cane which they had imported into the port of New York.

It is admitted that the law imposed no more duty on the article than fifteen percent *ad valorem*, although the collector, acting under the instructions of the Secretary of the Treasury, required bond for the payment of the above duty, or, should it be required, a duty of three cents per pound. No bond was given, and the syrup remained in the possession of the collector for a long time, by which means its value was greatly deteriorated.

The question for consideration arises out of a bill of exceptions in which the evidence is stated at large, showing the quality of the syrup, the number of gallons imported, and the refusal of the defendant to take bond for the fifteen percent *ad valorem* duty.

It was admitted by the counsel of the plaintiffs that the

Page 35 U. S. 94

defendant acted throughout with entire good faith and under instructions from the Treasury Department.

The plaintiff's counsel offered to prove that they were unable to give bonds for duties at three cents per pound, though they did not state that fact, to the defendant at the time they offered to make the entry.

The court overruled this testimony and instructed the jury

"That, admitting the merchandise in question was only subject to an *ad valorem* duty of fifteen percent, yet the circumstances under which the dispute about the rate of duties arose ought not to subject the collector to the payment of more than nominal damages; that the collector was pursuing what he believed to be the true construction of the law, and whatever injury the plaintiffs may have sustained in not receiving their goods at an earlier day grew out of their own conduct in not entering the goods in the manner offered by the collector, at fifteen percent *ad valorem*, taking the bond, however, to receive the payment of three cents per pound if such should be the legal rate of duties demandable; merely placing the case in a situation to have the question judicially decided as to the rate of duty, no intimation at the time being given that it would occasion any inconvenience to the plaintiffs to give the bond so required by the collector."

Under this instruction the jury found a verdict for six cents damages and six cents costs.

There can be no doubt that the circuit court decided correctly in overruling the evidence of inability in the plaintiffs to give the bond demanded by the defendant.

The materiality of this evidence is not perceived, and if it had been material, it ought not to have been received unless the fact of inability had been made known to the defendant at the time the bond was required.

In the argument, objections were made by the defendant's counsel to the sufficiency of the counts in the declaration, but these do not necessarily come before us in the present posture of the case, and should the judgment of the circuit court be reversed and the cause remanded for further proceedings; if the pleadings be deemed defective, the parties, with the leave of the circuit court, may amend them.

The collector of the customs is a ministerial officer. He acts

Page 35 U. S. 95

under the instructions of the Secretary of the Treasury, who is expressly authorized to give instructions as to the due enforcement of the revenue laws.

Do these instructions, when not given in accordance with the law, afford a justification to the collector or exonerate him from the payment of adequate damages for an injury resulting from his illegal acts?

The circuit court, in its charge to the jury, did not consider these instructions as a justification to the defendant, and in this it was unquestionably correct.

The Secretary of the Treasury is bound by the law, and although in the exercise of his discretion he may adopt necessary forms and modes of giving effect to the law, yet neither he nor those who act under him can dispense with or alter any of its provisions. It would be a most dangerous principle to establish that the acts of a ministerial officer, when done in good faith, however injurious to private rights and unsupported by law, should afford no ground for legal redress. The facts of the case under consideration will forcibly illustrate this principle. The importers offer to comply with the law by giving bond for the lawful rate of duties, but the collector demands a bond in a greater amount than the full value of the cargo. The bond is not given, and the property is lost, or its value greatly reduced, in the hands of the

defendant. Where a ministerial officer acts in good faith, for an injury done he is not liable to exemplary damages, but he can claim no further exemption, where his act are clearly against law.

The collector has a right to hold possession of imported goods until the duties are paid or secured to be paid as the law requires. But if he shall retain possession of the goods and refuse to deliver them after the duties shall be paid or bond given or tendered for the proper rate of duties, he is liable for the damages which may be sustained by this refusal. On the part of the defendant, it is insisted that the charge of the circuit court was on the facts of the case, and was limited to an expression of an opinion on those facts, without any direction at to any matter of law.

A court may not only present the facts proved, in their charge

Page 35 U. S. 96

to the jury, but give their opinion as to those facts for the consideration of the jury. But as the jurors are the triers of facts, such an expression of opinion by the court should be so guarded as to leave the jury free in the exercise of their own judgments. They should be made distinctly to understand that the instruction was not given as a point of law by which they were to be governed, but as a mere opinion as to the facts, and to which they should give no more weight than it was entitled to. And if a fair construction of the charge complained of shall amount to no more than this, it is liable to no valid objection.

The correctness of every charge must depend upon the phraseology used by the court, and of course but little aid from adjudicated cases can be expected in a case like the present.

