

Falk Vs. Robertson

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Court : US Supreme Court

Decided On : Nov-24-1890

Appeal No. : 137 U.S. 225

Appellant : Falk

Respondent : Robertson

Judgement :

Falk v. Robertson - 137 U.S. 225 (1890)

U.S. Supreme Court Falk v. Robertson, 137 U.S. 225 (1890)

Falk v. Robertson

No. 35

Argued October 30-31, 1890

Decided November 24, 1890

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ERROR TO THE CIRCUIT COURT OF THE UNITED

STATE FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Schedule F of section 2502 of Title 33 of the Revised Statutes, as enacted by section 6 of the Act of March 3, 1883, c. 121, 22 Stat. 503, provided as follows in regard to duties on imported tobacco:

"Leaf tobacco, of which eighty-five percent is of the requisite size and of the necessary fineness of texture to be suitable for wrappers, and of which more than one hundred leaves are required to weigh a pound; if not stemmed, seventy-five cents per pound; if stemmed, one dollar per pound. All other tobacco in leaf, unmanufactured, and not stemmed, thirty-five cents per pound."

Tobacco was imported in bales, each of which contained a quantity of Sumatra leaf tobacco answering the description in the statute of that dutiable at 75 cents per pound, except that it formed only about 83 percent of the contents of the bale. The rest of the bale consisted of inferior leaf tobacco, called "fillers," which was separated from the 75-cent tobacco by strips of paper or cloth, making the one kind readily separable from the other on the opening of the bale. More than 85 percent of the 75-cent tobacco answered the description of tobacco dutiable at that rate. *Held* that the whole of the 75-cent tobacco was dutiable at that rate, and that the contents of the bale as a whole were not dutiable at 35 cents per pound.

The unit upon which the 85 percent was to be calculated was not the entire bale.

The case of *Merritt v. Welsh*, [104 U. S. 694](#) , distinguished.

This is an action at law brought in the supreme court of the State of New York by Gustav Falk and Arnold Falk against William H. Robertson, late collector of the port of New York, and removed by the defendant into the Circuit Court of the United States for the Southern District of New York, to recover back duties paid under protest on certain importations of leaf tobacco into the port of New York from Hamburg and Holland, in January and April, 1884. The amount of duty exacted by the collector was \$8,408. The plaintiffs contended that the proper duty was only \$5,113.85, and they sued to recover back the difference, \$3,294.15.

They made due protest and appeal.

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It was claimed by the government and conceded by the plaintiffs that the tobacco was dutiable under the following provisions of Schedule F of section 2502 of title 33 of the Revised Statutes, as enacted by section 6 of the Act of March 3, 1883, c. 121, 22 Stat. 503:

"Leaf tobacco, of which eighty-five percent is of the requisite size, and of the necessary fineness of texture to be suitable for wrappers, and of which more than one hundred leaves are required to weigh a pound, if not stemmed, seventy-five cents per pound; if stemmed, one dollar per pound. All other tobacco in leaf, unmanufactured, and not stemmed, thirty-five cents per pound."

The question in issue was whether any of the tobacco was dutiable at 75 cents a pound, and the court at the trial, before Judge Shipman, directed a verdict for the defendant. Judgment was entered accordingly, to review which the plaintiffs have brought a writ of error.

The tobacco in question was imported into the United States in bales. In each bale was a quantity of leaf tobacco answering the description in the statute of that dutiable at 75 cents per pound, except that it formed only about 83 percent of the contents of the bale. It was Sumatra tobacco, imported from Sumatra into Europe in the same bale in which it was imported into this country. When the bale arrived in Europe, the entire contents of it were within the description of that dutiable here at 75 cents a pound, but in Europe the bale was repacked by taking out of it a quantity of its contents and substituting therefor a sufficient quantity of inferior tobacco, called "fillers," to reduce the proportion of the 75-cent tobacco in the entire bale to less than 85 percent of the contents of the bale as imported into the United States. The 75-cent tobacco was separated from the other by strips of paper or cloth, so that the one kind was readily distinguishable and separable from the other when the bale was opened in the United States.

MR. JUSTICE BLATCHFORD delivered the opinion of the Court.

