

**Lawrence Vs. Caswell**

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**Court :** US Supreme Court

**Decided On :** 1851

**Appeal No. :** 54 U.S. 488

**Appellant :** Lawrence

**Respondent :** Caswell

**Judgement :**

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U.S. Supreme Court Lawrence v. Caswell, 54 U.S. 13 How. 488 488 (1851)

**Lawrence v. Caswell**

**54 U.S. (13 How.) 488**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE SOUTHERN DISTRICT OF NEW YORK*

## **SYLLABUS**

By the Tariff of 1846, the duty of one hundred percent, *ad valorem*, upon brandy ought to be charged only upon the quantity actually imported, and not on the contents stated in the invoices.

Duties illegally exacted are those which are paid under protest and where there is an appeal to the judicial tribunals.

The Revenue Act of 1799, 1 Stat. 672, directed that an allowance of two percent for leakage should be made on the quantity of liquors which were subject to duty by the gallon. Where brandy was subjected to a duty *ad valorem*, it was no longer within the provisions of this act, and the allowance of two percent ceased.

This was a suit brought by John Caswell and Solomon T. Caswell, merchants of New York, against Lawrence, the collector, to recover an excess of duties upon brandy paid under protest. The whole case is set forth in the bill of exceptions, which was as follows:

" *Bill of Exceptions.* The counsel for the plaintiffs, after proving that the plaintiffs were partners, engaged in trade and commerce in the City of New York, further to maintain the issue on their part gave in evidence divers warehouse entries and withdrawal entries, and calculations of duties thereon, invoices, and gaugers' returns of certain importations of brandy made by the plaintiffs into the port of New York by the several vessels in the table or statement hereinafter set forth, particularly mentioned, which said several vessels arrived in the said port of New York at the respective dates, also in said table, or statement, mentioned, in and by which said documents it appeared that said several importations of brandy were, on the arrival thereof, respectively deposited in the public stores in said port of New York in pursuance of the Act of Congress establishing a warehousing system approved August 6, 1846, that upon the gauging of said several importations of brandy by the United States gaugers, made at the time of the arrival thereof respectively, the actual contents of each of said importations were found to be less than the contents stated in the invoices thereof respectively, the difference in each case between such invoice contents and the actual contents as ascertained by the said gaugers being specified in the said table or statement; that the said goods so imported were afterwards from time to time withdrawn from such public stores, and duties paid thereon by the plaintiffs to the defendant as collector of the port of New

York, who demanded as such duties under schedule A of the Tariff Act of July 30, 1846, one hundred per centum *ad valorem* upon the cost of the contents of said importations as such contents were stated in the invoices thereof respectively, amounting in the whole, as also appears in said table, to the sum of \$41,658, which said duties, so exacted, were paid by the plaintiffs to the said defendants as such collector under protest in writing, endorsed on the withdrawal entries, against the payment thereof, the said plaintiffs claiming that the duties should be computed not upon the said invoice contents of said importations, but upon the actual contents thereof, as shown by the aforesaid gaugers' returns, after deducting from the actual contents shown by such returns the allowance of two per centum thereon, directed by the 59th section of the Revenue Collection Act of March 2, 1799."

"The following is the form of the protests referred to, and they were all alike:"

" We claim deduction for all deficiency from the quantity shipped, also two percent allowance for leakage as heretofore customary, and protest against the collector's exacting the whole amount of the invoice."

" JOHN CASWELL & CO."

"The counsel for the said plaintiffs also proved that the duties so as aforesaid paid to and received by the said defendant, as such collector, were by him duly paid at the time of the receipt thereof into the Treasury of the United States."

"The table or statement above referred to contained also a specification of the excess of duty alleged by the plaintiffs to have been exacted by the defendant as such collector upon each of the said several importations, amounting in the aggregate to the sum of \$1,609, the said table or statement being in the words and figures following."

"[The table is omitted as not being necessary to be inserted.]"

"The plaintiffs' counsel then proved that under the Act of March, 1799, and from the passage of said act until the Tariff Act of July 30, 1846, took effect, it was the

uniform practice in the New York custom house, upon the entry of such importations of liquors subject to duties, to proceed as follows: "

"1st. The United States gaugers, after ascertaining the capacity of each cask, deducted the 'outs,' or number of gallons deficient, and, from the actual contents thus ascertained, made a further deduction of two percent on such actual contents for the allowance of leakage, directed by the 59th section of said Act of March 2, 1799, and made a return to the collector, exhibiting the result."

"2d. The duties were then calculated and exacted upon the

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net dutiable quantity so exhibited by the gaugers' return, and upon that quantity only, and without regard to any statement of quantity in the invoice."

"To this evidence the counsel for the defendant objected in due season as inadmissible, but his honor the presiding judge then and there overruled the said objection and decided that such evidence was admissible, to which ruling and decision of the said judge the counsel for the said defendant then and there excepted."

"The plaintiffs' counsel claimed to recover against the defendant the sum of \$1,609, above stated and interest thereon to the day of trial, amounting in the whole to \$2,039.35."

"The counsel for the plaintiffs there rested."

"The counsel for the defendant then insisted that the only allowances which could be considered in this case for deficiencies in said brandy had been provided for by acts of Congress, and had already been made at the custom house, and that by law the plaintiffs were not entitled to recover, and he prayed the court so to charge the jury."

"But the court charged the jury that the United States were only entitled to collect duties upon the importations in question upon the quantity remaining after

deducting from the actual contents ascertained and exhibited by the gaugers' returns the aforesaid allowance of two percent for leakage, and that the plaintiffs were therefore entitled to recover the amount so as aforesaid claimed by them."

"To which charge of his honor the judge, and to every part thereof, the defendant's counsel then and there excepted."

