Solomon Vs. Arthur

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Appeal No. : 102 U.S. 208

Appellant : Solomon

Respondent : Arthur

Judgement :

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Solomon v. Arthur

102 U.S. 208

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Imported goods composed of cotton and silk, the latter being the component part of chief value, were, by the Act of June 30, 1864, 13 Stat. 202, subject to a duty of fifty percent *ad valorem.*

This was an action brought by Solomon Solomon and others, constituting the firm of Solomon Brothers, against Arthur, the collector of the port of New York. The following facts were admitted upon the trial, it being agreed that neither party should offer any evidence.

Plaintiffs are partners in business, and as such imported at the port of New York, in December, 1873, and January, 1874, certain goods manufactured of silk and cotton. The defendant exacted upon them a duty of fifty percent *ad valorem,* which rate the plaintiffs paid under protest, the substantial part of which is, that under existing laws the goods are only liable to a duty of thirty-five percent, because they are provided for at that rate by sec. 22 of the Act of March 2, 1861, and sec. 13 of the Act of July 14, 1862. This protest was followed by an appeal to the Secretary of the Treasury, who affirmed the decision of the collector. This suit was brought in due time.

The goods were composed of silk and cotton in varying proportions, the warp being all cotton and the filling partly silk. It is admitted by the plaintiffs for the purpose of this case that silk was the component material of chief value. The goods generally are known in trade and commerce as goods made of mixed materials, but each kind thereof is also known by its specific name. If the plaintiffs are entitled to recover, judgment shall be rendered in their favor for the difference between thirty-five and fifty percent, which amount is $461.75 gold, with $75.40 interest in currency.

The jury found a verdict for the defendant pursuant to the instructions of the court, and the plaintiffs sued out this writ.

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MR. JUSTICE BRADLEY delivered the opinion of the Court.

It is obvious that the goods in question came under the designation of the last clause of sec. 8 of the Act of June 30, 1864, 13 Stat. 210, which lays a duty "on all manufactures of silk or of which silk is the component part of chief value, not

otherwise provided for, fifty percentum *ad valorem.* " That duty was therefore properly assessed unless the articles imported were "otherwise provided for." And that is the question. The plaintiffs insisted then and insist now that a duty on these goods was "otherwise provided for" by the Acts of March 2, 1861, sec. 22, and July 14, 1862, sec. 13, as "manufactures composed of mixed materials, in part of cotton, silk, wool or worsted, or flax," on which a duty of only thirty percent was laid by the act of 1861, and of five percent additional by the act of 1862. 12 Stat. 192, 557.

Previous acts were not repealed *in toto* by the Act of June 30, 1864, but it was declared by sec. 22 that "all acts and parts of acts repugnant to the provisions of this act be, and the same are hereby, repealed," with a proviso

"that the duties upon all goods, wares, and merchandise imported from foreign countries not provided for in this act shall be and remain as they were, according to existing laws prior to 29th April, 1864."

The act of 1864 contained no separate provision for a duty on goods composed of "mixed materials," like that in the acts of 1861 and 1862, on which the plaintiffs rely. They contend, therefore, that those clauses still continued in force, and that the goods imported by them were embraced therein, and were not intended to be embraced in the general clause in the act of 1864, under which the collector exacted the duty in question. The plaintiffs insist that the term "mixed materials" or "goods made of mixed materials" is a specific and well known commercial designation or name which by usage covers the goods imported by them, and is not a descriptive phrase used merely to designate any class of goods answering to the description, and therefore, although they may be embraced in the general description of the act of 1864, of goods "in which silk is the component part of chief value," such a general description

is not sufficient to take them out of their places in the previous acts where they are designated by name. It may be conceded that if the goods in question had a

specific name, such as that applied to "reps," "tapestry," "galloons," &c.;, and had been designated in the acts of 1861 and 1862 by such specific name, the argument of the plaintiffs would be well founded. It would be in accordance with the decision of this court in *Movius v. Arthur,* 95 U. S. 144 . But are the terms relied on a name for goods? Are they not descriptive, rather than denominative? We think it is very clear that they are merely descriptive. It may be true, as stated in the agreed case, that "such goods are generally known in trade and commerce as goods made of mixed materials;" but the case also adds that "each kind thereof is also known by its specific name." The fact that certain goods belong to the class of mixed goods, or of goods made of mixed materials, does not stamp them with the name of mixed goods, for the same description is applicable to many other kinds of goods, all having different names. It is not their name, it is merely their description.

Since, therefore, the designation in the act of 1861 of "manufactures composed of mixed materials, in part of cotton, silk," &c.;, is merely descriptive, and since the designation in the act of 1864 of "manufactures of which silk is the component part of chief value" is also descriptive, and since the goods in question are confessedly embraced in both descriptions, and since the act of 1864 contains no provision relating to mixed goods like that in the acts of 1861 and 1862, and lays a duty of fifty percent *ad valorem* on goods in which silk is the component part of chief value "not otherwise provided for," which we have construed generally to mean "not otherwise provided for in this act," *Smythe v. Fiske,* 23 Wall. 374, it seems to be almost a matter of demonstration that this was the duty properly demandable on the goods.

It is observable that the description of "manufactures made of mixed materials, in part of cotton, silk" &c.;, is more general than that of "manufactures of which silk is the component part of chief value." Logically, the two phrases standing together in the same act or system of laws would be related as

follows:

"Goods made of mixed materials, cotton, silk, &c.;, shall pay a duty of thirty-five percent; but if silk is the component part of chief value, they shall pay a duty of fifty percent."

It is suggested by the plaintiffs' counsel that a counterpart of the clause in the act of 1864, relating to goods in which silk is the component part of chief value, was contained in the Acts of March 2, 1861, and Aug. 5, 1861; and that if this clause in these acts did not apply to the plaintiffs' goods, the like clause in the act of 1864 should not be construed to apply to them, and, to show that the said clause in the acts of 1861 did not apply to the goods, they refer to the fact that prior to the passing of the act of 1864, the goods now in question were always assessed under the "mixed materials" clause, and not under the "component material of chief value" clause. We do not think that this argument can prevail. In the first place, it does not appear by the record what the practice was prior to 1864, and if it did appear as suggested, it is observable that under the Act of March 2, 1861, it was a matter of indifference under which clause the goods should be assessed, as the duties were the same under both, and, having commenced to assess the goods in one way under that act, the practice may have been inadvertently continued. We think the practice was at least questionable, if it obtained. At all events, the true construction of the law in its ultimate form is too obvious to admit of a reasonable doubt. The goods are aptly described by the general clause in the act of 1864, and are not otherwise provided for in that act nor provided for by name in any previous act. It follows that they are subject to duty under the said general clause.

We have been unable to find anything in the clauses referred to, or in their collocation in the various acts, or in the method of grouping or classification observed therein, that would lead us to infer an intention to exclude the goods in question from the operation of said general clause. It is sometimes the case, no doubt, that certain articles are so obviously intended to be included in a particular grouping or classification as to repel any suggestion that they are meant to be embraced in a different part of the law, though literally applicable

to them. But this cannot be said in the case before us. The goods in question have no such inseparable relation to one form of description exclusive of the other; nor are they so clearly intended to be embraced in any particular grouping or classification, as to repel or prevent the application to them of the clause under which they were assessed.

Judgment affirmed.