In 3 Burr 1742, a charge of Lord Camden, when Chief Justice of the C.B. is given, as follows:

"And the said Chief Justice did then and there declare and deliver his opinion to the jury that the said several matters so produced and proved, on the part of the defendants were not upon the whole case sufficient to bar the action, and with that

opinion left the same to the jury."

This instruction, in the language of Chancellor Kent, 12 John. 518, has always been "taken and received as a direction in a point of law."

In the instruction under consideration, the court said to the jury that

"admitting the merchandise in question was only subject to an *ad valorem* duty of fifteen percent, yet the circumstances under which the dispute about the rate of duties arose ought not to subject the collector to the payment of more than nominal damages. . . . That the collector was pursuing what he believed to be the true construction of the law, and whatever injury the plaintiffs may have sustained in not receiving their goods at an earlier day grew out of their own conduct in not entering the goods in the manner offered by the collector, at fifteen percent *ad valorem*, taking the bond, however, to secure the payment of three cents per pound,"

This language seems to be susceptible of but one construction, and that is that as the plaintiffs refused to give the bond required by the collector, who acted in good faith, they ought to recover no more

Page 35 U. S. 97

than nominal damages. That the jury considered this direction as controlling their verdict is clearly shown by the damages which they assessed. And indeed it is not perceived how they could have given any other effect to the charge. It covered the whole case, and must have been received by the jury as a direction on the law of the case. In what other light could they have considered it? The court did not say that exemplary damages ought not to be given, but that under the facts and circumstances of the case, no more than nominal damages should be assessed. The facts of the case were clearly established, and indeed were not controverted, and the amount of damages was the only matter for the investigation of the jury. On this point the jury should have exercised its own discretion, aided if necessary by the opinion of the court in relation to matters of fact and controlled by its direction in matters of law. But the jury was told, as the effect of the whole

evidence, that it ought to give nominal damages only.

The collector, in point of law, had no right to demand a bond for more than the duties at the rate of fifteen percent *ad valorem*; and the plaintiffs were under no obligation to give bond in a greater sum. And the fact of having failed to give such illegal bond was not a circumstance which should have lessened the plaintiffs' damages; nor, in point of law, should the good faith in which the defendant seems to have acted, exempt him from compensatory damages.

In the case of [Greenleaf v. Berth](#), 9 Pet. 299, the counsel prayed the court to instruct the jury that

"the evidence was not sufficient to prove that the said contract between Nicholson and Greenleaf on the one part, and W. Stewart, on the other, had been annulled or rescinded between the parties at any time prior to the execution of the deed by the plaintiff to Morris and Nicholson in May, 1796."

And this Court said,

"If this instruction be considered as asking the court to determine on the effect of the evidence, it was properly refused. It is the province of the jury to weigh and decide on the sufficiency of the evidence, and from the words of the instruction it would seem to be conceded there was some

Page 35 U. S. 98

evidence of the rescission of the contract, as the court was asked to instruct the jury that the evidence was not sufficient to prove the fact. Where there is no evidence tending to prove a particular fact, the court is bound so to instruct the jury when requested, but it cannot legally give any instruction which shall take from the jury the right of weighing the evidence, and determining what effect it shall have. In this view the circuit court did not err in refusing the above instruction."

And again, in the case of [Chesapeake & Ohio Canal Company v. Knapp](#), 9 Pet. 567, this Court said

"But it is insisted that in its instruction the court lay down certain facts as proved which should have been left to the jury. If this objection shall be sustained by giving a fair construction to the language of the court, the judgment must be reversed, for the facts should be left with the jury, whose peculiar province it is to weigh the evidence and say what effect it shall have."

In some cases it may be difficult to determine whether an instruction was given on the facts or the law of a case, but where the jury is instructed what its verdict should be, it is a direction on the effect it should give to the evidence, and it cannot fail to consider the instruction as the law applicable to the facts. This must have been the light in which the jury viewed the charge under consideration, and we think it is the true construction of the language used by the court. In its address to the jury, the circuit court may have qualified by words not reported the sentences contained in the bill of exceptions, but the legal question arise and must be decided from the face of the bill.

The objection that the proper remedy of the plaintiffs was by a motion for a new trial, and that the question now made on this writ of error is substantially a motion for a new trial seems not to be well founded. The amount of damages found by the jury is only referred to as showing that it considered its verdict as controlled by the direction of the court. And this Court considers that direction erroneous in point of law.

Some personal inconvenience may be experienced by an

Page 35 U. S. 99

officer who shall be held responsible in damages for illegal acts done under instructions of a superior, but as the government in such cases is bound to indemnify the officer, there can be no eventual hardship.

The judgment of the circuit court must be reversed and the cause remanded to that court for further proceedings.

