De Forest Vs. Lawrence

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Decided On : 1851

Appeal No. : 54 U.S. 274

Appellant : De Forest

Respondent : Lawrence

Judgement :

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De Forest v. Lawrence

54 U.S. (13 How.) 274

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The tariff law of 1846, passed on 30 July, 9 Stat. 42, contains no special mention of imported sheepskins, dried with the wool remaining on them.

They must be regarded as a nonenumerated article, and charged, with a duty of twenty percent *ad valorem.*

The plaintiffs in error, W. W. De Forest & Co. sued the collector to recover back money paid under protest, for duties on importations into New York, in the years 1847 and 1848, from Buenos Ayres, invoiced as sheepskins, having the wool on them.

The collector under instructions from the Secretary of the Treasury demanded and received a duty of thirty percent *ad valorem* on the wool upon the sheepskins, and a duty of five percent *ad valorem* upon the pelts.

The wool upon the skins was appraised at $18,596.52

Duty thereon at thirty percent . . . 5,578.95

Skins without the wool 9,972.14

Duty thereon at five percent 498.60

Total valuation of wool and skins. . . $28,568.66

Total duty . . . . . $ 6,077.55

Whilst the collector thus charged one duty upon the skin and another upon the wool, the importers claimed to enter the articles at a duty of five percent upon the whole, and the court decided that the proper duty to be charged was twenty percent upon the entire valuation.

The cause of this great difference of opinion was as follows:

By the Act of 19 May, 1828, 4 Stat. 271, chap. 55, sec. 2, first paragraph, a duty is imposed on wool unmanufactured: "And all wool imported on the skin shall be

estimated as to weight and value, and shall pay the same rate of duty, as other imported wool."

By the Act of July 14, 1832, same vol. chap. 227, sec. 2, first paragraph, 584, wool unmanufactured is charged with duty: "Provided, that wool imported on the skin shall be estimated, as to weight and value, as other wool."

By the Act of 30 August, 1842, 5 Stat. chap. 270,

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sec. 1, paragraph first, 548, a duty on wool unmanufactured is imposed: "Provided, also, that wool imported on the skin shall be estimated, as to weight and value, as other wool."

In the 5th section and sixth paragraph of that same act of 1842, p. 554, duties are imposed

"On sheepskins, tanned and dressed, or skivers, two dollars per dozen; on goat or sheepskins, tanned and not dressed, one dollar per dozen; on all kid and lambskins, tanned and not dressed, seventy-five cents per dozen; and on skins tanned and dressed, otherwise than in color, to-wit, fawn, kid, and lamb, usually known as chamois, one dollar per dozen; . . . on raw hides of all kinds, whether dried or salted, five percent *ad valorem;* on all skins pickled and in casks, not specified, twenty percent *ad valorem.* "

Subsequently to these three statutes, so mentioning and distinguishing those three several classes of imports, same the statute of 30 July, 1846, 9 Stat. Little & Brown, chap. 74, 42, entitled "An act reducing the duties on imports, and for other purposes."

The first section enacted that from and after the first day of December then next,

"In lieu of the duties heretofore imposed by law on the articles hereinafter mentioned, and on such as may be now exempt from duty, there shall be collected, levied, and paid, on the goods, wares, and merchandise, herein

enumerated and provided for, imported from foreign countries, the following rates of duty."

Then follows the enumeration of various articles, subject to various duties, in schedules from A to H, ranging from duties of one hundred percentum to five percentum *ad valorem.*

Section 2 enacts that the goods "mentioned in schedule I, shall be exempt from duty."

Section 3 imposes on all goods, wares, and merchandise imported from foreign countries, "and not specially provided for in this act, a duty of twenty percentum *ad valorem.* "

In schedule C, of articles subject to thirty percent *ad valorem,* "wool unmanufactured" is mentioned, but "wool imported upon the skin" is not specially provided for therein. In schedule H, among other articles subject to the duty of five percent *ad valorem,* "raw hides and skins of all kinds, whether dried, salted, or pickled," are mentioned; but "wool imported on the skin" is not therein mentioned. In schedule I, of articles exempt from duty, wool imported on the skin, is not mentioned, neither is it mentioned in anyone of the schedules, from A to I inclusive.

On the trial of the case in the circuit court, Mr. Justice Nelson instructed the jury that the article came most appropriately within the schedule of nonenumerated articles, and as such was chargeable with a duty of twenty percent.

To which charge the counsel for the plaintiffs excepted, on the ground that the court should have charged the jury that the article imported by the plaintiffs, raw sheepskins dried, fell under schedule H, of the Tariff of 1846, and was not a nonenumerated article, but on the contrary, was enumerated under said schedule H, and was liable only to a duty of five percent, and not to a duty of 20 percent. That the said article being a raw skin dried, and being not otherwise specifically

provided for in said act, was liable only to the same rate of duty as all other raw skins dried. And the counsel for the said plaintiffs requested the court to charge the said jury accordingly, which request was refused by the court, and the counsel for the plaintiffs thereupon excepted.

Upon this exception, the cause came up to this Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The action was brought by the plaintiffs against the defendant, the late collector of the port of New York, to recover back an excess of duties paid under protest on an article imported from Buenos Ayres, described in the invoices and entries as "sheepskins." The importations were under the Tariff Act of 1846. The article was imported with the wool on the skins, and by the instructions

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of the Secretary of the Treasury, the collector was directed to cause the wool to be estimated and appraised, and to be charged with a duty of thirty percent *ad valorem* under schedule C, and five percent on the skin, under schedule H. The plaintiffs claim that no more than a duty of five percent *ad valorem* should be charged upon the entire article. It is usually described, in the invoices, and shipped as sheepskins, and known in trade and commerce by that designation. The skin is in the same condition as when taken from the animal, except it is dried. It is not dressed.

