Case No. 4,671.

FARNHAM ET AL. v. BANCROFT.

[3 Haz. Reg. U. S. 6.]

Circuit Court, D. Massachusetts. June 3, 1840.

CUSTOMS DUTIES—CONSTRUCTION OF STATUTE—CRUDE SALTPETRE.

Saltpetre which was known in commerce as "crude saltpeter" at the time the act of 1832 was passed, is entitled to free entry as such,—chapter 227, § 2 [4 Stat. 583],—although the customs officers may be of the opinion that it is partially manufactured.

This was an action of assumpsit to recover the sum of ninety-three dollars and thirty-six cents, alleged to have been illegally required to be paid to the defendant [George Bancroft], acting under instructions from the comptroller of the treasury, as collector of the ports of Boston and Charlestown as and for duties upon a certain quantity of saltpetre imported by the plaintiffs [Putnam J. Farnham and others].

The act of 1816, c. 107, § 1 [3 Stat. 310], imposes a duty of 71/2 per cent. ad valorem on saltpetre. The act of 1824, c. 136, § 1 [4 Stat. 25], imposes a duty of 121/2 per cent. ad valorem on all articles specified, and which then paid 71/2 per cent. ad valorem; and the same act in the same section imposes a duty of 3 cents per pound on refined saltpetre. The act of 1832, c. 224, § 2 [supra], makes crude saltpetre free. The duties in this case were claimed upon the ground that the saltpetre in question was neither crude nor refined, and therefore among the unenumerated articles, and as such liable to a duty of 121/2 per cent. ad valorem. The duties were paid under protest, and notice was given, that a suit would be brought to recover them back from the defendant.

The counsel for the plaintiffs stated the law that the collector was liable to refund duties illegally assessed, when paid under protest, and that the statute was to be construed according to the commercial sense in which the words "crude saltpeter" were used at the time of the passage of the act of 1832, and that it was a question of fact for the jury whether this were "crude saltpetre," in such commercial sense. The plaintiff then introduced several witnesses who examined a specimen of the saltpetre, and testified that it was the crude saltpetre of commerce. Mr. Degrand testified, that he had imported saltpetre before and since 1832. Had bought and sold a great deal, and had examined every lot that came into market. This was crude saltpetre. There was no question of it. He never knew any other kind but crude or refined. There was no intermediate quality. Mr. Wigglesworth testified, that he had imported the article twenty years. This was crude. He never knew any other kind but crude and refined. Mr. Charles Henshaw testified that he had been acquainted with the article twenty years. He had refined 3,000 tons within fifteen years. This is crude, and has always been known as such before and since 1832. Never knew any other name for it. It could not be called saltpetre until it was in this state. This is the first product from the earth containing saltpetre. Mr. Ozias Goodwin had

been an importer of saltpetre twenty-five years. This is crude saltpetre, and was always called so. There was no other name for it, and there was no other kind but crude and refined. Mr. Charles Smith had bought a great deal of saltpetre for 15 or 20 years. This was crude. There was no other name for it. There was no other grade or class but crude and refined.

After this evidence was in, the United States district attorney said he had no witness to offer. The collector, in requiring duties upon this article, had acted in obedience to the circular of Mr. Baker, at Washington.

Dexter, Sprague & Gray, for plaintiffs.

Mr. Mills, for the United States.

STORY, Circuit Justice, thereupon informed the jury that the law was as stated by the counsel for the plaintiffs, and that, the evidence being all on one side, there could be no question as to what their verdict should be.

The jury then returned a verdict for the plaintiffs for the amount claimed without leaving their seats.

The judge remarked that, as the collector did not appear to have acted wantonly in following the instructions of the comptroller to assess these duties, no interest should be added; but if, after this trial, he should

continue to assess duties upon a similar article, the rate of damages might be different.

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