Stuart Vs. Maxwell

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Decided On : 1853

Appeal No. : 57 U.S. 150

Appellant : Stuart

Respondent : Maxwell

Judgement :

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Stuart v. Maxwell

57 U.S. (16 How.) 150

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The twentieth section of the Tariff Act of 1842 provides that on all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which any of its component parts may be chargeable. 5 Stat. 566.

This section was not repealed by the general clause in the Tariff Act of 1846, by which all acts and parts of acts repugnant to the provisions of that act, 1846, were repealed.

Consequently, where goods were entered as being manufactures of linen and cotton, it was proper to impose upon them a duty of twenty-five percent *ad valorem,* such being the duty imposed upon cotton articles in Schedule D by the Tariff Act of 1846. 9 Stat. 46.

The plaintiffs in error, who were plaintiffs below, sued the collector to recover moneys for duties, paid under protest, alleged to have been overcharged at the port of New York in July, 1849. Verdict and judgment for defendant.

The plaintiffs made entry at the custom house of goods as being "manufactures of linen and cotton." The appraisers reported them to be manufactures of cotton and flax.

Upon such goods, collector Maxwell charged duties at the rate of 25 percent *ad valorem,* according to the 20th section of the Act of 30 August, 1842, which enacted,

". . . And on all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which any of its component parts may be chargeable."

5 Stat., by Little & Brown 566, chap. 270.

The collector applied this 20th section to Schedule D of the Act of 30 July, 1846; 9 Stat. by Little & Brown 46, chap. 74, by which a duty of twenty-five percent *ad valorem* was imposed on

"cotton laces, cotton insertings, cotton trimming laces, cotton laces and braids, . . . ; manufactures composed wholly of cotton, not otherwise provided for,"

being so instructed by the Acting Secretary of the Treasury by circular of May 8, 1848.

The plaintiffs, in their protest, contended

"that under existing laws, said goods are liable to a duty of twenty percent as a nonenumerated article, . . . under the 30th section of the tariff of 30 July, 1846,"

dated 25 July, 1849, and 8 January, 1850.

The plaintiffs proved by witnesses that the goods entered at the customs in schedule A, were reported by the appraisers as manufactures of cotton and flax; that he paid the duties thereon at the rate of twenty-five percent *ad valorem;* that they were manufactures composed of cotton and flax;

"that the proportion of flax in the goods varies considerably, being in some about a half, in others about a third or a fourth; but that the flax is the material of chief value in the goods; that the appraisers' report of the goods as 'manufactures of flax and cotton' means that the fabrics were composed of linen and cotton combined. None of them were manufactures of cotton or flax alone."

The plaintiffs' counsel prayed the court to instruct

"That if the jury shall find from the evidence that the goods in question were manufactures of 'linen and cotton combined,' and not 'manufactures composed wholly of cotton,' then that duty was exacted at the rate of twenty-five percent *ad valorem,* when the goods were subject only to twenty percent *ad valorem,* as a nonenumerated article, under the 3d section of the tariff of 1846."

That instruction the court refused, and charged the jury that if they believe the goods in question are manufactures of flax and cotton combined, then, inasmuch as the 20th section of the tariff of 1842 directs that

"On all articles from two or more materials the duty shall be assessed at the highest rate at which any of its component parts may be chargeable, the goods in question are subject to the same charge as articles enumerated under schedule D

as if manufactures composed wholly of cotton not otherwise provided for, and that they are therefore not articles subject to the duty of twenty percent only under 3d section of the tariff of 1846."

To the refusal to charge as moved by plaintiffs, and to the charge as given to the jury, the plaintiffs excepted.

Upon this exception the case came up to this Court.

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MR. JUSTICE CURTIS delivered the opinion of the Court.

The plaintiffs in error brought their action in the Circuit Court of the United States for the Southern District of New York against the defendant, who was formerly collector of the customs for the port of New York, to recover moneys alleged to have been illegally exacted as duties. The plaintiffs entered at the custom house certain goods as "manufactures of linen and cotton," and claimed to have them admitted on payment of the duty of twenty percent levied on unenumerated articles under the 3d section of the Tariff Act of 1846. The defendant insisted that the 20th section of the Tariff Act of 1842 was in force, and that by force of it, these goods, being manufactured

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partly of cotton, must be assessed twenty-five percent, that being the duty imposed by the act of 1846 upon manufactures of cotton not otherwise provided for. If these articles are, for the purpose of fixing the amount of duty, deemed by law to be manufactures of cotton, it is not denied that the duty was rightly assessed. And whether they are to be so reckoned and treated depends upon the question whether the 20th section of the act of 1842 was repealed by the Tariff Act of 1846.

