Meredith Vs. United States

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SooperKanoon Citation : sooperkanoon.com/79685

Court : US Supreme Court

Decided On : 1839

Appeal No. : 38 U.S. 486

Appellant : Meredith

Respondent : United States

Judgement :

Meredith v. United States - 38 U.S. 486 (1839)
U.S. Supreme Court Meredith v. United States, 38 U.S. 13 Pet. 486 486 (1839)

Meredith v. United States

38 U.S. (13 Pet.) 486

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

An action was instituted by the United States to recover from the assignees of S. Smith & Buchanan, insolvent merchants, the duties on merchandise imported by them and for which bonds had been given, but which remained unpaid. The United

States had retained, from money awarded under the treaty with France to Lemuel Taylor, who was the surety in the bonds, a sufficient sum to pay the bonds, but had not appropriated the

same towards their satisfaction. The assignees claimed to set off against the demand of the United States the amount due by Lemuel Taylor to the estate they represented, he having been discharged by the insolvent laws of Maryland. The Court said

"Whatever might be the merits of such an equitable claim in any suit brought by Lemuel Taylor, the insolvent, or by his assignee against S. Smith & Buchanan or against their assignees, it could have no proper place in a suit brought by the United States to recover demands justly due to them for duties. It was to them *res inter alios acta,* and the United States was not called upon to engage in or to unravel any of the accounts and setoffs existing between those parties in a suit at law like the present."

The importers of goods do, in virtue of the importation thereof, become personally indebted to the United States for the duties thereon, and the remedy of the United States for the duties is not exclusively confined to the lien on the goods and the security of the bond given for the duties. The duties due upon all goods imported constitute a personal debt due to the United States from the importer, independently of any lien on the goods and of any bond given for the duties. The consignee of goods imported is for this purpose treated as the owner and importer.

The right of the government to the duties accrues, in the fiscal sense of the term, when the goods have arrived at the port of entry. The debt for the duties is then due, although it may be payable afterwards according to the regulations of acts of Congress.

The debt due to the United States for duties on imported merchandise is not extinguished by the giving of bonds, with surety, for the same. The revenue collection act of 1799, ch. 128, requires that the collector should take the bonds for the duties from all the persons who are the importers, whether they be partners or

part owners.

The government of the United States has a right to retain money in its hands belonging to a surety in a bond given for duties which is unpaid until a suit shall be terminated for the recovery of the amount of the duties on the goods due by the importers. The government is not obliged to appropriate the money of the surety to the satisfaction of the bond, but may hold it as a security until the suit is determined.

The United States instituted an action of assumpsit against Jonathan Meredith and Thomas Ellicott to recover from them, as the assignees of Samuel Smith, James A. Buchanan, and Thomas A. Buchanan, formerly trading as merchants under the firm of S. Smith & Buchanan, a certain amount due to the United States for duties; the United States claiming a right of priority of payment against the estate in the hands of the trustees. The deed of trust to the plaintiffs in error was executed by S. Smith & Buchanan, on the 9th of November, 1820.

In July, 1818, there was imported into Baltimore by S. Smith & Buchanan and by Hollins & McBlair a quantity of merchandise from Canton on board the brig *Unicorn,* and in February, 1819, the same persons imported from Calcutta a quantity of merchandise on board of the ship *Brazilian.* In the importation by the

Page 38 U. S. 487

Unicorn, S. Smith & Buchanan had an interest of two-thirds, and of five-ninths in the cargo of the Brazilian, the remaining interest in both importations belonging to Hollins & McBlair.

Entries of the merchandise of both cargoes were made by John Smith Hollins, one of the joint importers, and a partner in the firm of Hollins & McBlair, who, with James A. Buchanan, also one of the joint importers, and a partner in the firm of S. Smith & Buchanan, and a certain Lemuel Taylor, executed to the United States their joint and several bonds for the payment of the duties.

Upon these bonds the United States afterwards instituted actions against each of the obligors and recovered judgments in the Circuit Court for the District of Maryland. These judgments have been twice revived by *scire facias,* and are now in full force and unreversed.

S. Smith & Buchanan afterwards became insolvent, as also did Lemuel Taylor. A large sum of money was awarded under the treaty with France to Lemuel Taylor, which was claimed by Mr. Colt, his assignee, but the United States withheld a part thereof, being the amount of the bonds given for the duties on the importations by the brig *Unicorn* and ship *Brazilian,* for which Lemuel Taylor was surety. A large sum of money was also awarded to Smith & Buchanan, under the treaty with France, which was paid to Messrs. Meredith and Ellicott, their assignees. The sum so received by the assignees was sufficient to pay the amount claimed by the United States for the duties on the portions of cargoes of the *Unicorn* and *Brazilian,* which had been imported by S. Smith & Buchanan, but not enough to pay their partnership debts. The United States had not adverted to the alleged liability of S. Smith & Buchanan for the duties unpaid on their importations when the awards under the French treaty were paid to their assignees.

