

Maxwell Vs. Griswold

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Decided On : 1850

Appeal No. : 51 U.S. 242

Appellant : Maxwell

Respondent : Griswold

Judgement :

Maxwell v. Griswold - 51 U.S. 242 (1850)

U.S. Supreme Court Maxwell v. Griswold, 51 U.S. 10 How. 242 242 (1850)

Maxwell v. Griswold

51 U.S. (10 How.) 242

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The points ruled in the preceding case of [Greely v. Thompson](#) adopted and applied to this case also so far as they are applicable.

Where the collector insisted upon either having the goods appraised at the value at the time of shipment, the consequence of which would have been an addition of so much to the invoice price as to subject the importer to a penalty, or to allow the importer voluntarily to make the addition to the invoice price and so escape the penalty, and the importer chose the latter course, this was not such a voluntary payment of duties on his part as to debar him from bringing an action against the collector for the recovery of the excess thus illegally exacted.

Like the preceding case of *Greely v. Thompson*, this was an action brought by the defendants in error against Maxwell, the collector at the port of New York, for the return of duties paid under protest.

In January, 1850, the defendants in error imported into New York, in the ship *Matilda*, from Manila, sundry bags of sugar and bales of hemp. The goods were purchased in March and April, 1849, but not shipped until about 24 July, 1849, when the market prices had risen very considerably. The assistant appraiser reported upon the value of the articles, meaning by the word value "the actual market value at the time of shipment to the United States in the principal markets of the country of produce."

The importers paid the duties under protests, one of which was the following:

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" *Protest Notice* "

"New York, January 3, 1850"

"H. MAXWELL, ESQ., *Collector*: "

"We hereby protest against the duties demanded from us by the collector on this importation of plantain bark, or hemp."

"One objection is that the duties, contrary to law and justice, are assessed upon a greater value than the cost of the same when purchased for us for shipment to the

United States, the true costs and charges being the value in the foreign market Manila at the time when purchased for shipment, amount to \$38,197.95, say thirty-eight thousand one hundred and ninety-seven 95/100 dollars. We are required to pay duties upon an estimated and fictitious value, amounting, with charges &c., to \$47,662.95, and we are compelled to enter the goods at their estimated and fictitious value to save penalties and forfeitures and to get possession of our property."

"We protest against being committed to anything by the form of the entry, which we submit to upon compulsion, insisting that they are not according to the truths of the transactions. The sixteenth section of the tariff law of 1842 fixes the date of purchase for shipment as the time in reference to which the value is to be ascertained, except in the case of goods imported into the United States from some country other than that of the growth or manufacture of the imported articles. There is nothing in the eighth section, or any part of the Tariff Act of 1846, nor in any other law of the United States, inconsistent with the sixteenth section of the act of 1842."

"We give notice that we intend to seek redress by suit at law and otherwise, as we may be advised, for the wrong done to us in respect to the excessive duty imposed upon this importation."

"We rely upon the objection we have made, and upon such other objections founded in law and in fact as belong to the case, and we now offer to specify them to the collector, more particularly if requested so to do."

"The sum of money now illegally extorted from us, over and above the true and honest duties, is \$2,366.25, more or less, being 25 percent on the valuation over and above actual cost, as specified in the invoice herewith produced."

"True copy. S. P. R."

"NATH'L L. & GEO. GRISWOLD"

Upon the trial of the cause, a bill of exceptions was taken,

which it is not deemed advisable to set forth *in extenso* because it contained all the invoices, entries, depositions, and circulars from the Secretary of the Treasury, the whole amounting to nearly thirty printed pages. The following summary of the bill will be sufficient:

" *Southern District of New York, ss.* "

"Be it remembered that on the 13th day of June, in the year 1850, as yet of the stated term of the said court, commencing on the first Monday of April in the year 1850, held at the City Hall in the City of New York, in the Southern District of New York, before the Hon. Samuel Nelson, Associate Justice of the Supreme Court of the United States, sitting in the said circuit court, the issue within contained joined between the said Nathaniel L. Griswold, George Griswold, George W. Gray and George Griswold, Jr., plaintiffs, and Hugh Maxwell, defendant, came on to be tried, and the said parties, by their respective attorneys, before the said Justice came, and the jurors of the jury in this behalf duly summoned also came, and to say the truth also in this behalf are elected, tried, and sworn."