"The jury thereupon found a verdict for the plaintiffs for the sum of \$2,039.35 damages and six cents costs."

"And because the prayer of the said defendant by their said counsel and the several rulings and decisions and instructions and charge of the said judge and the several exceptions taken to the same do not appear by the record of the verdict aforesaid, the defendants have caused the same to be written on this bill of exceptions, to be annexed to such record, and have prayed the said judge to set his hand and seal to the same."

"Whereupon the said Samuel R. Betts, the judge before whom the said issues were tried and the said exceptions taken, has hereunto set his hand and seal the 6th day of February, in the year of our Lord, 1852."

"SAMUEL R. BETTS [L.S.]"

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This is an action brought by the defendants in error against the collector of the port of New York to recover certain sums of money alleged to have been illegally exacted as duties.

The defendants in error are merchants to New York, and imported a large quantity of brandy in the years 1847 and 1848, which were deposited in the public stores under the Warehousing act of 1846. Upon gauging these several importations at the time of their arrival, the contents were found to be less than the quantity stated

in the several invoices.

As the brandy was from time to time withdrawn by the importers, the collector demanded the duty of one hundred percent *ad valorem* upon the whole invoice quantity, and it was paid by the importers under protest.

The importers claimed in their protest that the duties should be computed upon the actual contents, as shown by the gauger's returns, after deducting two percent from such contents. And the court was of opinion, and so directed the jury, that this was

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the correct mode of ascertaining the duties, and a verdict was accordingly rendered and judgment given for the amount overcharged. This writ of error is brought to revise that judgment.

Two questions arise in the case 1st, whether the duty ought to be computed on the quantity stated in the invoices or on the contents as ascertained by the gauger's returns, and 2d, whether the two percent ought to have been deducted for leakage.

As relates to the first question, it is substantially the same with that decided by the court in the case of [Marriott v. Brune](#), 9 How. 619. The duty of 100 percent *ad valorem* was chargeable on the quantity of brandy actually imported, and not on the contents stated in the invoices. This overcharge was therefore illegally exacted, and the defendants in error were entitled to recover back the amount. The judgment of the circuit court is in this respect correct.

But it is proper to say, in order that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted, the Courts mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of objection. Where no such protest is made, the duties are not illegally exacted in the legal sense of the term. For the law has confided to the Secretary of the Treasury the power of deciding in

the first instance upon the amount of duties due on the importation. And if the party acquiesces and does not by his protest appeal to the judicial tribunals, the duty paid is not illegally exacted, but is paid in obedience to the decision of the tribunal to which the law has confided the power of deciding the question.

Money is often paid under the decision of an inferior court, without appeal, upon the construction of a law which is afterwards, in some other case in a higher and superior court, determined to have been an erroneous construction. But money thus paid is not illegally exacted. Nor are duties illegally exacted where they are paid under the decision of the collector, sanctioned by the Secretary of the Treasury, and without appealing from that decision to the judicial tribunals by a proper and legal protest. Nor are they within the principle decided by the court in the case before us.

We proceed to the second point -- that is, to the claim of a further deduction of two percent

The Revenue Collection act of 1799, c. 22, 59, under which it is claimed, provides

"That there shall be an allowance of two percent for leakage on the quantity which shall appear by the gauge to be contained in any cask of liquors subject to duty by the gallon. "

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At the time this law passed, brandy and sundry kinds of wine were subject to a specific duty upon the gallon; but various other wines were charged with an *ad valorem* duty, not to exceed in amount a certain rate per gallon specified in the law. And as the two percent deduction was made to depend on the character of the duty, and not upon the nature of the liquor imported, the brandy and wines, which then paid a duty by the gallon, were entitled to it, but the wines which paid an *ad valorem* duty were not entitled. The right to the allowance did not depend upon the fact that the importation consisted of brandy or wines of a particular description, but upon the duty to which the article was subject. If it was charged by the gallon, this deduction was to be made, but otherwise if charged *ad valorem*.

Afterwards, by the Act of May 13, 1800, the *ad valorem* duties, which were before charged on certain kinds of wine, were changed to specific duties, and all wines were charged with duty by the gallon. And from the passage of this act until the act of 1846, all importations of liquors of any description paid a specific duty. This will account for the usage in the custom house to allow the deduction on all liquors, as stated in the record. For when the *ad valorem* duty on certain wines was changed to a duty by the gallon, these wines, like brandy and other wines, came within the provision in the act of 1799, and consequently were entitled to the two percent deduction.

So also when the act of 1846 changed the duty upon brandy from a specific one upon the gallon to a duty *ad valorem*, it was no longer within the provision of the act of 1799, and consequently no longer entitled to the deduction of two percent. The provision in the act of 1799 is not repealed, but brandy is not now within it, because it is not subject to a duty by the gallon.

It is said there is the same reason for allowing this deduction for loss by leakage whether the duty is *ad valorem* or specific, and that it would be unjust to make any discrimination between them. But without stopping to inquire whether this argument is well founded or not or whether sufficient reasons may not be assigned for the difference, it is sufficient for the Court to say that the law makes the distinction. And it is not within the province of the Treasury Department or the Court to decide upon the reasonableness or unreasonableness of a tariff which it is evident Congress intended to impose. The words of the law are plain. And since brandies do not pay a duty by the gallon, they are not entitled to the deduction of two percent.

The judgment of the circuit court must therefore be

*Reversed with costs and a mandate issued directing it to proceed to judgment upon the principles stated in this opinion.*

## **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 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 reversed with costs, and that this cause be and the same is hereby remanded to the said circuit court with directions to award a *venire facias de novo* and to proceed therewith in conformity to the opinion of this Court.

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