

9FED.CAS.—37

Case No. 4,982a.

FOSTER ET AL. V. SIMMONS.<sup>1</sup>

Circuit Court, D. Massachusetts.

Oct. 7, 1878.

CUSTOMS DUTIES—WASHED AND UNWASHED WOOL—COMPUTATION OF DUTIES—TIME FOR PROTEST.

- [1. The provision of Rev. St. § 2504, Schedule L, that the duty on wool of the first class, imported washed, shall be “twice the amount of the duty” to which it would be subjected if unwashed, must, in view of the necessities of its practical application, be construed to require a doubling of the specific and ad valorem rates, and not a computation of the amount of duties which the law would impose on the number of pounds of unwashed wool, and then a doubling of this amount.]
- [2. There is no new liquidation of duties when goods imported for warehousing are withdrawn from bond, and consequently the 10 days allowed for filing a protest (Rev. St. § 293) must be computed from the date of the original liquidation, which is made at the same time and the same manner as when the entry is for immediate consumption.]

Statement of Agreed Facts.

This is an action of money had and received, to recover \$342.46 in gold coin, and interest thereon, the same being the amount of customs duties exacted by the defendant [William A. Simmons], then collector of customs for the port of Boston, and paid by the plaintiffs [Charles O. Foster and others] to him under protest, upon certain importations of washed wool of the first class, imported by the plaintiffs from Liverpool, England, in the steamers “Minnesota” and “Illyrian,” as hereinafter set forth. The writ is dated August 10, 1877, and, with the declaration and answer, may be referred to as part of these agreed facts.

The first importation of the plaintiffs was by the “Minnesota,” of “70 bags River Plate skin wool,” containing 11,678 pounds, at the entered value of \$4,963, and was so invoiced and entered for warehousing. The invoice was dated Liverpool, March 17, 1877, and the entry for warehousing was duly made here April 2, 1877, when an estimate of duties was made, a bond given, and the goods sent to the warehouse. At the time of the entry the collector designated upon the invoice one bag of the wool in every ten to be opened, examined and appraised, and ordered these designated packages to be sent to the public stores for that purpose; and the packages so designated were sent to the public stores, where they were duly opened and examined by the appraiser, who, on the 3d of April, 1877, made the following report on the invoice:—“Washed River Plate Wool. Class I. Value over 32 cents per lb. Duty 20 cents and 22 per cent. Correct” On the 20th of

April, 1877, the duties were ascertained, liquidated and assessed upon the merchandise so entered in accordance with that report; that is to say, at 20 cents on the pound, and 22 per cent ad valorem. On the 13th of April, 1877, the plaintiffs withdrew from the warehouse three bags of the above wool, amounting to 487 pounds, and of the value, of \$207, upon which the defendant, as collector of customs, exacted the customs duty according to the foregoing ascertainment and liquidation of 20 cents a pound, and 22 per cent ad valorem, amounting to \$142.94, which amount the plaintiffs paid on the same day. On the 27th of the same April, the plaintiffs delivered to the defendant the following protest:—Charles O. Foster & Co., 22 Broad Street Boston, 19 April, 1877. To the Honorable the Collector of Customs, Boston: Dear Sir:—On the 2d day of April, 1877, we imported per steamer ‘Minnesota’ from Liverpool, 70 bags River Plate skin wool, as per invoice dated 16 March. 1877. Upon this importation duty has been assessed at 20 cents per pound, and 22 per cent, ad valorem—the wool in question being rightly classed as ‘washed wool of the first class. By the act of congress, passed 2d March, 1867, it is provided (section 1) ‘that the duty upon wool of the first-class which shall be imported washed, shall be twice the amount of duty to which it would be subjected if imported unwashed.’ In the present case we are charged upon washed wool double the rates of duty levied upon unwashed wool, instead of twice the amount of such duty, as the act provides. We therefore hereby respectfully protest against the assessment of duty made upon the present importation. We remain, dear sir, Your obedient servants, Charles O. Foster & Co.” The collector not changing the assessment and liquidation of the duty, the plaintiffs thereafter, and within thirty days, duly appealed to the secretary of the treasury, who, on the 16th of May, 1877, affirmed the decision of the collector. The plaintiffs claim that this sum of \$142.91 was \$28 in excess of the true amount of duty due upon that with drawal.

