Beard Vs. Nichols

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Court : US Supreme Court

Decided On : Jan-21-1887

Appeal No. : 120 U.S. 260

Appellant : Beard

Respondent : Nichols

Judgement :

Beard v. Nichols - 120 U.S. 260 (1887)
U.S. Supreme Court Beard v. Nichols, 120 U.S. 260 (1887)

Beard v. Nichols

Argued December 22, 1886

Decided January 21, 1887

120 U.S. 260

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

Webbing made of India rubber, wool, and cotton, and known as "wool elastic webbing," is not dutiable as webbing made of wool, or of which wool is a component material at fifty cents per pound and in addition thereto fifty percent *ad valorem,* but as webbing composed wholly or in part of India rubber at thirty-five percent *ad valorem.*

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This was an action at law to recover back duties alleged to have been illegally exacted. Judgment for plaintiff, to review which defendant sued out this writ of error. The case is stated in the opinion of the Court.

MR. CHIEF JUSTICE WAITE delivered the opinion of the Court.

The single question in this case is as to the duty payable in the latter part of 1878 and the early part of 1879 on "webbing made of India rubber, wool, and cotton," and known as "wool elastic webbing," as distinguished from "union elastic webbing," made of rubber, silk, and cotton, and "cotton elastic webbing," made of rubber and cotton. It is used for gores and gussets in the manufacture of Congress boots, and, without the rubber, would not be adapted to that use. In its manufacture, it is not wrought by hand or braided by machinery, but is woven in a loom.

In the court below, three clauses of 2504 of the Revised Statutes were brought under consideration, to-wit:

First. Schedule L, "Wool and Woolen Goods," Rev.Stat. 472:

"Webbings, beltings, bindings, braids, galloons, fringes, gimps, cords, cords and tassels, dress trimmings, head nets, buttons, or barrel buttons, or buttons of other forms for tassels or ornaments, wrought by hand or braided by machinery, made of wool, worsted, or mohair, or of which wool, worsted, or mohair is a component material, fifty cents per pound, and, in addition thereto, fifty percent *ad valorem.* "

Second. Schedule M, "Sundries," Rev.Stat. 477:

"India rubber, articles composed of -- braces, suspenders, webbing, or other fabrics, composed wholly or in part of India rubber, not otherwise provided for, thirty-five percent *ad valorem.* "

Third. Schedule L, "Wool and Woolen Goods," Rev.Stat. 471:

"Woolen cloths, woolen shawls, and all manufactures of wool of every description, made wholly or in part of wool,

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not herein otherwise provided for, fifty cents per pound, and, in addition thereto, thirty-five percent *ad valorem.* "

In this Court, however, it was conceded by the Solicitor General, in his argument for the collector, that, as the third clause does not specifically provide for webbing, and both the others do, that clause would not be relied on here. The precise question to be determined is therefore whether these goods are dutiable as "webbing, . . . composed wholly or in part of Indian rubber," at thirty-five percent *ad valorem,* or as "webbing . . . made of wool . . . or of which wool . . . is a component material," at fifty cents per pound, and, in addition thereto, fifty percent *ad valorem.* The collector exacted the larger duty, and this suit was brought to recover back the difference between that and the smaller one. The court below gave judgment against the collector, and to reverse that judgment this writ of error was sued out.

In the Tariff Act of August 30, 1842, c. 270, 5, subdivision Tenth, 5 Stat. 555, was this provision:

"On India-rubber oil-cloth, webbing, shoes, braces, or suspenders, or other fabrics of manufactured articles composed wholly or in part of India rubber, thirty percent *ad valorem.* "

In the Act of July 30, 1846, c. 74, 11, Schedule C, 9 Stat. 44, this was the language: "Braces, suspenders, webbing, or other fabrics, composed wholly or in part of India rubber, not otherwise provided for." The same provision was made in

the Act of March 2, 1861, c. 68, 22, 12 Stat. 191, and in the Act of July 14, 1862, c. 163, 13, 12 Stat. 556, which increased the duties on these articles five percent *ad valorem.* In the last of these acts, 8, p. 552, was the following provision: "On manufactures of India rubber and silk, or of India rubber and silk and other materials, fifty percent *ad valorem.* " These provisions of the acts of 1861 and 1862 were reenacted in substantially the same language as part of the Revised Statutes. That in relation to manufactures of India rubber and silk, and India rubber and silk and other materials, is found in 2504, immediately preceding the second of the clauses above referred to.

In 1873, while the acts of 1861 and 1862 were in force, and before the enactment of the Revised Statutes, Davies & Co.

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imported into New York "suspenders or braces, manufactured of rubber, cotton, and silk," and the collector exacted a duty of fifty percent *ad valorem* as upon a manufacture of India rubber and silk and other materials; but this Court held in *Arthur v. Davies,* 96 U. S. 135 , that they were only dutiable at the rate of thirty-five percent *ad valorem,* as suspenders or braces composed wholly or in part of India rubber, and that they were not "otherwise provided for," as manufactures of India rubber and silk and other materials, because for thirty years before the importation in that case, "and in four different statutes, braces and suspenders, composed wholly or in part of India rubber, had been a subject of duty *eo nomine.* " During the same year Faxon, Elms & Co. imported into Boston from Liverpool webbing which was a manufacture of India rubber, silk, and cotton, known as "Union Gussett," "Union Web," or "Union Elastic Web," and used in the manufacture of the gores or gussets of Congress boots. In this case, also, the collector exacted a duty of fifty percent *ad valorem,* under 8 of the act of 1862, as on manufactures of India rubber and silk and other materials, but this Court held at its October term, 1878, in *Faxon v. Russell* (not reported), on the authority of *Arthur v. Davies,* that the goods were only dutiable as webbing composed wholly or in part of India rubber.

These cases, with which we are entirely satisfied, are conclusive upon the questions here involved. Ever since 1842, "webbing," composed wholly or in part of India rubber, has been a subject of duty *eo nomine,* and it is no more otherwise provided for, as webbing composed wholly or in part of wool than it would be as a manufacture of India rubber and silk, or of India rubber and silk and other materials, if silk had been one of its component parts.

The judgment is affirmed.