The case was tried before the Circuit Court of Maryland, and a verdict rendered in favor of the United States. The defendants prosecuted this writ of error.

In the progress of the trial, the defendants, now plaintiffs in error, offered evidence to prove that at the time of Lemuel Taylor's application for the benefit of the insolvent laws of Maryland, he was indebted and still remains indebted to the estate of S. Smith & Buchanan in a sum more than sufficient to pay the whole amount due upon the several bonds for duties before mentioned, but the admissibility of this evidence was objected to by the counsel for the United States, and the court sustained the objection.

Page 38 U. S. 491

MR. JUSTICE STORY delivered the opinion of the Court.

This is a writ of error to the Circuit Court for the District of Maryland. The original action was assumpsit brought by the United States against the plaintiffs in error, who were the original defendants, to recover from them, as assignees under a general assignment of the property of the firm of Smith & Buchanan, the amount of certain duties alleged to be due from the said firm upon certain importations in the brig *Unicorn* and the ship *Brazilian,* out of the funds in the hands of the assignees, upon the ground of an asserted right of priority of the United States to payment out of the same funds.

At the trial upon the general issue, the material facts appeared as follows. In the years 1818 and 1819, Smith & Buchanan and Hollins & McBlair, two separate commercial firms in Baltimore, imported, on their own account as owners, a quantity of goods from Calcutta in the brig *Unicorn* and ship *Brazilian* above mentioned,

Page 38 U. S. 492

on which the present duties were claimed. Smith & Buchanan were the importers and owners of two-thirds of the cargo of the ship and five-ninths of that of the brig, and that proportion went to their possession and use. The remainder of both cargoes belonged to Hollins & McBlair. The entries of both cargoes were made at the custom house at Baltimore by John S. Hollins, one of the firm of Hollins & McBlair, as imported in the vessels, respectively, by Hollins & McBlair and Smith & Buchanan, and Hollins gave bonds for the duties in the common form in his own name, and James A. Buchanan, of the firm of Smith & Buchanan, and Lemuel Taylor, who is admitted to be a mere surety, also executed the same bonds. The condition of the bonds was for the payment of the duties on the goods "entered by the above bounden John S. Hollins, for Smith & Buchanan, and Hollins & McBlair, as imported" in the ship and brig respectively.

Upon these bonds the United States afterwards instituted actions against each of the obligors and recovered judgments in the Circuit Court for the District of Maryland. These judgments have been revived, and are now in full force and unreversed. Smith & Buchanan became insolvent, and after the rendition of the

judgments, Taylor also became insolvent under the insolvent laws of Maryland. One Rosewell L. Colt became the trustee of Taylor, and afterwards, under the treaty of indemnity with France, a large sum of money was awarded to him by the commissioners, and a large sum of money was also awarded to Smith & Buchanan, which has been received by the original defendants as their assignees and is more than sufficient to pay the sums now claimed by the United States, but not enough to pay the partnership debts of the firm of Smith & Buchanan. Taylor applied to the Treasury Department for the usual certificates granted to claimants by the awards under the treaty, but they were refused by the department upon the ground of Taylor's indebtment to the United States upon the aforesaid bonds and judgments. Since that period an arrangement has been made between the government and Colt, the trustee, by which a sufficient sum of the moneys so due by Taylor is reserved in the Treasury to secure the amount of the judgments on the bonds against Taylor, and the residue has been paid over to the trustee. And the present action has been brought by the United States for the benefit of Taylor's trustee in order to give to the latter the full rights and remedies of the United States to a priority of payment out of the moneys of Smith & Buchanan in the hands of the defendants as their assignees. To repel the supposed equity in Taylor as a surety, the defendants offered to prove that at the period of the application of Taylor for the benefit of the insolvent laws, he was largely indebted to Smith & Buchanan, and in a sum more than sufficient to cover the whole amount due upon the duty bonds aforesaid, and still remained so indebted. The court rejected the evidence, and to this rejection the defendants excepted. And this constitutes the first bill of exceptions.

Page 38 U. S. 493

Upon this we have no more to say than that we think the ruling of the court was clearly right. Whatever might be the merits of such an equitable claim in any suit brought by Taylor or his assignee against Smith & Buchanan or their assignees, it could have no proper place in a suit brought by the United States to recover demands justly due to them for duties. It was, as to them, *res inter alios acta,* and the United States was not called upon to engage in or to unravel any of the

accounts and setoffs existing between those parties in a suit at law like the present.