Leaf tobacco consists of three classes, "wrappers," "fillers," and "binders." "Wrappers" are leaves suitable for the outside finish of a cigar. "Fillers" are leaves that make up the main body of the cigar, and "binders" are the secondary or inside wrapper, and hold together the loose material which constitutes the filling. Prior to the passage of the act of

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1883, the various grades of leaf tobacco -- wrappers, fillers, and binders -- were applied to different uses, were bought and sold under their several names, and were of different value in the market, and prior to that time bales of leaf tobacco in the trade were, as a rule, homogeneous as to their contents, each one consisting of only one of these three classes.

The plaintiffs claim that, upon the addition to the bale of enough inferior tobacco to reduce the proportion, in the entire bale, of the fine wrapper tobacco below 85 percent, the whole of the tobacco in the bale was made dutiable at only 35 cents per pound. They contend that the unit upon which the 85 percent is to be calculated is the entire bale; but we cannot agree with this view. The statute does not refer to tobacco in bales. It does not say that the 85 percent is to be 85 percent of the contents of a bale; but the duty of 75 cents per pound is imposed upon any quantity of leaf tobacco of the specified quality and weight, if not stemmed. In the present case, the carefully separated and distinguishable quantity of tobacco in the bale which was of the specified size, fineness, and weight, was the whole of it -- that is, 100 percent -- and more than 85 percent of that size, fineness, and weight, and all of it fell under the description of what was dutiable at 75 cents a pound. The unit is not the bale, but is the separated quantity of such leaf tobacco. That quantity stands, for the purposes of duty, as if it had been imported in a bale which contained nothing but itself. By the method of packing, the wrapper tobacco and the filler tobacco remained entirely distinct. The association of them in the

bale was evidently only for the purpose of avoiding the higher duty imposed upon the superior tobacco. This association was to be dissolved the moment the bale was opened in the United States, because the two grades of tobacco sold for different prices in the market. It appears from the testimony of one of the plaintiffs that, prior to the act of 1883, the bale of Sumatra tobacco that was known and dealt in was a bale containing about 160 or 170 pounds of that tobacco, and inferior tobacco was not imported in the same bale with such Sumatra tobacco. The unit of the statute therefore must be held to be leaf

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tobacco wrappers answering the description which, when reaching the named percentage, is subject to the duty of 75 cents a pound.

It is argued for the plaintiffs that the bale must be considered as the unit, because it is required by section 2901 of the Revised Statutes that, for the purpose of appraisement, the collector shall designate at least one package of every invoice, and at least one package of every ten packages. Reference is made also to sections 2911 and 2912, which provide what shall be done in case the appraisers find in a given package articles of wool or cotton of similar kind, but different quality, and to section 2915, which provides for the taking of samples from packages of sugar to ascertain the quality, and to the Act of May 1, 1876, c. 89, 19 Stat. 49, providing for the separate entry of one or more packages contained in an importation of packed packages, consigned to one importer or consignee, and of which there is no invoice. But we do not perceive that these statutory provisions affect the question in hand. They refer only to what is to be done as to appraisement when two articles of different quality are imported in the same package, and to the separate entry of a package packed in a larger package; but there is nothing in these provisions which shows that the 85 percent in question is to be regarded as meaning 85 percent of the entire contents of a package containing separable and separated quantities of leaf tobacco of two different qualities, and subject to two different duties.

In the view which we thus take of this case, there is nothing which conflicts with the decision in *Merritt v. Welsh*, [104 U. S. 694](#) . In that case, under Schedule G of section 2504 of the Revised Statutes, the sole test of the dutiable quality of sugars was held to be their actual color, as graded by the Dutch standard, and it was held that if the particular color was given to the sugar in and by the process of manufacture, and was not artificially given to it after it had been manufactured, it was subject only to the duty imposed upon sugar of a specified color. The question there decided was whether, in case the sugar was not artificially colored for the purpose of avoiding

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duties after it was manufactured, its dutiable quality was to be decided by its actual color, graded by the Dutch standard, or by its saccharine strength, as ascertained by chemical tests, and it was held that the actual color was the test. So in the present case, the actual qualities belonging to the given, separable quantity of leaf tobacco which is made dutiable at 75 cents a pound determine the rate of duty.

The present case was tried twice. At the first trial, before Judge Wheeler, he directed a verdict for the plaintiffs, but he subsequently granted a new trial. In his opinion granting it, 25 F. 897, he said:

"Justice to the plaintiffs, however, requires that they be entirely acquitted of any attempt to deceive the customs officers by what they did, for it was done with their full knowledge, and partly at their suggestion, and after a like importation, with the full knowledge of all, had been passed, as a test case at the lower rate."

We concur in this view.

Judgment affirmed.