The court below charged the jury, that the article came within neither of the schedules mentioned, but was more properly a nonenumerated article, and chargeable with a duty of twenty percent *ad valorem.* And judgment was rendered in the case accordingly.

By the Act of May 19, 1828, 4 Stat. 271, sec. 2, a duty is charged upon wool imported on the skin, and direction is given to estimate it as to weight and value,

and impose the same duty as on other imported wool.

A similar provision is found in the Act of July 14, 1832, *id.* 584, sec. 2, and also, in the Act of August 30, 1842, 5 *id.* 548

The article is not enumerated according to its previous designation in the revenue laws in the act of July 30, 1846, Sess.Laws, 68, and, of course, no duty is specifically charged upon it in that act as in the previous acts. But it is claimed, on the part of the plaintiffs, that it falls within the description under schedule H, "raw hides, and skins of all kinds, whether dried, salted, or pickled, not otherwise provided for," and which are chargeable only with a duty of five percent *ad valorem.*

This description was obviously taken from the act of 1842, sec. 5, par. 6, "on raw hides of all kinds, whether dried or salted, five percent *ad valorem;* on all skins pickled, and in casks, not specified, twenty percent ad. valorem."

The only difference between this act, and the present one is that the two classes, "raw hides," and "skins," are now ranged in one class, and the duty of five percent charged upon each. "Skins pickled," are classed with "raw hides dried or salted," which latter article, it is well known, is extensively imported into the country for the purpose of being manufactured into leather, and the duty is fixed at a low rate for the encouragement of the manufacturer.

In this same act of 1842, it will be remembered, sheepskins, imported with the wool on, were charged with a specific duty, the same as unmanufactured wool, thus distinguishing the article from skins pickled, referred to in the 6th paragraph of the 5th section of that act.

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We have no doubt, from the association of skins with raw hides in the act of 1846, in connection with the description, and classification in the act of 1842, that they should be regarded as an article imported, like raw hides, for the purpose of being manufactured, and by no reasonable construction can be regarded as descriptive

of the article in question.

The argument is quite as strong, and we think stronger, in favor of ranging the article under the clause in schedule E: "skins of all kinds, not otherwise provided for," and which is chargeable with a duty of twenty percent *ad valorem.*

Neither do we think that the article can be separated, and a duty charged separately upon the estimated quantity of the wool, and upon the skin, according to the rate chargeable upon each. This would be the introduction of a principle in the construction of the revenue acts heretofore unknown, and which has no countenance in the provisions of the acts themselves.

The 20th section of the act of 1842 looks to the component parts of a manufactured article of two or more materials in fixing the duty, but does not separate it, and charge the duty on each part according to the class to which it belongs. It assesses the duty on the entire article at the highest rate at which any of the component parts might be charged.

It is difficult also to say to what length this principle, if admitted, must be carried in construing these acts. It could not, consistently, be limited to the article in question, for while skins, dried, are charged only with the duty of five percent *ad valorem,* "hair of all kinds" is chargeable with a duty of ten percent, and the same rule of construction that would separate the sheepskin, and charge a duty separately on the wool, and on the skin, would require the deerskin, with the hair on, to be separated, and the duty to be levied on each part. And so, in respect to every other skin dried, salted, or pickled, imported with the hair on.

It is true that in the acts of 1828, 1832, and 1842, in each of which a specific duty was charged upon the wool imported on sheepskins, the appraisers were directed to estimate the weight and value, for the purpose of assessing the duty. But the article was not divided, as no separate duty was assessed upon the skin by either of these acts. The act of 1842 assessed a duty upon "skins pickled and in casks," but skins imported with the wool on, when separated from the wool, would not fall within this description. The whole duty, therefore, that could be properly assessed

upon the article was assessed upon the estimated quantity of wool imported upon it.

The article has never been classed in any of the tariff acts under the designation of skins, but has been charged always,

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since it came under the notice of these acts, with a specific duty. It has been thus charged since the act of 1828 down to the present act, a period of some eighteen years. And, although it has been invoiced, and is known in trade and commence, by the designation of sheepskin raw, and dried, and may, generally speaking, be properly ranged under the denomination of skins, as a class; yet, having a known designation in the revenue acts, distinct from the general class to which it might otherwise be assigned, we must regard the article in the light in which it is viewed by these acts, rather than in trade and commerce. For when Congress, in legislating on the subject of duties, has described an article so as to identify it by a given designation for revenue purposes, and this has been so long continued as to impress on it a particular designation as an article of import, then it must be treated as a distinct article, whether there be evidence that it is so known in commerce or not. It must be taken as thus known in the sense of the revenue laws, by reason of the legal designation given to it, and by which it has been known and practiced on at the custom house.

It is but fair to presume, after having been treated by the lawmakers for a considerable length of time as an article known by this designation, with a view to the assessment of the rate of duty upon it, that, if intended to be charged specifically, or by enumeration, the designation by which it was known to them would have been used, instead of the one known to trade and commerce, if that should be different.

The 3d section of the act of 1846 enacts that on all goods, wares, and merchandise -- not specifically provided for in the act, a duty of twenty percent *ad valorem* shall be charged.

Under the foregoing view of the law of the case, sheepskins, imported with the wool on, must be regarded as a nonenumerated article, and fall within this third section.

The probability is that the enumeration was omitted from an oversight, else the article would have been chargeable with a duty in the way provided for in the act of 1842. But, having been omitted, and not specifically provided for, it necessarily comes within the section mentioned, and subject to a duty of twenty percent *ad valorem.*

We are of opinion, therefore, the judgment of the court below was right, and should 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,

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on 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 percent per annum.