"And the counsel for the said plaintiffs, to maintain and prove the said issue in their behalf, produced and gave in evidence the invoices, entries, and protests, in the words and figures following:"

"[Then followed the invoices, entries, and protests, the entries showing that the appraisers had added to the amount 'to make value at time of shipment.]"

"And proved that said protests were made and delivered to the defendant at and before the payment of the duties on the goods in said invoice and entries contained, and that the sum of \$12,493.50 was paid by the plaintiffs to the defendants on 8 January, 1850, as duties on the plantain bark named in said foregoing entry thereof, of which amount \$2,425.50 was duty on the sum of \$97,02, added with commissions in said entry as therein expressed, 'to make market value of bark,' and on the 15th day of the same month the plaintiffs paid to the defendant the further sum of \$5,091 as duties on the sugar named in said

foregoing entry thereof, of which amount \$615 was duty on the sum of \$2,050, added with commissions in said last-mentioned entry as therein expressed, 'to make value at time of shipment.'"

"And further to maintain and prove said issue on their part, the counsel for said plaintiffs called the following witnesses, who, being severally duly sworn, testified as follows, that is to say:"

"[Then followed the depositions of several witnesses, showing

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the purchases at Manila, and that the prices were the regular market prices at the time of purchase.]"

"The plaintiff's counsel, further to maintain and prove said issue on their part, produced and gave in evidence certain circulars of the Secretary of the Treasury, in the words and figures following, viz.: "

"[Then followed a series of circulars from the Secretaries of the Treasury, beginning with the year 1833 and coming down to October, 1849, being nineteen printed pages.]"

"The plaintiff's counsel, further to maintain and prove said issue on their part, called the following witnesses, who, being severally duly sworn, testified as follows:"

"A. B. Mead testified that he was assistant appraiser from about the fall of 1846 to the fall of 1849, and during that time had the almost exclusive charge of appraising iron and other metals,"

"and that, under the instructions of the Secretary of the Treasury, the examiners and appraisers at the port of New York have in all cases been required under the provisions of the tariffs of 1842 and 1846 to ascertain and appraise, and report the wholesale market values of all merchandise in the principal markets of the country of production or manufacture, at the period of the exportation of the merchandise

to the United States, and not at the period of the purchase or production of the merchandise in the country whence imported, and that such has been the uniform practice up to this time, so far as known to the deponent."

"G. F. Thompson testified that he was assistant appraiser of the port of New York from 1844 to June, 1848, and that, under the instructions of the Secretary of the Treasury, the examiners and appraisers at the port of New York have in all cases been required, under the provisions of the tariffs of 1842 and 1846, to ascertain, and appraise, and report, the wholesale market values of all merchandise in the principal markets of the country of production or manufacture, at the period of the exportation of the merchandise to the United States, and not at the period of the purchase or production of the merchandise in the country whence imported, and that such has been the uniform practice up to this time, so far as known to the deponent."

"Samuel J. Willis testified that he was one of the principal appraisers at the port of New York from the year 1844 to July, 1849, and that, under the instructions of the Secretary of the Treasury, the examiners and appraisers of the port of New York have in all cases been required, under the provisions of the tariffs of 1842 and 1846, to ascertain and appraise and report the wholesale market values of all merchandise in the

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principal markets of the country of production or manufacture at the period of the exportation of the merchandise in the country whence imported, and that such has been the uniform practice up to this time, so far as known to the deponent."

