

United States Vs. Hathaway

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 404

Appellant : United States

Respondent : Hathaway

Judgement :

United States v. Hathaway - 71 U.S. 404 (1866)

U.S. Supreme Court United States v. Hathaway, 71 U.S. 4 Wall. 404 404 (1866)

United States v. Hathaway

71 U.S. (4 Wall.) 404

*CERTIFICATE OF DIVISION OF OPINION BETWEEN THE JUDGES OF THE
CIRCUIT*

*COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF
MICHIGAN*

SYLLABUS

Staves for pipes, hogsheads, and other casks, the growth and produce of the province of Canada, imported in November, 1863, from Canada into the United States were not free from duty under the reciprocity treaty of 1854 between the United States and Great Britain, by which "timbers and lumber of all kinds, round, hewed, and sawed, unmanufactured

Page 71 U. S. 405

in whole or in part" were to be admitted free of duty. They were liable to pay 10 percent *ad valorem*, imposed by the sixth section of the Act of July 14, 1862.

The suit was brought to recover a duty of ten percentum *ad valorem*, under the Tariff Act of 14 July, 1862, on *staves for pipes, hogsheads, and other casks* imported by the defendants in November, 1863, from Canada into the United States.

These articles were exempt from duty by the twenty-third section of the Act of March 2, 1861. [[Footnote 1](#)] But a duty of ten percentum *ad valorem* was imposed by the sixth section of the Act of July 14, 1862.

By the reciprocity treaty of 1854 between this country and Great Britain, it was stipulated that the following, among other articles, were to be admitted free of duty: "Timber and lumber of all kinds, round, hewed, and sawed, *unmanufactured in whole or in part.* "

It was admitted on the trial by the defendants that they had imported from Canada West, at the time charged in the declaration, into the United States a quantity of white-oak timber *split* in the form of pipe and hogshead staves at the place of importation, and that they were the growth and produce of the province of Canada.

The main question upon which the judges divided in opinion was whether, under the reciprocity treaty of 1854 between the United States and Great Britain, and the acts of Congress on the subject, the article of staves as above described, were liable to duty.

The government had held that the article being split wood was not exempt, but was liable to pay ten percent under the Act of July 14, 1862.

Page 71 U. S. 407

MR. JUSTICE NELSON delivered the opinion of the Court.

The construction given to the clause of the treaty by the government excluded the article in question from the free list and subjected it to the duty of the existing tariff law, which was in the present instance the act of 1862. The regulations of the Secretary of the Treasury declared, that articles of wood entered under the designations of the treaty remained liable to the duty if manufactured in whole or in part by planing, shaving, turning, splitting, or riving, or any process of manufacture other than rough-hewing or sawing. [[Footnote 2](#)]

We think this a sound construction of the words of the

Page 71 U. S. 408

clause. The treaty admits free of duty "timber and lumber of all kinds," with certain specified limitations, "round, hewed, and sawed," which limitations, as respects this branch of the clause, are determined either by the form or by the work bestowed on the article -- the timber or lumber must be round, hewed, or sawed; if neither, then the article is not brought within the description, and if otherwise brought within it, there is still a further limitation -- "unmanufactured, in whole or in part." The article may be round, hewn, or sawed, but if it has undergone the process of manufacture, even in part, it is taken out of the free list.

In the present case, the article is prepared by splitting for the hand of the cooper, in the manufacture of the pipe or hogshead, a process which has the effect to relieve him from much of the labor that would otherwise be required in adapting it to the use intended. It has been already reduced to the proper form and size -- a work which, in the first stages of the manufacture of the hogshead, must be done, and by which a considerable advance is made in fitting and finishing it for the market.

As this treaty has been annulled, the question is no longer of any general importance, and as we concur in the interpretation given to it by the Secretary of the Treasury, it is unnecessary to extend this opinion.

The court answer the question in the affirmative.

[[Footnote 1](#)]

12 Stat. at Large 196.

[[Footnote 2](#)]

Reg. 1857, p. 498, § 2, Art. 921.