The second importation of the plaintiffs was by the steamer “Illyrian” from Liverpool, of 219 bags, containing 38,455 pounds of River Plate skin wool, of the entered value of \$16,321; and was so invoiced and entered for warehousing. The invoice was dated Liverpool, March 24, 1877, and the entry for warehousing was duly made here April 9, 1877, when an estimate of duties was made, a bond given, and the goods sent to the warehouse. At the time of the entry the collector designated upon the invoice one bag of the wool in every ten to be opened, examined and appraised, and ordered the designated packages to be sent to the public stores for that purpose; and the packages so designated were sent to the public stores, where they were duly opened and examined by the appraiser, who on the 10th April, 1877, made the following report upon the invoice:—“Washed Wool. Class I. Value over 32 cents per lb. Duty 20 cents and 22 per cent Correct” On the 27th April, 1877, the duties were ascertained, liquidated and assessed upon the merchandise so entered, in accordance with that report; that is to say, at 20 cents on the pound and 22

YesWeScan: The FEDERAL CASES

per cent ad valorem. Afterwards the plaintiffs from time to time, as below stated, made withdrawals of said wool, upon which the defendant, as collector, exacted, at the time of the withdrawals, from the plaintiffs, customs duties according to the said ascertainment and liquidation, of 20 cents a pound and 22 per cent, ad valorem, which several sums the plaintiffs paid at the time of the withdrawals, and within ten days after said several payments made and delivered “to the collector protests against such payments, and the collector, not changing his exactions of duties, the plaintiffs within thirty days respectively, from the date of the several protests, appealed to the secretary of the treasury, who affirmed the decisions of the collector, and the writ was brought within ninety days thereafter.

The dates and the amounts and values of the withdrawals, the amounts of duties exacted and paid, the dates of protest and the amounts claimed to have been paid in excess, are given in the following schedule:—

Dates of Withdrawals and of the Payment of Duty Thereon.	Number of Bags in Withdrawn.	Amounts Withdrawn in Pounds.	Values \$	Amounts of Duty Paid, \$ cts.	Amounts Claimed to have been Paid in Excess.	Dates of Protest.
May 16, 1877.	6	1,054	447	309.14	60.61	May 23, 1877
May 18. 1877.	5	883	375	259.10	50.77	May 24, 1877.
July 2, 1877.	5	883	375	259.10	50.77	July 6, 1877.
July 6, 1877.	5	883	375	249.10	50.77	July 7, 1877.
July 9, 1877.	10	1,766	750	518.20	101.54	July 10, 1877.

One of the protests last named, which may stand for all, was as follows:—Charles O. Foster & Co., 22 Broad Street. Boston, May 23, 1877. W. A. Simmons, Esq., Collector of Customs, Boston. Sir:—We hereby protest against charge of duty of 20 cents per pound, and 22 per cent, ad valorem on six bales washed wool, part of goods entered by us on the 9th of April, 1877, per S. S. ‘Illyrian’ from Liverpool (bond No. 584), and withdrawn for consumption on the 16th of May, 1877. We claim that, for the purpose of assessing duty, the washed wool should be treated as unwashed, the duty charged at ten cents per pound on the number of pounds withdrawn, and eleven per cent ad valorem upon the same number of pounds of the wool if unwashed, and that double the aggregate is the correct amount of duty; we therefore further claim that, under the existing laws, the duty as exacted by you on the said six bales wool should be reduced, so that the same should merely equal two times the amount of duty on the same number of pounds of the same wool in the grease or unwashed, lours, very respectfully, Charles O. Foster & Co.” The value of the wool of both these importations, in its unwashed condition, at Liverpool, the last port whence exported to the United States, excluding charges in such port, was, at the time of exportation, less than 32 cents a pound, and its value in a washed condition at the same; time and place, was somewhat more than twice the same per pound. Wools of this, class, by being washed, shrink from 50 to 65 per cent in weight, the dirt and grease being removed by the washing, and the wool remaining; and the value of the pound of washed wool of this class is somewhat more than double the value of the pound of unwashed wool of the same class.