Afterwards the United States asked an instruction to the jury, which was given to the jury, to which the defendants excepted. The defendants then prayed certain instructions to the jury, which the court refused to give, to which refusal the defendants also excepted. These exceptions are spread at large upon the record, and constitute the second bill of exceptions. It is unnecessary to recite them at large, as they are all resolvable into the leading points which have been so fully argued at the bar, and we shall therefore proceed at once to the consideration of these points.

The first question is whether Smith & Buchanan were ever personally indebted for these duties -- or in other words, whether the importers of goods do, in virtue of the importation thereof, become personally indebted to the United States for the duties due thereon, or the remedy of the United States is exclusively confined to the lien on the goods and the security of the bond given for the duties. It appears to us clear upon principle as well as upon the obvious import of the provisions of the various acts of Congress on this subject that the duties due upon all goods imported constitute a personal debt due to the United States from the importer (and the consignee for this purpose is treated as the owner and importer) independently of any lien on the goods and any bond given for the duties. The language of the Duty Act of 27 April, 1816, ch. 107, under which the present importations were made, declares that "there shall be levied, collected, and paid" the several duties prescribed by the act on goods imported into the United States. And this is a common formulary in other acts laying duties. Now in the exposition of statutes laying duties it has been a common rule of interpretation derived from the principles of the common law that where the duty is charged on the goods, the meaning is that it is a personal charge on the owner by reason of the goods. So it was held in *Attorney General v. _____,* 2 Anst. 558, where a duty was laid on wash in a still, and it was said by the court that where duties are charged on any articles in a revenue act, the word "charged" means that the owner shall be debited with the sum, and that this rule prevailed even when the article was

actually lost or destroyed before it became available to the owner. Nor is there anything new in this doctrine, for it has long been held that in all such cases, an action of debt lies in favor of the government against the importer for the duties whenever by

Page 38 U. S. 494

accident, mistake, or fraud, no duties, or short duties have been paid.

The question has also been asked at what time the right of the government to the duties accrues in the fiscal sense of the terms. The answer is, at the time when the goods have arrived at the proper port of entry. This is the established rule adopted by the government in all cases where there has been a new act passed, increasing or diminishing the duties to be paid on goods imported after a specified period. The same doctrine was affirmed by this Court in the cases of *United States v. Vowell,* 5 Cranch 368, and of *Arnold v. United States,* 9 Cranch 104. But although the duties thus accrue to the government as a personal debt of the importer, upon the arrival of the goods in the proper port of entry; yet it is but a *debitum in praesenti solvendum in futuro,* according to the requisitions of the Revenue Collection Act of 2 March, 1799, ch. 128, and therefore if a deposit of the goods is made by the importer or a bond is given by him for the duties pursuant to the provisions of that act, the importer is entitled to the full credit allowed by that act. But it is a mistake to suppose that if a deposit is made or the goods, either with or without a bond given for the duties, the rights of the government for the duties are limited to the lien upon the goods, and cannot, if they are lost or destroyed, be made a personal charge against the importer. On the contrary, the Revenue Collection Act of 1799, ch. 128, s. 62, expressly declares that the goods deposited shall be kept by the collector with due and reasonable care, at the expense and risk of the party on whose account they have been deposited. Our opinion therefore on this point is that the duties due upon goods imported, constitute a personal debt, and charge upon the importer, as well as a lien on the goods themselves.

In the next place, was the debt due for the duties on the goods imported in the present case extinguished by giving the bond by Hollins in the manner before stated? We have no doubt that these bonds, being voluntary bonds, are valid and that Hollins and his sureties are estopped to deny their validity. But the question is not whether they are valid, but whether they are the proper statute bonds contemplated by the revenue act of 1799, ch. 128. It is to be observed that the present case is not one where the bonds were given by the sole importer of the goods, so that the sole question would then be whether the bond of the same party, who was personally liable for the duties supposing the bond to cover all the duties due and payable on the goods, was an extinguishment of the simple contract debt for those duties. But the present is a case where one of several partners, and one of several joint importers, has given his separate bonds for the duties due by law by all the importers, either as partners or as part owners, and therefore where the true question is whether such bonds under such circumstances amount to an extinguishment of the debt due by all the

Page 38 U. S. 495

other importers as partners or as part owners. It is certainly incumbent upon those who assert the affirmative, to show by some clear and determinate language of the Revenue Collection Act of 1799, ch. 128, that the collector was thus authorized to take the separate bonds of one of the importers for the debt of all, and that it was the legislative intention that such separate bonds, when taken, should operate as an extinguishment of the liability of all the other importers. Now it is plain that where the goods are received on deposit, the whole goods, and not merely the share of the partner giving the bonds, are liable for the duties.