That 20th section is as follows:

"That there shall be levied, collected and paid on each and every nonenumerated article which bears a similitude either in material, quality, texture, or the use to which it may be applied to any enumerated article chargeable with duty the same rate of duty which is levied and charged on the enumerated article which it most resembles in any of the particulars before mentioned, and if any nonenumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, there shall be levied, collected, and paid on such nonenumerated article the same rate of duty as is chargeable on the article it resembles paying the highest rate of duty, and on all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which any of its component parts may be chargeable."

This section is a reenactment of the 2d section of the Tariff Act of 1841. 5 Stat. 464.

The repealing clause in the act of 1846 is "that all acts and parts of acts repugnant to the provisions of this act be, and the same are hereby, repealed." It is alleged by the plaintiffs that repugnance exists between the 20th section of the act of 1842 and the act of 1846. The argument is that the act of 1846 divides all imports into three classes -- first, those specified which are to be free of duty; second, those specified which are required to pay different but specific rates of duty; third, those not specially provided for in the act, which are required to pay a duty of twenty percent *ad valorem;* that a manufacture of cotton and flax not being included, *nominatim,* among the imports which are to be exempted from or subject to duty, is necessarily embraced within the class of nonenumerated articles, and so are liable to a duty of twenty percent only, and that this argument is strengthened by the fact that, in Schedule D, manufactures composed wholly of cotton are taxed twenty-five percent, and that if it had been intended to tax manufactures composed partly of cotton and partly of flax with a duty of twenty-five percent, they would have been specifically mentioned in this schedule, and that it is not admissible, under

an act which in terms levies a tax of only twenty percent upon all imports not specially provided for, to levy a tax of twenty-five percent upon an import not named or described in the act as liable to that rate of duty.

The force of this argument is admitted. It is drawn from sound principles of interpretation. But on a careful consideration of this case, we are of opinion that it ought not to prevail in the construction of this law.

The act of 1846 is a revenue law of the United States, and must be construed with reference to acts *in pari materia,* of which it forms only one part. This observance of a settled principle for the construction of statutes is absolutely necessary in the present state of the legislation of Congress on the subject of revenue. Without it, the public revenue could not be collected, and inextricable embarrassments and difficulties must constantly occur. We are obliged to look at the whole existing system and consider the nature of the subject matter of the enactment under consideration in its relations to that system in order to pronounce with safety upon its repugnancy to or consistency with any particular act of Congress.

In the first place, then, it must be observed that the 20th section of the act of 1842 does not impose any particular rate of duty upon imports. It was designed to afford rules to guide those employed in the collection of the revenue, in certain cases likely to occur, not within the letter, but within the real intent and meaning of the laws imposing duties, and thus to prevent evasions of those laws. Manufacturing ingenuity and skill have become very great, and diversities may be expected to be made in fabrics adapted to the same rules and designed to take the same places as those specifically described by some distinctive marks for the mere purpose of escaping from the duty imposed thereon. And it would probably be impossible for Congress by legislation to keep pace with the results of these efforts of interested ingenuity. To obviate, in part at least, the necessity of attempting to do so this section was enacted.

It does not seem to be any more repugnant to the provisions of the act of 1846 than the great number and variety of provisions of the revenue laws, whose object was to cause the revenue to be regularly and uniformly collected without evasion

or escape. If this act of 1846 had in terms enacted the 20th section of the act of 1842, its provisions would not thereby have been rendered repugnant or conflicting. This section would then only have afforded a rule by which it could be determined that certain articles did substantially belong to and were to be reckoned as coming under a particular schedule. This is apparent not only from a consideration of the subject matter of the

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20th section, when compared with the act of 1846, but from the fact that this 20th section actually made part of an act whose subject matter, and the outline of whose provisions, were the same as those of the act of 1846. The act of 1842 levied duties on certain imports specifically named. It declared certain other articles, also specifically named, to be exempt from duty, and it provided that a duty of twenty percent *ad valorem* should be levied on all articles not therein provided for. Yet this 20th section made a consistent part of that act. The 26th section of the act of 1842 provides

"That the laws existing on first day of June, 1842, shall extend to and be in force for the collection of the duties imposed by this act on goods, wares, and merchandise imported into the United States, and for the recovery, collection, distribution, and remission of all fines, penalties, and forfeitures, and for the allowance of the drawbacks by this act authorized, as fully and effectually as if every regulation, restriction, penalty, forfeiture, provision, clause, matter, and thing in the said laws contained had been inserted in and reenacted by this act."