The law imposing duty upon wools of this class is as follows (Rev. St U. S. p. 474): “Wools of the first-class the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall be thirty-two cents or less per pound, ten cents per pound, and in addition thereto, eleven per cent, ad valorem. Wools of the same class the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall exceed thirty-two cents per pound, twelve cents per pound, and in addition thereto ten per cent, ad valorem.” “The duty upon wool of the first class which shall be imported washed, shall be twice the amount of the duty to which it would be subjected if imported unwashed.”

If the protests of the plaintiffs, or any of them, shall be held to be sufficient and made in season, and if the mode of assessing the duty upon the merchandise in question, claimed by the plaintiffs in their protests severally, is the correct mode, it is agreed that the several sums hereinbefore stated to be claimed by the plaintiffs as exacted in excess are correct amounts, and that judgment may be rendered in gold in favor of the plaintiffs, for such of these amounts as the court shall decide the plaintiffs to be entitled to, with interest thereon from the date of payment, with costs, otherwise judgment shall be rendered for the defendant with costs.

YesWeScan: The FEDERAL CASES

!A. D. Chandler, for plaintiffs.

The government in assessing the duty on these wools, doubled the rates. The correct method, under the statute, is to double the amount There is a marked difference between the two methods, thus:—

Government Method. 1,000 lbs. Washed Wool of the First Class.	
1,000 lbs. washed wool at 20 cents per pound	\$200 00
1,000 lbs. washed wool are worth \$280.00 (at 28 cents per lb.), 22 per cent of which is	61 60
Duty by government method	\$261 60
Correct Method. 1,000 lbs. Washed Wool of the First Class.	
1,000 lbs unwashed wool at 10 cents per lb	\$100 00
1,000 lbs unwashed wool are worth \$140.00 (at 14 cents per lb.), 11 per cent of which is	15 40
	\$115 40
	2
Duty on 1,000 pounds unwashed wool “Twice the amount” of this duty gives the correct duty on 1,000 lbs of washed wool, as	\$230 80
Difference Between the Two Methods.	
Government method	\$261 60
Correct method	230 80
Difference	\$ 30 80 on every 1,000 lbs.

It is not to be forgotten, in these calculations, that washed wool is worth at least twice as much as unwashed wool, at the last port of export. Washed wool is, in fact, worth more than twice as much as unwashed wool. Hence the difference against the importer is really greater than that shown by the above examples.

This difference in the value of the wools expressly appears in the agreed facts, as follows: “The value of the pound of washed wool of this class (washed) is somewhat more than double the value of the pound of unwashed wool of the same class.” As the Revised Statutes require the duty on washed wools to be assessed at “twice the amount” of duty to which it would be subjected if unwashed, and not double the rates, the correct method is demonstrable as above shown.

George P. Sanger, U. S. Atty.

Before CLIFFORD, Circuit Justice, and LOWELL, District Judge.

FOSTER et al. v. SIMMONS.1

CLIFFORD, Circuit Justice. Masters of ships laden with goods for importation, on their arrival within four leagues of out coast, or within any of the bays, harbors, ports,

or inlets thereof, are required, upon demand, to produce the ship's manifest of such goods to such officer of the customs as shall come on board the ship for his inspection, and it is made the duty of such officer to certify the fact of compliance with that requirement, and the day the manifest was so produced. Imported goods may be entered for consumption or for warehousing, at the option of the importer or consignee, and the proceedings in the two cases, so far as respects the entry, are in all particulars the same. Such an entry must be in writing, and must be made to the collector of the district within fifteen days after the required report is filed by the master. Appropriate forms for that purpose are prescribed by law and the regulations of the treasury department, and the provision is that the owner or consignee making the entry shall also produce to the collector and naval officer, if any, the original invoice or invoices of the goods or other documents received in lieu thereof, or concerning the same, in the same state in which they were obtained, with the bills of lading for the importation. *Waring v. Mayor, etc.*, 8 Wall. [75 U. S.] 117. Two importations from Liverpool were made by the plaintiffs, of River Plate skin wool, one by the *Minnesota* and the other by the *Illyrian*. Entry for warehousing was duly made in the former case, April 2, 1877, and the latter, April 9, in the same year. In the first importation there were 70 bags, containing 11,678 pounds of wool, invoiced and entered as of the value of \$4,963; and in the second importation there were 219 bags, containing 38,455 pounds of wool, invoiced and entered as of the value of \$16,321. Beyond question these proceedings were regular, and the agreed statement shows that the duties were estimated in each case at the time of the entry, that the required bond for the same was also given in each case, and that the collector designated on the invoice one in ten of the packages to be examined and appraised, and ordered the same to be sent to the public store for that purpose. Due report was by the appraiser made in the first case, April 3, 1877, as follows: "Washed River Plate Wool. Class 1. Value, over 32 cents per lb. Duty 20 cents and 22 per cent Correct" In the second case the report bears date April 10, in the same year, and is in the words following: "Washed Wool. Class 1. Value over 32 cents per lb. Duty 20 cents and 22 per cent. Correct"