Upon a careful review of the other provisions of the act, we are equally well satisfied that in every case within the act, the bond for the duties is required to be given by all the persons who are the importers, whether they be partners or part owners, and that the collector is not by law authorized to take the separate bond of one of the importers in extinguishment of the joint liability of all. The language of the 62d section of the act is

"That all duties on goods, wares, or merchandise imported shall be paid or secured to be paid before a permit shall be granted for landing the same, and where the amount of such duty on goods imported in any ship or vessel, on account of one person only, or of several persons jointly interested, shall not exceed fifty dollars, the same shall be immediately paid, and if it exceed that sum, shall, at the option of the importer or importers, be paid, or secured to be paid, by bond."

Now construing this language distributively, as in our judgment it ought to be construed, to mean by the importer when there is one only, and by all the importers when there is more than one, there is not the slightest difficulty in giving full effect to every word of the act. Construe it the other way, and the word "importers" has no appropriate use which is not included in the other language. The very form of the bond given in the same section, also, shows that it was the intent of the act that all the importers should be parties to the bond, for it prescribes

"Know all men by these presents that we [here insert the name of the importer or consignee, or if by an agent the name of such agent, and of the importers or consignees, and the sureties, their place of abode, and occupation],"

&c.; It is not unimportant also to consider what would be the consequence of a different construction of the act, for if it would lead to importers to substitute collection of the public revenue and enable importers to substitute almost at their own discretion the liability of one of the firm, or one part owner for the liabilities of all, it would open the way not only to many intentional evasions and frauds upon the just right of the government, but also, in cases of the death or insolvency of the acting partner, or part owner, leave the government without redress against those who had almost exclusively enjoyed all the benefits of the importation. On the other hand, the construction which we put upon the act imposes the burden upon these who have enjoyed the benefits and creates a common interest in a vigilant and prompt

discharge of that burden. Nor is there any inconvenience in it, for if all the importers are not present, a letter of attorney may readily be executed which will meet every exigency of commercial business. And we cannot but think that the 25th section of the Act of 1823, ch. 149, which provides that any bond to the United States entered into for the payment of duties by a merchant belonging to a firm in the name of such firm shall equally bind the partner or partners in trade of the person or persons by whom such bond shall have been executed, was intended to meet cases of this sort, and that it demonstrates the understanding of Congress that by the existing law then in force, all the partners were required to join in the bond for the duties.

The remaining point is whether, under the circumstances of the present case, the government has actually received payment of the duties in controversy. We think it has not. By the payment of the moneys due under the French treaty and the awards of the commissioners, there was originally in the hands of the government the sum of sixty thousand dollars awarded to Smith & Buchanan, which was properly and primarily applicable to the discharge of these very duties. But by mere mistake, arising from the circumstance that Hollins alone appeared the principal in the bonds, and Smith & Buchanan being unknown to have been the original importers, that sum was paid over by the government to the present defendants, as assignees. Had the facts been known, the present controversy would have stopped at the threshold by recouping or retaining the amount from the awards. The government has now in its possession the funds, under the awards due to Taylor, the surety on these bonds, and it certainly had the power, if it pleased, to appropriate the same in payment of the debt. The question is whether it has so done. Looking to the whole transactions, we are satisfied that it has not. It retains the funds of Taylor in its hands as security for payment, if the present suit should not be successful; and it has allowed the suit to be brought in the name of the United States, for the benefit of Taylor. It has thus carried out the intent and spirit of the act of 1799, ch. 128, sec. 65, which declares that the surety paying a bond for duties shall have and enjoy the like advantage, priority, or preference for the receipt of the said moneys out of the effects of the insolvent, as are reserved and secured to the United States. We think, then, that no payment has been

made, but that Taylor's funds have been held as a mere special deposit for the indemnity of the government, and to abide the event of the suit, and that to give a different construction to the acts of the officers of the government would defeat their true objects as well as the purposes of substantial justice.

Upon the whole we are of opinion that the judgment of the circuit court ought to be

Affirmed.

The case of *Williams v. United States,* which was submitted to the Court upon the argument in

Page 38 U. S. 497

the present case, is far less stringent in its circumstances in favor of the defendants, and involves far less difficulty. The judgment in that case is also

Affirmed.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland and was argued by counsel. On consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed.