

Newman Vs. Arthur

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Appeal No. : 109 U.S. 132

Appellant : Newman

Respondent : Arthur

Judgement :

Newman v. Arthur - 109 U.S. 132 (1883)

U.S. Supreme Court Newman v. Arthur, 109 U.S. 132 (1883)

Newman v. Arthur

Argued October 24, 1893

Decided November 5, 1883

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. The rule that where words are used in an act imposing duties upon imports, which have acquired by commercial use a meaning different from their ordinary meaning, the latter may be controlled by the former is not applicable when the language used in the statute is unequivocal.

2. The fact that at the date of the passage of an act imposing duties, goods of a certain kind had not been manufactured does not withdraw them from the class to which they belong when the language of the statute clearly and fairly includes them.

This action was brought to recover money alleged to have been illegally exacted by the collector of customs at the port of New York and paid under protest. There was a verdict and judgment in favor of the defendant below, to reverse which this writ of error is prosecuted. The importations were made in 1875 and consisted of cotton goods, upon which the collector assessed a duty of five and a half cents a square yard, and twenty percent *ad valorem*. The plaintiff at the time of the liquidation claimed that the goods were liable to a duty of only thirty-five percent *ad valorem* as manufactures of cotton not otherwise provided for. It was proven on the trial that goods like those in question

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were first manufactured in Manchester, England, in 1868 or 1869, they being then a new article of manufacture, and were first introduced into this country in 1869 or 1870. They have been known since their first introduction into this country in trade and commerce by the name of cotton Italians, and used exclusively for coat linings. The importations in question were wholly of cotton, and dyed black in the piece, after being woven, and were made in imitation of a well known article called Italian cloth, made of wool, and used for lining woolen coats. The surface of the cotton Italians was by some process of weaving and calendering made smooth and glossy like that of the real Italians. Plain woolen goods are those in which the warp and woof threads cross each other at right angles.

Cotton Italians are not plain woven, but are twilled goods, and had upon them figures of different designs made in weaving. The cotton Italians in question had more than one hundred threads and less than two hundred threads to the square inch, counting the warp and filling, and were less in weight than five ounces to the square yard, and did not exceed in value twenty-five cents to a square yard. Plaintiff's counsel gave evidence tending to show that the number of threads to the square inch in plaintiff's importations could not be counted without unraveling the goods.

The plaintiff's counsel asked the plaintiff, who was duly sworn as a witness in the cause, the following question: "Are the goods bought and sold of the count of the number of threads?"

The defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiff's counsel duly excepted.

The plaintiff's counsel then offered to prove by the witness that goods like those in question were never known in trade and commerce in this country as countable goods, or so bought and sold.

The defendant's counsel objected to the evidence as immaterial. The court sustained the objection, and plaintiff's counsel duly excepted. Plaintiff's counsel then offered to show

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that prior to 1861, and ever since, there have been in trade and commerce in this country a great variety of cotton cloths known as countable goods, and which were bought and sold by the number of threads in the warp and filling, which number of threads were ascertainable by a glass and without taking the fabric to pieces. The defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiff's counsel duly excepted. The plaintiff's counsel then asked the witness the following question:

"Was the value of cotton Italians partially or wholly determined, between the manufacturer and the purchaser, according to the number of threads to the square inch?"

To this question defendant's counsel objected as immaterial. The court sustained the objection, and plaintiff's counsel duly excepted.

It was conceded that plaintiff's goods were neither cotton jeans, denims, drillings, bed tickings, gingham, plaids, cottonades, nor pantaloon stuff, nor goods of like description to them or either of them, nor for similar use.

Among others, not necessary here to refer to, the following instruments were requested by the counsel for the plaintiff in error, which the court refused to give, and to which exception was duly taken, *viz.*,

"3d. That if the number of threads to the square inch in plaintiff's goods, counting the warp and filling, cannot be counted without taking the goods to pieces, then the plaintiff is entitled to recover."

"5th. That cotton Italians, being a new manufacture and unknown here and abroad when the act of 1864 was passed, they were not specifically enumerated, and the presumption, until rebutted, is that they come under the general provision of manufactures not otherwise provided for. "

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MR. JUSTICE MATTHEWS delivered the opinion of the Court. After reciting the facts as above stated, he continued:

The provisions of the law which govern the case are contained in section 2504 Revised Statutes, being Schedule A, cotton and cotton goods, and are as follows:

"1. SEC. 2504. On all manufactures of cotton (except jeans, denims, drillings, bed tickings, gingham, plaids, cottonades, pantaloon stuff, and goods of like description), not bleached, colored, stained, painted, or printed, and not exceeding one hundred threads to the square inch, counting the warp and filling, and

exceeding in weight five ounces per square yard, five cents per square yard; if bleached, five cents and a half per square yard; if colored, stained, painted, or printed, five cents and a half per square yard, and, in addition thereto, ten percent *ad valorem*. "

"2. On finer and lighter goods of like description, not exceeding two hundred threads to the square inch, counting the warp and filling, unbleached, five cents per square yard; if bleached, five and a half cents per square yard; if colored, stained, painted, or printed, five and a half cents per square yard, and, in addition thereto, twenty percent *ad valorem*. "

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"3. On goods of like description, exceeding two hundred threads to the square inch, counting the warp and filling, unbleached, five cents per square yard; if bleached, five and a half cents per square yard; if colored, stained, painted, or printed, five and a half cents per square yard, and, in addition thereto, twenty percent *ad valorem*. "

"4. On cotton jeans, denims, drillings, bed tickings, gingham, plaids, cottonades, pantaloons, and goods of like description, or for similar use, if unbleached, and not exceeding one hundred threads to the square inch, counting the warp and filling, and exceeding five ounces to the square yard, six cents per square yard; if bleached, six cents and a half per square yard; if colored, stained, painted, or printed, six cents and a half per square yard, and, in addition thereto, ten percent *ad valorem*. "

"5. On finer or lighter goods of like description, not exceeding two hundred threads to the square inch, counting the warp and filling, if unbleached, six cents per square yard; if bleached, six and a half cents per square yard; if colored, stained, painted, or printed, six and a half cents per square yard, and, in addition thereto, fifteen percent *ad valorem*. "

"6. On goods of lighter description, exceeding two hundred threads to the square inch, counting the warp and filling, if unbleached, seven cents per square yard; if

bleached, seven and a half cents per square yard; if colored, stained, painted, or printed, seven and a half cents per square yard, and, in addition thereto, fifteen percent *ad valorem*, *provided* that upon all plain woven cotton goods, not included in the foregoing schedule, unbleached, valued at over sixteen cents per square yard; bleached, valued at over twenty cents per square yard; colored, valued at over twenty five cents per square yard, and cotton jeans, denims, and drillings, unbleached, valued at over twenty cents per square yard, and all other cotton goods of every description, the value of which shall exceed twenty five cents per square yard, there shall be levied, collected, and paid a duty of thirty five percent *ad valorem*, *and provided further* that no cotton goods having more than two hundred threads to the square inch, counting the warp and filling, shall be admitted to a less rate of duty than is provided for goods which are of that number of threads. "

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"12. . . . and all other manufactures of cotton, not otherwise provided for, thirty five percent *ad valorem*. "

The contention of the plaintiff in error now relied on is, in substance, that the goods in question are not embraced in the provisions of the statute applicable to "manufactures of cotton" described and classed by the number of threads to the square inch because that description had reference only to goods so described and classed by mercantile usage in dealings between buyers and sellers where the threads could be counted by the aid of a glass, whereas, the goods in question, as it must be assumed from the offers of proof which were rejected, were not dealt in by manufacturers and merchants according to any such usage, and could not be, because the threads in a square inch could not be counted except by unraveling the fabric for that purpose, and it is therefore argued that as the goods in question were of a new manufacture, not known at the date of the passage of the act, they cannot be considered as within the specified enumeration of the statute, and the appropriate duty must be determined by the final clause, embracing "all other manufactures of cotton not otherwise provided for." The claim is, in the language of counsel making it, that

"Congress did not mean to subject to this 'countable' clause every article of cotton manufacture of which, by cutting out a square inch, the number of threads constituting the warp and woof of that area could be counted, but only those articles in which the threads were counted in ordinary mercantile transactions therein, and which could be counted by methods practiced by the trade."

It is sought to support this argument by invoking the rule of construing the statute applied in *Arthur v. Morrison*, [96 U. S. 108](#) , and the numerous cases there cited, that where words are used in an act imposing duties upon imports which have acquired, by commercial use, a meaning different from their ordinary meaning, the latter may be controlled by the former if such be the apparent intent of the statute; but the application fails in the present instance, because the language used is

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unequivocal. There is no reference in the statute, either expressly or by implication, to any commercial usage, and there is no language in it which requires for its interpretation the aid of any extrinsic circumstances. The rejected proof of the custom of merchants to rate certain descriptions of goods as to values by the number of threads to the square inch, as ascertained by inspection by means of a glass, throws no light whatever on the meaning of the law, because the law fixes the rate of duty by a classification based on the number of the threads in a square inch, without reference to the mode in which the count is to be made. It might be quite convenient for dealers not to count the threads except when they could do so without unraveling, but it is pure conjecture that Congress intended to stop the count by collectors at the same limit. There appears to be no difficulty in counting the threads, no matter how fine the fabric, as long as the goods are plain woven, and the necessity of unraveling for the purpose of counting seems to exist only in case of twilled goods, and yet this very act requires a count of threads in the case of jeans, denims, drillings, bed tickings, etc., which are twilled, and bases a difference of duty upon them according to the number of threads to the square inch so ascertained.

The fact that at the date of the passage of the act, goods of the kind in question had not been manufactured cannot withdraw them from the class to which they belong, as described in the statute, where, as in the present case, the language fairly and clearly includes them.

There is no error in the record, and the judgment is accordingly

Affirmed.

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