All these facts are agreed to, and it is also agreed that the duties in the first case were on the 20th of April, in the same year, ascertained, liquidated and assessed in accordance with the report of the appraiser, and that the duties in the second case were ascertained, liquidated and assessed by the appraiser, April 27th, of that year, in accordance with the report of the appraiser in that case. Protests were subsequently filed by the plaintiffs in each of the cases. In the first case, the protest though bearing date April 19th, 1877, was not delivered until the 27th of the same month. They, the importers, object to the liquidation of the duties in that case because the goods are charged with double the rates of duty upon unwashed wool instead of twice the amount of such duty as the act of congress provides. Formal protest was also filed in the second case, dated May 23, 1877, in

which the plaintiffs object to the liquidation of the duties in that case, because, as they, in effect, insist, the washed wool should be treated as unwashed wool, and double the aggregate duty imposed upon the unwashed wool is the correct amount of duty to which the washed wool is properly subject, under the existing act of congress. Provision is made that the decision of the collector as to the rate and amount of duties shall be final and conclusive unless the owner or importer, consignee or agent shall, within ten days after the ascertainment and liquidation of the duties, as well in cases entered in bond as for consumption, give notice in writing to the collector on each entry, if dissatisfied with his decision, setting forth therein distinctly and specifically the grounds of his objection thereto, and shall, within thirty days after the date of such ascertainment and liquidation, appeal therefrom to the secretary of the treasury, whose decision on such appeal shall be final and conclusive. 13 Stat 215; Rev. St § 2931; 19 Stat 247.

Ten days from the date of the ascertainment and liquidation of the duties are allowed for the filing of the protest, or the giving notice in writing to the collector by the importer, consignee or agent, of his dissatisfaction with the collector's decision, setting forth therein distinctly and specifically, the grounds of such objection; and the agreed statement shows that the protest in the first case was seasonably filed, and in the judgment of the court it is sufficiently distinct and specific to constitute a compliance with that requirement in the act of congress. *Davies v. Arthur*, 96 U. S. 758.

Certain descriptions of importations were, under the act of the 2d of March, 1867 [14 Stat 559], divided into classes, to facilitate the ascertainment of the duty, or rate of duty, to which the articles were subjected by the provisions of that act, which classification was, to a large extent, preserved in the Revised Statutes. Wool of the first class, the value whereof, excluding certain charges, shall be thirty-two cents or less per pound at the port whence exported, is subject to a duty of ten per cent per pound, and in addition thereto, eleven per centum ad valorem; and wool of the same class, whose value, excluding charges, exceeds thirty-two cents per pound, is subject to a duty of twelve cents per pound, and in addition thereto, ten per cent, ad valorem, the antecedent provision being that the duty upon wool of the first class, which shall be imported