The act of 1846 contains no corresponding provision. So that unless we construe the act of 1846 substantially as an amendment of the act of 1842, merely altering its provisions so far as the latter enactment is inconsistent with the former, the entire instrumentalities for the collection of the revenue under the act of 1846 would be wanting, and the duties which it requires to be paid could not be collected. It is quite apparent, therefore, that a great number and variety of provisions designed to protect the revenue against mistakes, evasions, and frauds, and to guard against doubts and questions, and to secure uniformity of

rates in its collection, owe their present operation upon the duties levied by the law of 1846, to the vitality given to them by the law of 1842, and must be considered now to be the law because the act of 1842 made them, in effect, a part of its enactments, and because the act of 1846 does not interfere with that enactment by which they were made so. And it must be further observed that these provisions of the 20th section of the act of 1842 are of the same nature as those thus left in force under the 26th section of the act of 1842, having been designed to remove doubts, to promote uniformity, and to check evasions and frauds.

There is nothing, therefore, in the general scope of the act of 1846 repugnant to the rules prescribed in this 20th section of the act of 1842. Is there in its particular phraseology?

It is strongly urged that there is; that the terms of the 3d section are wholly inconsistent with the attempt to bring any article under either of the schedules, by operation of any law

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outside of the act of 1846. That this 3d section enacts in clear terms that a duty of twenty percent *ad valorem* shall be levied on all goods "not specially provided for in this act," and that to levy a higher rate of duty, by force of a provision of some other act, is directly in conflict with the express words of the law. It must be admitted there is great force in this argument. It has received due consideration, and the result is that in our opinion it is not decisive. In the first place it may be justly said that if the act of 1846 has specially provided for manufactures of cotton, and has at the same time left in force a rule of law which enacts that all manufactures of which cotton is a component part shall be deemed to be manufactures of cotton, if not otherwise provided for, it has, in effect, provided for the latter. By providing for the principal thing, it has provided for all other things which the law declares to be the same. It is only upon this ground that sheer and manifest evasions can be reached. Suppose an article is designedly made to serve the uses and take the place of some article described, but some trifling and colorable change is made in the fabric or some of its incidents. It is new in the

market. No man can say he has ever seen it before, or known it under any commercial name. But it is substantially like a known article which is provided for. The law of 1842 then declares that it is to be deemed the same, and to be charged accordingly; that the act of 1846 has provided for it under the name of what it resembles. Besides, if the words "provided for in this act" were to have the restricted interpretation contended for, a like interpretation must be given to the same words in other revenue laws, and the most prejudicial consequences would follow -- such consequences as clearly show it was not the intention of Congress to have these words so interpreted.

Thus the 26th section of the act of 1842, already cited, adopts existing laws for the collection of duties "imposed by this act," for the collection of penalties and remission of forfeitures, and the allowance of drawbacks "by this act authorized." Yet, as has already been said, it is by force of this adoption that the duties and penalties under the act of 1846 are collected. It is manifest that the structure of the revenue system of the United States is not such as to admit of this exact and rigid interpretation; that the real intention of the legislature cannot thus be reached. The true interpretation we consider to be this: the 26th section of the act of 1842 having reenacted the then existing laws, and applied them to the collection of duties levied by that act, when Congress, by the act of 1846, merely changed the rates of duty, without legislating concerning their collection, the laws in force on that subject are to be applied,

and this application is not restrained by the fact that, when reenacted by the act of 1842, they were declared to be so for the purpose of collecting the duties by that act imposed. The new duties merely take the place of the old, and are to be acted on by existing laws as the former duties were acted on, and among these existing laws is that which affords a rule of denomination, so to speak; which determines under what designation in certain cases a manufacture shall come, and how it shall be ranked; when this has been determined, the act of 1846 levies the duty.

It is urged that in the act of 1846, special provision is made for certain manufactures composed partly of cotton, and that this shows no general rule was in operation imposing a particular rate of duty on articles made partly of cotton. But that this would not be a safe inference is evident from the fact that the act of 1842 imposes the same rate of duty on manufactures of wool and of manufactures of which wool is a component part, worsted, and worsted and silk, cotton, or of which cotton shall be a component part; yet this act of 1842 contained the section now under consideration. It may be observed also that schedule D, in the act of 1846, after manufactures composed wholly of cotton, goes on to specify cotton laces, cotton insertings, trimming laces, and braids &c.;

It would not be safe for the court to draw any inference from the apparent tautology of those parts of a revenue law describing the subjects of duty. In most cases, the terms used being addressed to merchants, are to be understood in their mercantile sense, the ascertainment of which is matter of fact, depending on evidence; and that which may seem merely tautologous might turn out to be truly descriptive of different subjects.

On the whole, our opinion is that there is no necessary repugnance between the act of 1846 and the 20th section of the act of 1842, and consequently the former did not repeal the latter, and the duty in question was rightly assessed. The judgment of the circuit court is therefore

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 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.

MR. JUSTICE GRIER dissented.