

Case No. 714.

BACON v. BANCROFT.

[1 Story, 341;¹ 3 Law Rep. 386.]

Circuit Court, D. Massachusetts.

Oct. Term, 1840.

CUSTOMS DUTIES—GUNNY CLOTH—COMMERCIAL USAGE.

The tariff being a statute regulating commerce, the terms of it must be construed according to commercial usage and understanding. In this case, it was submitted to the jury, to determine, whether gunny cloth and cotton bagging were different articles of commerce.

[Cited in *U. S. v. Wotton*, 53 Fed. 346.]

[See *Curtis v. Martin*, 3 How. (44 U. S.) 106; *Elliott v. Swartwout*, 10 Pet. (35 U. S.) 151; *Arthur v. Morrison*, 90 U. S. 111.]

At law. This was an action [by Samuel C. Bacon] against the defendant, [George Bancroft,] as collector of the port of Boston, to recover back the amount of duties, paid under protest, upon a quantity of gunny cloth, imported by the plaintiff, and by the collector charged with the duty on cotton bagging. [Verdict for plaintiff.]

It was agreed, that gunny cloth was imported and used extensively for the purpose of covering cotton in bales, and as a substitute for the article commonly known as cotton bagging. And it was submitted to the jury, under the instruction of the court, to find, whether the article in question was that known in commerce as cotton bagging, or was another and different article. It appeared by the testimony, that cotton bagging, and gunny cloth were both well known in this country before the passing of the tariff, and that they were considered as different articles of commerce, and known by different names.

Dexter, for plaintiff. Mills, Dist. Atty., for defendant.

Before STORY, Circuit Justice, and DAVIS, District Judge.

STORY, Circuit Justice, instructed the jury, that the tariff being a statute, regulating commerce, the terms of it must be construed according to commercial usage and understanding; and that if they found, of which there appeared no doubt, the evidence being uniform to that effect, that the two articles were understood and known among merchants to be different articles of commerce, and that the article in question had not been known in commerce as cotton bagging, it was not subject to the duty, whatever might be the use to which it had been applied.

The jury immediately returned a verdict for the plaintiff.

¹ [Reported by William W. Story, Esq.]