washed, shall be twice the amount to which it would be subjected if imported unwashed. Washed wool was imported in both of these cases, and the contest upon the merits is, whether the duties imposed by the collector were or were not correct. Both of these importations, if unwashed, were, at the time of their importation, excluding charges at Liverpool, valued at less than thirty-two cents per pound, and their value in a washed condition was somewhat more than twice the value per pound of the unwashed wool. Wools of the class mentioned, by being washed, shrink from fifty to sixty-five per cent in weight, the dirt and grease being removed by the washing, which greatly diminishes the weight of the article, consequently the value of the pound of washed wool is somewhat more than double the value of the pound of unwashed wool of the same class. First class wool, if imported washed "shall be twice the amount of the duty to which it would be subjected if imported unwashed." Although the appraiser found that the value of the wools in these cases was over thirty-two cents per pound, yet it is plain that he committed an error in that regard, as the duty which he recommended in each case was twenty cents specific and twenty-two per cent ad valorem, which is the duty imposed upon washed wool of the value of thirty-two cents per pound and less, as will be seen by doubling the rates charged upon unwashed wool of that valuation. Twenty cents specific duty and twenty-two per cent ad valorem is just double the duty imposed on unwashed wool of the first class, when of the value of thirty-two cents and less, excluding charges at the last port or place whence exported. Grant the value of the wool imported was thirty-two cents or less, then it is clear that the collector in ascertaining and liquidating the amount, doubled the rates imposed by law upon unwashed wool of the same class, which is the theory assumed by both parties in this controversy. Viewed in that light the United States contend that the ascertainment and liquidation of the duties were correct and that the plaintiffs are not entitled to recover any thing, because they fail to show that they paid to the collector any excess beyond what the law imposed. On the other hand the plaintiffs contend that the ascertainment and liquidation of the duties were erroneous; that the collector should first have computed the amount of the duties which the law would impose on the number of pounds of unwashed wool and then have doubled that amount. Opposed to that it is contended by the United States that double the rates of duty in such a case, and twice the amount of the duty, are the same thing, which cannot be sustained, if it be meant by the proposition that the two methods of computation will produce the same aggregate result. Nor can the theory of the plaintiffs be sustained, as the agreed facts show that the unwashed wool, by being washed, shrinks from fifty to sixty-five per cent, which is sufficient to show that the construction of the provision assumed by the plaintiff cannot be correct. Instead of that, the exact, literal meaning of the phrase would be approached much more nearly by adding the amount of the shrinkage of unwashed wool to the number of pounds of washed wool imported, and computing the duty at twice the amount

of the duty to which it would be subjected if imported unwashed. If the amount of the shrinkage could be ascertained in every case, the theory suggested would work out the correct result; but it can not be admitted that congress Intended that it should be the duty of the collector in every case to ascertain how much the shrinkage of the unwashed wool was when it was converted into washed wool, before he could estimate and liquidate the duties upon the goods imported as washed wool. Congress never intended that such a construction should be adopted, as it would impose upon the collector the duty of making an inquiry which he could rarely, if ever, answer; and it is equally clear that congress never intended to adopt the theory of the plaintiffs, as that would leave fifty per cent or more of the goods imported, duty free or without any customs taxation whatever. "Twice the amount of the duty to which it would be subjected, if imported unwashed," are the words of the act, and in the judgment of the court the rule of computation adopted by the collector is the only one of a practicable character which can be adopted consistent with the language of the provision. Customs taxation is usually by rates of duty specific or ad valorem, or by both, as in this case; and if the language had been twice the aggregate sum imposed upon a like amount of goods the case would, have been clear, but the language is "twice the amount of the duty," which may well be construed to mean twice the duty upon the pound of washed wool to which the importation would be subjected if imported unwashed. Judgment must therefore be for the defendant in the first case.

Enough appears in the statement of the case to show that the protest in the second case was not filed in season to constitute a compliance with the act of congress, to which reference has already been made. 13 Stat 215; Rev. St. § 283. Neither party controverts that proposition, if the ten days be computed from the original ascertainment and liquidation of the duties, but the plaintiffs insist there may be and is a subsequent ascertainment and liquidation of duties where the entry is for warehousing, and that if any subsequent protest is filed within ten days from such subsequent ascertainment and liquidation of the duties, the protest is seasonable. Nothing of the kind is provided for in the acts of congress. Nor can any such inference be drawn from the provision, which.

is that the decision of the collector as to the rate and amount of duties, and the dutiable costs and charges thereon, shall be final and conclusive, unless the owner, importer, consignee or agent shall, within ten days after the ascertainment and liquidation of the duties by the proper officers of the customs give notice in writing to the collector, on each entry, if dissatisfied with his decision, setting forth therein distinctly and specifically the grounds of his objection thereto. Appeal, if any, must be taken within thirty days from that ascertainment and liquidation of the duties, and the same proceedings take place in respect to the entry and the ascertainment and liquidation of the duties, whether the entry is for warehousing or for consumption.

