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**Bartlett Vs. Kane**

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**Court** : US Supreme Court

**Decided On :** 1853

**Appeal No.** : 57 U.S. 263

**Appellant** : Bartlett

**Respondent** : Kane

**Judgement** :

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**Bartlett v. Kane**

**57 U.S. (16 How.) 263**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF MARYLAND*

## SYLLABUS

By the Tariff Act of 1842, the custom house appraisers are directed to ascertain, estimate and appraise by all reasonable ways and means in their power the true and actual market value of goods &c.;, and have power to require the production,

on oath, of all letters, accounts, or invoices relating to the same. If the importer shall be dissatisfied with the appraisement, he may appeal to two merchant appraisers.

Where there was an importation of Peruvian bark, and the appraisers directed a chemical examination to be made of the quantity of quinine which it contained, although the rule may have been inaccurate, yet it did not destroy the validity of the appraisement.

The importer having appealed, and the appraisers having then called for copies of letters &c.;, the importer withdrew his appeal without complying with the requisition. The appraisement then stands good.

The appraisers having reported the value of the goods to be more than ten percent above that declared in the invoice, the collector assessed an additional duty of twenty percent under the eighth section of the Act of 1846, 9 Stat. 43. This additional duty was not entitled to be refunded, as drawback, upon reexportation.

This case was an action brought by Bartlett against Kane, who was the collector of the port of Baltimore, for the refunding of certain duties alleged to be illegally exacted upon the importation of Peruvian bark.

The circumstances of the case are fully stated in the opinion of the court.

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MR. JUSTICE CAMPBELL delivered the opinion of the Court.

This suit was commenced by the plaintiff as consignee of six hundred and fourteen seroons of Peruvian bark imported into the port of Baltimore and entered at the custom house for an excess of duties charged by the defendant as collector and paid under protest. Two hundred seroons of the first quality were entered for consumption, and the remainder for warehousing. On the 4th of October, 1849, the appraisers of the custom house reported the value of the invoice to be ten percent and more above the value declared by the agents of the plaintiff who

made the entry, and in consequence the collector, besides the legal duty of fifteen percent *ad valorem,* assessed an additional duty of twenty percent under the eighth section of the Act of 1846, 9 Stat. 43, c. 74, for undervaluation. On the 6th of October, 1849, the plaintiff duly protested against the appraisement and requested that the case might be submitted to merchant appraisers as provided by law. After notice of the appeal, the same day, the permanent appraisers required the plaintiff

"to produce all their correspondence, letters, and accounts relative to the shipment and to make a deposition that the documents furnished were all that he had concerning the shipment."

In reply to this, some five days after, the plaintiff instructed his agents that it would be tedious and difficult to comply with the requisition in consequence of the volume of the correspondence, says he cannot understand what use the appraisers could make of them, as they had made their report, that he should defer their presentation for another tribunal, and that he withdraws his appeal, and will pay the duties under protest. He still insists upon the overvaluation, but offers to settle at that rate provided the additional duty is not charged. He says that this exaction is illegal, and they can test it at their leisure. That he had been advised that an appeal appraisement might interfere with his rights in a court of justice.

These letters of the plaintiff were submitted to the permanent appraisers, who replied they could make no alteration of their estimate, and the appeal of the plaintiff was withdrawn. The plaintiff paid the entire duties exacted upon the appraised value of the entire import, including those entered for consumption as



well as warehousing, and an additional duty of twenty percent for undervaluation. These sums were paid under protest. A portion of the bark was exported, and upon this the plaintiff became entitled to drawback, which was paid to the extent of the regular duty, but the additional duty was not refunded.

The complaint of the plaintiff is that the appraisers, instead of estimating the value of the Peruvian bark according to the cost price in the markets of its production, under the directions of the Secretary of the Treasury caused a chemical analysis of samples to be made to ascertain the quantity of sulphate of quinine it contained, and, having ascertained its relative intrinsic value with other imports of the same article, regulated its appraised value by a comparison with the cost of such imports. The facts and the complaint were submitted to the Secretary of the Treasury, who replied as follows:

