

Homer Vs. the Collector

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Court : US Supreme Court

Decided On : 1863

Appeal No. : 68 U.S. 486

Appellant : Homer

Respondent : The Collector

Judgement :

Homer v. The Collector - 68 U.S. 486 (1863)

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Homer v. The Collector

68 U.S. (1 Wall.) 486

ERROR TO THE CIRCUIT COURT FOR

THE DISTRICT OF MASSACHUSETTS

SYLLABUS

Under the Tariff Act of 1846, as amended by the Tariff Act of 1857, almonds are subject to a duty of 30 p.c. *ad valorem*.

The Tariff Act of 1857, which was an act reducing duties, provided by its first section, that in lieu of the duties then existing, there should be imposed upon the articles in schedule B of the Tariff Act of 1846, a duty of 30 p.c.; and upon those in schedules C, E, and G, of said act, the duties of 24, 15, and 8 p.c. respectively, "*with such exceptions as are hereinafter made.*"

The Tariff Act of 1846 had imposed a duty of 40 p.c. upon the articles enumerated in schedule B, among which were "*almonds*" (by name), "*currants*," "*dates*," "*figs*,"

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"*prunes*," "*raisins*." It had imposed a duty of 30 p.c. upon those enumerated in schedule C, among which articles were "*grapes*," "*nuts*, not otherwise provided for," "*plums*;" and a duty of 20 p.c. upon those enumerated in schedule E, including "*bananas*," "*cocoa-nuts*," "*fruit*, green or ripe, not otherwise provided for," "*oranges*," "*lemons and limes*," "*pineapples*."

By this first section, therefore, of the Tariff Act of 1857, the duties on almonds, currants, dates, figs, prunes, and raisins, were reduced from 40 to 30 p.c.; grapes, plums, "*nuts not otherwise provided for*," to 24 p.c.; bananas, oranges, lemons &c., and "*fruit, green or ripe, not otherwise provided for*," in the statute of 1846, to 15 p.c.; *unless* these articles or any of them should come under the "*exceptions*" afterwards made. The second section of the act of 1857 did make exceptions in favor of various articles, among them "*fruit, green, ripe, or dried*," which it enacted should be transferred to schedule G, thus making them liable to a duty of 8 p.c. No *particular* fruits were named in this section.

Tariff acts, prior to that of 1846 -- that is to say, the tariff acts of 1804, 1816, 1832, 1842 -- had all laid a duty on "*almonds*" by name.

In this state of the tariff acts, the plaintiff had made an importation of almonds, on which the defendant, Collector of the Port of Boston, charged 30 p.c. *ad valorem*. The plaintiff, considering that almonds were within the exception of "*dried fruit*," and so chargeable with but 8 p.c. *ad valorem*, paid the larger duty under protest,

and brought suit to recover the difference. In the course of the trial, the following questions were raised:

1st. Whether by law almonds were subject to a duty of 30 p.c. or of 8 p.c. only.

2d. Whether evidence should be admitted to prove that before and at the time of the passing of the Tariff Act of 1857, almonds were fruit, green, ripe, or dried, *according to the commercial understanding of these terms in the markets of this country.*

3d. Whether it should be left to the jury to determine

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whether almonds were fruit, green, ripe, or dried, *according to the commercial understanding of these terms in our own markets when the Tariff Act of 1857 was passed.*

A certificate of division of opinion in the judges as to these points brought the same questions here.

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MR. JUSTICE NELSON, after stating the case, delivered the opinion of the Court:

The argument is that almonds are dried fruit, and hence are provided for in the second section of the act of 1857, and evidence was offered on the trial to show that such was the commercial sense of the term. But this inquiry had nothing to do with the question, and, indeed, it is difficult to see how any such inquiry could take place except as matter of curiosity and speculation, for certainly such proof could not exist or be found in the sense of commercial usage under any of the tariff acts, as a duty has been imposed on almonds, *eo nomine*, almost immemorially, at least since the duty act of 1804, and continued in the duty act of 1816, 1832, 1842, 1846. The article, as we have seen, is charged specifically with a duty of 40 p.c. *ad valorem* in the act of 1846, and is not named in the changes in the act of 1857.

Full effect can be given to the term "fruit," "dried," without the very forced construction to bring within it the article in question. Direction to the court below that almonds are subject to duty of 30 p.c. *ad valorem*. The other questions certified need not be answered.

Direction accordingly.

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