Usually the boarding officer, as before remarked, boards the vessel on her arrival, and obtains the manifest and delivers it to the collector; but if the boarding officer does not perform that duty, then the act of congress makes it the duty of the master to deliver the manifest to the collector within twenty-four hours after the arrival of the vessel, and to make formal entry of the vessel within forty-eight hours after the vessel arrives in port. On the arrival of the vessel the consignee, owner or agent is required to make an entry of the cargo, either for consumption or for warehousing, and to produce the bill or bills of lading, together with the invoice duly certified, setting forth the quantity, quality and general description of the merchandise. Where the entry is for consumption, an estimate of the amount of the duties appearing to be due, is made from the quantity and description given in the invoice; and, if the person making the entry deposits the estimated amount of the duties so appearing to be due, a permit is then issued to deliver the cargo after the quantities are ascertained, the invoice being at the same time sent to the appraiser with the request endorsed on its face to "examine and classify the merchandise, and to report thereon" and at the same time the surveyor is requested to ascertain and report quantities. Step by step the same proceedings are had in the case of merchandise entered for warehousing, except that in lieu of a deposit covering the estimated amount of the duties, a bond is taken in the penal sum of double the amount of the duties appearing to be due by the invoice. Formal entry is required in both cases, and in both cases the duties are ascertained and liquidated on the receipt by the collector, of the appraiser's report in relation to classification and rate, and the surveyor's report in relation to quantity. No other appraisement takes place unless the party making the entry, or the collector, is dissatisfied with the appraisement, in which event the collector may order another appraisement by the local appraisers, or by the principal appraiser, or by three merchants. Alterations are sometimes made by the second appraisers, but when the duties are ascertained and liquidated, the importer, if dissatisfied with the decision of the collector, has ten days from the date of such ascertainment and liquidation in which to enter his protest, and may appeal to the secretary of the treasury within thirty days from the same date. Withdrawals of parcels of merchandise where the entry is for warehousing, may be made at any time pursuant to

the treasury regulations, but there is no act of congress providing for any other ascertainment and liquidation of the duties, nor for any other protest or appeal. When the entry is made the duties are estimated by the collector for the purpose of fixing the amount of the required deposit or bond, but the ascertainment and liquidation of the duties follows the action of the appraiser and that of the surveyor, unless the importer augments the value or quantity, or both, in the entry. The estimation of duties for the purpose of fixing the amount of the deposit in case the entry is for consumption, or of the bond in case the entry is for warehousing, is always made from the value and quantities specified in the invoice, but it is a mere estimate, and should never be confounded with the subsequent ascertainment and liquidation of the duties. Attempt is made in argument to support the opposite theory from Mr. Justice Strong, in an opinion given by him in the supreme court. *Westray v. U. S.*, 18 Wall. [85 U. S.] 322.

Four points were decided in that case: 1. That the collector is under no obligation to give notice to the importer of the liquidation of duties on imported merchandise. 2. That the right of the importer to complain or appeal begins with the date of the liquidation, whenever that is made. 3. That the warehouse bond is a bond given to secure the payment of whatever duties may be by law chargeable upon the merchandise to which it refers. 4. That the obligor can only be relieved from the penalty by the payment of all the duties, to secure which he gave the bond.

Beyond that there is nothing in the opinion which controls the present case. In the course of the opinion the judge points out very clearly the difference between the estimate of duties made to fix the amount of the deposit or the amount of the bond, and the subsequent ascertainment and liquidation of the duties which mark the date from which the ten days allowed for protest begin to run. It is clear from that opinion that the limitation of the right to complain or appeal, commences with the date of the liquidation, and that the collector is not required to give notice when the liquidation takes place. Nor is there any thing in that opinion in the judgment of the court here which gives any sanction to the theory that the collector must make a new liquidation of duties every time the importer withdraws from the warehouse any portion

YesWeScan: The FEDERAL CASES

of the imported goods. Such a theory, if accepted, would prove to be very inconvenient, and would increase the duties of the collector's office beyond what the present force in those offices could perform, but the better answer to the proposition is that there is no act of congress which authorizes any such proceeding. Apply the rules here suggested and it is clear that the defendant is also entitled to judgment in the second case.

Judgment for the defendant

<sup>1</sup> [Not previously reported.]