"It appears from the report of the United States appraisers dated 20 October last that the dutiable value of the article in question having been estimated and sustained by them in conformity with law, it was found that the appraised value exceeded, by ten percent or more, the value declared in the entry, and that an appeal from this appraisement, entered by the importer, was subsequently withdrawn by him. Under these circumstances, it necessarily follows that the original appraisement, made by the United States appraisers, is to be taken as final and conclusive in determining the dutiable value, and that such value, exceeding by ten percent or more the value declared in the invoice and entry, the 'additional duty' of twenty percent, as provided in the eighth section of the Tariff Act of 1846, is chargeable under the law in addition to the regular tariff rate of fifteen percent *ad valorem* levied on the enhanced value of the article in question. A supplemental question in reference to this importation having been submitted to the department, under date of 7th instant -- namely whether the importer is not entitled to the return of that portion of the 'additional duty' paid on that part of the importation withdrawn from warehouse by the importer and exported from the United States -- I have to advise you that upon a careful examination of the subject, it is the opinion of the department that the 'additional duty' imposed in all cases of undervaluation, to a certain extent, was intended and must be considered as entirely distinct in character and object from the regular tariff rates of duty exclusively in view when the laws regulating the drawback of duties were enacted, and that consequently no return of such 'additional duty' could be legally made as debenture. It is thought proper to add that the practice heretofore pursued under the instructions of the department has been uniformly governed by these views. "

Much evidence was given at the trial to prove that the value declared by the agents of the consignee at the time of the entry was strictly accurate, and that the rule of valuation adopted at the custom house was deceptive, and injurious to the importer.

The conclusions of the Secretary of the Treasury, as before set forth, were sustained in the circuit court, and form the subject for examination in this Court.

By the sixteenth section of the Tariff Act of 1842, 5 Stat. 563, c. 270, it is prescribed to the appraisers, by all reasonable ways and means in his or their power, to ascertain, estimate, and appraise the true and actual market value, and wholesale price, any invoice or affidavit thereto to the contrary notwithstanding, of the said goods, wares, and merchandise at the time purchased and in the principal markets of the country wherever the same shall have been imported into the United States, with the proviso that whenever the same shall have been imported into the United States from a country in which the same have not been manufactured and produced, the foreign value shall be appraised and estimated according to the current market value, or wholesale price of similar articles at the principal markets of the country of production or manufacture at the period of the exportation of said merchandise to the United States. The seventeenth section of the act authorizes the appraisers to call before them and examine upon oath the owner, importer, consignee, or other person

"touching any matter or thing which they may deem material in ascertaining the true market value or wholesale price of any merchandise imported, and to require the production on oath to the collector, or to any permanent appraiser of any letters, accounts, or invoices in his possession relating to the same, for which purpose they are hereby respectively authorized to administer oaths and affirmations, and if any person so called shall neglect or refuse to attend, or shall decline to answer, or shall, if required, refuse to answer in writing any interrogatories or produce such papers, he shall forfeit and pay to the United States the sum of one hundred dollars, and if such person be the owner, importer,

or consignee, the appraisement which the said appraisers . . . may make of the goods, wares, and merchandise, shall be final and conclusive, any act of Congress to the contrary notwithstanding. . . ."

"Provided that if the importer, owner, agent, or consignee of any such goods shall be dissatisfied with the appraisement and shall have complied with the foregoing requisitions, he may forthwith give notice to the collector, in writing, of such dissatisfaction, on the receipt of which the collector shall select two discreet and experienced merchants, citizens of the United

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States familiar with the character and value of the goods in question to examine and appraise the same agreeably to the foregoing provisions, and if they shall disagree, the collector shall decide between them, and the appraisement thus determined shall be final and deemed and taken to be the true value of the said goods, and the duties shall be levied thereon accordingly, any act of Congress to the contrary notwithstanding."

The plaintiff contends that the rule of appraisement by which the dutiable value of the said goods was raised, and the importer was subjected to the additional duty prescribed by the eighth section of the act of 1846, was illegal and void, and the duties thus claimed and paid under said appraisement were illegally exacted. It may be admitted that the rule, if strictly applied, would in many cases lead to erroneous results and could not be relied upon as a safe guide in any case, but this admission does not establish the nullity of the appraisement. The appraisers are appointed "with powers, by all reasonable ways and means, to ascertain, estimate, and appraise the true and actual market value and wholesale price" of the importation. The exercise of these powers involves knowledge, judgment, and discretion. And in the event that the result should prove unsatisfactory, a mode of correction is provided by the act. It is a general principle that when power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject matter. The only questions which can arise between an

individual claiming a right under the acts done, and the public, or any person denying their validity, are power in the officer and fraud in the party; all other questions are settled by the decision made or the act done by the tribunal or officer, whether executive, legislative, judicial, or special, unless an appeal is provided for or other revision by some appellate or supervisory tribunal is prescribed by law.

