United States Vs. Mescall

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Court : US Supreme Court

Decided On : Nov-08-1909

Appeal No. : 215 U.S. 26

Appellant : United States

Respondent : Mescall

Judgement :

United States v. Mescall - 215 U.S. 26 (1909)
U.S. Supreme Court United States v. Mescall, 215 U.S. 26 (1909)

United States v. Mescall

No. 278

Argued October 14, 1909

Decided November 8, 1909

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK

SYLLABUS

The rule of *ejusdem generis,* that, where the particular words of description are followed by general terms the latter will be regarded as referring to things of a like class with those particularly described, is only a rule of construction to aid in arriving at the real legislative intent, and does not override all other rules. When the particular words exhaust the genus, the general words must refer to words outside of those particularized.

Under 9 of the Customs Administrative Act of June 10, 1890, c. 407, 26 Stat. 131, 135, providing punishment for making and aiding in false entries, the words "owner, importer, consignee, agent or other person" include a weigher representing the government, and his acts come within the letter and purpose of the statute.

Section 9, chapter 407, Laws of June 10, 1890, 26 Stat. 131-135, known as the Customs Administration Act, under which defendant was indicted, reads as follows:

"That if any owner, importer, consignee, agent, or other person shall make, or attempt to make, any entry of imported merchandise by means of any fraudulent or false invoice, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the United States shall be deprived of the lawful duties, or any portion thereof, . . . embraced or referred to in such invoice, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from the person making the entry, shall be forfeited, which forfeiture

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shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles or merchandise to which such fraud or false paper or statement relates, and such person shall, upon conviction, be fined for each offense a sum not exceeding five thousand dollars, or be

imprisoned for a time not exceeding two years, or both, in the discretion of the court."

The indictment, in the first count, alleges that the steamship *Alice* arrived at the port of New York on November 2, 1907, from Greece, having on board eighty cases of cheese consigned to one Stamatopoulos; that the said cheese was unloaded and an invoice and entry thereof filed with the collector of customs of the port of New York by the said Stamatopoulos; that the defendant was at the time, an assistant weigher of the United States in the customs service at the port of New York, and engaged in the performance of his duties as such assistant weigher; that it was his duty to weigh accurately the said cheese, and make return thereof to the collector of customs, and, upon the weight so returned, the said entry was to be liquidated; that the said defendant

"did knowingly, willfully, and unlawfully make and attempt to make an entry of imported merchandise, to-wit, the said eighty cases of cheese, by means of a false and fraudulent practice, by means whereof the United States was to be deprived of the lawful duties, or a portion thereof, accruing upon the said merchandise;"

that he did knowingly, willfully, and unlawfully return the net weight of said cheese as 13,358 pounds, whereas the true weight thereof, and the weight upon which the entry should have been liquidated and the duties paid, was 17,577 pounds. The second and third counts contain the same statement of facts, but it is averred in the one that the defendant was "guilty of a willful act and omission, by means whereof the United States was to be deprived of the lawful duties," or a portion thereof, and, in the other that he unlawfully made and attempted to make the entry "by means of a false written statement." To this indictment a

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demurrer was filed and sustained, the court, after discussing several matters, saying:

"But it is apparent from the allegations of the indictment that the defendant is not in fact any of the persons within the contemplation of 9 with relation to these

particular importations, and cannot be considered either an owner, importer, consignee, agent, or other person."

"The defendant, Mescall, was not making or attempting to make an entry of these goods. According to the charge, he was, contrary to his duty, rendering assistance to the importer, who was the 'person' making the entry."

The case is here under the Act of March 2, 1907, 34 Stat. 1246, c. 2564, which authorizes a writ of error "direct to the Supreme Court of the United States" in a criminal case wherein there has been a decision or judgment sustaining a demurrer to an indictment, when such decision or judgment is based upon the invalidity or construction of a statute upon which the indictment is founded.

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MR. JUSTICE BREWER delivered the opinion of the Court.

It appears that the trial court sustained the demurrer on the ground that, as to the offense charged, the statute, properly construed, does not include the defendant. The case is therefore one which may be brought to this Court. *United States v. Keitel,* 211 U. S. 370 . But our inquiry is limited to the particular question decided by the court below. *Id.,* 211 U. S. 398 .

Counsel for defendant invokes what is sometimes known as Lord Tenderden's rule -- that, where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described -- *ejusdem generis.* The particular words of description, it is urged, are "owner, importer, consignee, agent." The general term is "other person," and should be read as referring to someone similar to those named, whereas the defendant was not owner, importer, consignee, or agent, or of like class with either. He was not making, or attempting to make, an entry. He represented the government, and, contrary to his duties, was rendering assistance to the consignee, who was making the entry. But, as said in *National Bank of Commerce v. Ripley,* 161 Mo. 126, 132, in reference to the rule:

"But this is only a rule of construction to aid us in arriving at the real legislative intent. It is not a cast-iron rule, it does not override all other rules of construction, and it is never applied to defeat the real purpose of the statute, as that purpose may be gathered from the whole instrument. . . . Whilst it is aimed to preserve a meaning for the particular words, it is not intended to render meaningless the general words. Therefore, where the particular words exhaust the class, the general words must be construed as embracing something outside of that class. If the particular words exhaust the genus, there is nothing *ejusdem generis* left, and in such case we must give the general words a meaning

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outside of the class indicated by the particular words, or we must say that they are meaningless, and thereby sacrifice the general to preserve the particular words. In that case, the rule would defeat its own purpose."

See also Gillock v. People, 171 Ill. 307, and the cases cited in the opinion; *Winters v. Duluth,* 82 Minn. 127; *Matthews v. Kimball,* 70 Ark. 451, 462. Now the party who makes an entry, using the term "entry" in its narrower sense, is the owner, importer, consignee, or agent, and it must be used in that sense to give any force to the argument of counsel for defendant; but, used in that sense, the term "other person" becomes surplusage. In 1 of c. 76, Laws of 1863, 12 Stat. 738, is found a provision of like character to that in the first part of the section under which this indictment was found, but the language of the description there is "owner, consignee, or agent." This was changed by 12, c. 391, Laws 1874, 18 Stat. 188, to read "owner, importer, consignee, agent, or other person," and that description has been continued in subsequent legislation. Evidently the addition in 1874 of the phrase "other person" was intended to include persons having a different relation to the importation than the owner, importer, consignee, or agent. Congress was broadening the scope of the legislation and meaning to reach other persons having something to do in respect to the entry beyond that which was done by the owner, importer, consignee, or agent, or else the term "other person" was a meaningless addition. Now the defendant was a person, other than the owner, importer, consignee, or agent, by whose act the United States was

deprived of a portion of its lawful duties. His act comes within the letter of the statute as well as within its purpose, and the intent of Congress in the legislation is the ultimate matter to be determined

The fact that he could not be punished in all respects as fully as the owner, in that he had no goods to be forfeited, is immaterial. *United States v. Union Supply Company,* decided this day, *post,* p. 215 U. S. 50 .

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We are of opinion, therefore, that the trial court erred in sustaining the demurrer. The judgment is reversed and the case remanded for further proceedings.