"The counsel for said plaintiffs then rested, and the counsel for said defendant thereupon insisted and prayed the court to charge and instruct the jury as matter of law as follows:"

"1. That the payment made in this case by the plaintiffs to the defendant was a voluntary and not a coercive payment, and so that the plaintiffs could not maintain their action; that the evidence showed that the collector had been entirely passive

in this whole matter, and had done no act and made no demand which compelled the plaintiffs to pay the entire amount, which they did pay upon their own advisement; that the collector merely received the sum tendered to him by the plaintiffs, and never made the payment a condition precedent to the delivery of the goods, nor threatened to raise the valuation expressed on the face of the invoice; all that was done was done by the plaintiffs themselves voluntarily, without the least coercion or action on the part of the defendant, and that the verdict should therefore be in his favor."

"2. That the acts done by the collector were all done in obedience to written instructions made by circulars addressed by the Secretary of the Treasury to the collector which are set out in Schedule Z, annexed to this case, and in compliance with the acts of Congress therein referred to."

"That these instructions had all the authority of law, so far as the collector was concerned, and he could not disobey them. That all the money received by the collector in this case was collected by him in obedience to law and paid immediately into the Treasury of the United States under a like compulsion, and that the collector could not be made liable to refund any part of this money to the plaintiffs, even although the construction put upon the revenue laws by the Secretary of the Treasury may have been erroneous."

"That the Act of Congress approved February 26, 1845, entitled"

"An act explanatory of an act making appropriations for the civil and diplomatic expenses of government for the year one thousand eight hundred and thirty-nine,"

"did not apply to this case, the defendant being compelled by laws passed by Congress subsequently to that year to pay over without delay into the Treasury of the United States all moneys received by him as collector, and that by authority of the case of *Carey v. Curtiss*, reported in 3 Ohio 236, the defendant could not be made liable in this action."

"3. That there was no error in the proceedings at the custom house,

the valuation there made being the true valuation according to law, and hence this action could not be maintained."

"Whereupon the court then and there charged and instructed the jury that by law duties were only to be assessed upon the actual market value of the said plantain bark, or hemp, and sugar at the time of their purchase by the plaintiffs, and not upon such market value at the time of their shipment by them, and that the payment of duties by the plaintiffs upon the increased amount, being the difference between such market value at the time of shipment and at the time of purchase, was, on the part of the plaintiffs, a payment by coercion, and having been accompanied with the protest, the plaintiffs were entitled to a verdict for the sum paid as duties on such increased amount, with interest thereon from the date of its payment; that the fact that the defendant, in taking duties upon the market value of the merchandise at the time of shipment, had acted in obedience to the circular instructions to that effect from the Secretary of the Treasury, did not render such mode of assessment of duties legal, or preclude the plaintiffs from recovering the excess paid by them above the duties upon the market value of the merchandise at the time of its purchase. And the court further refused to charge or instruct the jury in conformity with the points insisted upon by the defendant's counsel, and in conformity with which he had prayed the court to charge and instruct the jury as aforesaid."

"And the counsel for said defendant then and there excepted to the said charge of the court, and to the refusal of the court to charge the jury in conformity with which the said counsel had so prayed the court to charge the jury, as aforesaid: "

"And thereupon the jurors of the jury aforesaid found a verdict for the plaintiffs for three thousand two hundred and six dollars and forty-four cents."

"And because the said several matters so offered and given in evidence, and the matters insisted upon by the said defendant, and the decision of the said court, and the charge of the said court, and the said exceptions taken to the same, do

not appear by the record of the verdict aforesaid, the said defendant has caused the same to be written on this bill of exceptions, to be annexed to said record, and has prayed the said justice, holding the said court, to set his hand and seal to the same. Whereupon the said the honorable Samuel Nelson, the associate justice before whom the said issue was tried, and the said exceptions were taken, has hereto set his hand and seal, this 2d day of January, in the year 1851."

"S. NELSON [L.S.]"

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Upon this bill of exception, the case came up to this Court.

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MR. JUSTICE WOODBURY delivered the opinion of the Court.

The case presents two points similar to what have just been decided in [Greely v. Thompson](#). In respect to the first one, which related to the proper time for fixing the value of goods imported from the country of their growth or manufacture, this Court there held it was the time of their procurement when not purchased, and the time of their purchase when they had been actually purchased abroad, rather than the time of their exportation or shipment. The goods in this case were valued at the latter time, though they had been previously purchased, and at a lower price. For the reasons assigned in the other case, the instruction given that this time was wrong must be considered legal.