*United States v. Arredondo,* 6 Pet. 691.

The interference of the courts with the performance of the ordinary duties of the executive departments of the government would be productive of nothing but mischief, and we are satisfied that such a power was never intended to be given to them. *Decatur v. Paulding,* 14 Pet. 499.

The interposition of the courts in the appraisement of importations would involve the collection of the revenue in inextricable confusion and embarrassment. Every importer might feel justified in disputing the accuracy of the judgment of the appraisers, and claim to make proof before a jury, months and even years after the article has been withdrawn from the control of the government and when the knowledge of the

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transaction has faded from the memories of its officers. The consignee, after he has been notified of the appraisement, is authorized to appeal, and pending the appeal we can see no reason why he may not negotiate with the officers of the customs to correct any error in their judgment. We do not perceive a reason for holding that their control of the subject is withdrawn by the fact of the appeal. The appeal is one of the reasonable ways and means allowed to the importer for ascertaining the true and dutiable value, paramount in its operation to any other when actually employed, but until employed not superseding those confided to the officers. We think, therefore, that the permanent appraisers under the sanction of the collector, which is to be presumed, when informed that their decision was contested, had the right to call for the production of the correspondence, and that

the plaintiff could not have prosecuted the appeal without a compliance with the requisition.

In this case, the plaintiff neither complied with the requisition nor prosecuted the appeal, but withdrew it and settled the duties on the basis of the appraisement of the permanent appraisers. After this, we think he could not dispute the exactness of the appraisement. In *Rankin v. Hoyt,* 4 How. 327, being the case of a disputed appraisement, the jury found the invoice to be correct, and it was urged that the collector could not be justified in following the higher valuation of the appraisers. The Court said

"that an appraisal made in a proper case must be followed, or the action of the appraisers would be nugatory and their appointment and expenses become unnecessary. The propriety of following it cannot in such a case be impaired by the subsequent verdict of the jury, differing from it in amount, as the verdict did not exist to guide the collector when the duty was levied, but the appraisal did, and must justify him, or not only the whole system of appraisement would become worthless, but a door be opened to a new and numerous class of actions against collectors entirely destitute of equity. We say destitute of it because, in case the importer is dissatisfied with the valuation made by the appraisers, he is allowed by the act of Congress, before paying the duty, an appeal and further hearing before another tribunal."

In the case before us, the plaintiff withheld the information which might have satisfied the officers of the government after a legal requisition upon him. He abandoned the claim for a hearing before "persons familiar with the character and value of the goods in question," "discreet and experienced merchants," and preferred a tedious and vexatious litigation. We think, as was said by the Court in the case above cited, "he cannot with much grace, complain afterwards that any overestimate existed."

We shall now inquire whether, upon the re exportation of the Peruvian bark entered for warehousing, the plaintiff was entitled to a return of the twenty percent of additional duty charged upon the portion so exported.

An examination of the revenue laws upon the subject of levying additional duties, in consequence of the fact of an undervaluation by the importer, shows that they were exacted as discouragements to fraud, and to prevent efforts by importers to escape the legal rates of duty. In several of the acts, this additional duty has been distributed among officers of the customs upon the same conditions as penalties and forfeitures. As between the United States and the importer, and in reference to the subject of drawback and debenture, it must still be regarded in the light of a penal duty.

The provision for the return of the duty upon a reexportation formed a part of the system of regulations for importation and revenue from the earliest period of the government, and has always been understood to establish relations between the regular and honest importer and the government.

It does not include in its purview any return of the forfeitures or amercements resulting from illegal or fraudulent dealings on the part of the importer or his agents. Those do not fall within the regular administration of the revenue system, nor does the government comprehend them within its regular estimates of supply. They are the compensation for a violated law, and are designed to operate as checks and restraints upon fraud and injustice. A construction which would give to the fraudulent importer all the chances of gain from success and exonerate him from the contingencies of loss would be a great discouragement to rectitude and fair dealing. We are satisfied that the existing laws relating to exportations, with the benefit of drawback, do not apply to relieve the person who has incurred, by an undervaluation of his import, this additional duty from the payment of any portion of it.

Our conclusion is there is no error in the record, and the judgment of the circuit court is

*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 District of Maryland, 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.

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