Another point decided in *Greely v. Thompson*, and which is a ground of exception here, was that though the money was collected in obedience to orders from the Treasury

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Department, which the collector, so far as regards the department, was bound to follow, yet this did not justify him as to others, or bar a recovery by third persons if not liable in law to pay so high duties. For the reasons there assigned, this exception is likewise one which cannot be sustained.

The other points in that case do not arise here, but one does arise which did not exist there, and which we now proceed to examine.

The importer had put in his invoice the price actually paid for the goods, with charges, and proposed to enter them at the value thus fixed. But the collector concluded in that event to have them appraised, and the value would then, by instructions and usage at New York, be ascertained as at the time of the shipment, which was considerably higher, and would probably subject the importer not only to pay more duties, but to suffer a penalty.

The importer protested against this, but in order to avoid the penalty, under such a wrong appraisal, adopted the following course.

This being a case of purchase of goods abroad, and not procurement, it came clearly within the eighth section of the act of 1846, and therefore the importer, as that act permits, was allowed to make, and did make, an addition to his invoice, so as to escape the penalty, by means of the addition, and the payment of the consequent increased duties. Pamphlet Laws for 1846, p. 69.

This increase of duties, thus obtained, the present action is instituted to recover back, they having been paid under protest and unwillingly. The government, however, insist that this excess of duties was caused and paid voluntarily, and hence, though illegal, cannot be recovered back. If they were paid voluntarily, some precedents would seem to countenance the inability to sustain this suit.

[Elliot v. Swartwout](#), 10 Pet. 137.

But the gist of the point is were these increased duties in truth paid voluntarily, in the meaning of that term as applicable to the present subject? We have already seen that the importer did not at first propose to enter his goods of such a value as to justify these increased duties. On the contrary, he insisted on entering them at

only the price for which he purchased them, with charges, and thus agreeing with his original invoice, while the collector virtually insisted on having them appraised at their increased value as at the time of the shipment, such being the usage in the custom house at New York, and such the requirement of the circular of the Secretary of the Treasury, November 24, 1846. The importer, knowing that

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this would subject him to a severe penalty, in order to avoid it felt compelled to add to his invoice the amount which the price had risen between the purchase and the shipment.

But this addition and consequent payment of the higher duties were so far from voluntary in him that he accompanied them with remonstrances against being thus coerced to do the act in order to escape a greater evil, and accompanied the payment with a protest against the legality of the course pursued towards him.

Now it can hardly be meant in this class of cases that to make a payment involuntary, it should be by actual violence or any physical duress. It suffices if the payment is caused on the one part by an illegal demand and made on the other part reluctantly and in consequence of that illegality, and without being able to regain possession of his property except by submitting to the payment. See cases cited hereafter

All these requisites existed here. We have already decided that the demand for such an increased appraisal was illegal. The appraisal itself, as made, was illegal. The raising of the invoice was thus caused by these illegalities in order to escape a greater burden in the penalty. The payment of the increased duties thus caused was wrongfully imposed on the importer, and was submitted to merely as a choice of evils.

He was unwilling to pay either the excess of duties or the penalty, and must be considered, therefore, as forced into one or the other by the collector, *colore officij*, through the invalid and illegal course pursued in having the appraisal made of the value at the wrong period, however well meant may have been the views of

the collector.

The money was thus obtained by a moral duress not justified by law, and which was not submitted to by the importer except to regain possession of his property withheld from him on grounds manifestly wrong. Indeed it seems sufficient to sustain the action, whether under the Act of February 26, 1845, or under principles of the common law, if the duties exacted were not legal and were demanded and were paid under protest. 5 Stat. 727; *Clinton v. Strong*, 9 Johns. 370; 1 Miller 536; 1 Bos. & P., 139; *Irving v. Chitsowdt*, 4 T.R. 485, 553; Cowp. 69, 805.

All these circumstances existed here, and hence the judgment below must be

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of New York, and was argued by counsel. On

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consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs and damages at the rate of six per centum per annum.

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