GAMBLE ET AL. V. MASON.

Case No. 5,209.

{7 Am. Law Reg. 178; 42 Hunt Mer. Mag. 589.}

Circuit Court, D. Maryland. Nov. Term, 1858.

CUSTOMS DUTIES—TARIFF ACTS OF 1842 AND 1857—ARTICLES NOT ENUMERATED—ACTIONS AGAINST COLLECTOR—COMPLIANCE WITH STATUTORY REQUIREMENTS.

1. The 20th section of the tariff act of 1842 {5 Stat. 565} is still in force, and is embodied in the act of 1857 {11 Stat. 192}.

{Approved in Field v. Schell, Case No. 4,772.}

2. That whether an article imported into the country, and which is not specifically enumerated in the schedule of the act, bears a similitude in material, quality, texture or use, to one which is enumerated, is a question which a jury must determine.

3. In order to maintain an action against the collector of the port, the plaintiff must satisfy the jury that he has fully complied with all the requirements of the statute, both as to form, and substance.

This was an action on the case brought by the plaintiffs to recover of the defendant $187. The plaintiffs {Joseph C. Gamble and David Gamble} are aliens and citizens of England, and the defendant {John T. Mason} is collector of the customs of the United States, at the port of Baltimore. On the 16th of April, 1858, D. Mcllvain, as consignee and agent of the plaintiffs, entered at the custom house in Baltimore one-hundred

barrels of caustic soda, valued at $1,700. The defendant assessed and levied on the said caustic soda a duty at the rate of fifteen per cent ad valorem; the consignee contending that caustic soda, was liable, under the tariff act of 1857, to but four per cent ad valorem, paid the above assessment of fifteen per cent, under protest in writing, and took the goods; the assessment, as paid, amounted to $255. Afterwards, on the 24th of April, 1858, McIlvain addressed a letter to the defendant, setting forth the grounds on which he protested against the said assessment of fifteen per cent, and the reasons why he considered that caustic soda was liable to a duty of but four per cent; the defendant, still adhering to his decision, McIlvaine, as agent and consignee of the plaintiffs, on the 13th of May, 1858, appealed from his decision to the secretary of the treasury, and the secretary of the treasury on the 18th of May, 1858, notified McIlvaine that he had affirmed the decision of the defendant. The plaintiffs thereupon, on the 16th day of June, 1858, instituted the present suit.

The act of congress, approved March 3, 1857 [supra], being the latest tariff act, embraces eight separate schedules, designated by the letters of the alphabet from A to H inclusive; each of said schedules contains a list of enumerated articles, all articles in the same schedule being assessed at the same rate, and a different rate being assessed in each of the different schedules. Schedule I contains all articles that are free of duty. The act of 1857 also, provides that all articles imported from abroad into the United States, and not enumerated in said schedules, shall pay a duty of fifteen per centum. The act of 1857 is similar in its provisions to the tariff act of 1846 [9 Stat 42], which was the tariff act next preceding the act of 1857, with the exception that the rates of duty are different in the two acts, and some changes made in the latter as to the relative position of some articles in different schedules. The 20th section of the tariff act of 1842, is in these words,—"That there shall be levied, collected and paid on each and every non-enumerated article which bears a similitude, either in material, quality, texture, or the uses to which it may be applied, to any enumerated article chargeable with duty, the same rate of duty which is levied and charged on the enumerated article which it most resembles in any of the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles, on which different rates of duty are chargeable, there shall be levied, collected and paid on such non-enumerated article the same rate of duty as is chargeable on the article which it resembles, paying the highest duty; and on all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which any of its component parts may be chargeable."

The plaintiffs admitted that caustic soda was not enumerated in any of the before mentioned schedules of the act of 1857, but they contended that under the 20th section of act of 1842, caustic soda bears a similitude to soda ash either in material, quality, texture, or the uses to which it may be applied, and of all the articles enumerated in the

different schedules of the act of 1857, it most resembles soda ash; and inasmuch as soda ash is made liable to pay but four per cent, by said act, (being embraced in Schedule H) that therefore caustic soda is properly chargeable with but four per cent, and having paid fifteen per cent under protest on that entered on the 16th of April, 1858, that they are entitled in this action to recover the difference between fifteen per cent on $1,700, and four per cent on the same sum.

The defendant contended, 1st, that caustic soda is liable to pay a duty of fifteen per cent, as an unenumerated article under the act of 1857. 2d. That it bears no similitude either in material, quality, texture, or the uses to which it may be applied to soda ash, and that it does not most resemble soda ash of all the articles enumerated in the several schedules of the act of 1857; that therefore it is not properly chargeable with the same duty as is levied upon soda ash.

J. Mason Campbell and Bernard Caxter, for plaintiffs.

W. Meade Addison, U. S. Dist Atty., for defendant

HELD BY THE COURT (GILES, District Judge): 1st, that the 20th section of the tariff act of 1842 was still in force, and must be considered as embodied in the tariff act of 1857.

2d. That if caustic soda bears a similitude to soda ash, either in material, quality, texture, or the uses to which it may be applied, and most resembles soda ash of all the articles enumerated in said tariff act of 1857, that then caustic soda was under said act chargeable with but four per cent ad valorem, and that whether or not caustic soda bears the said similitude to soda ash, and most resembles it as aforesaid, is a question for the jury to determine.

3d. That if caustic soda more nearly resembled carbonate of soda than it does soda ash, in the particulars mentioned in the said 20th section of act of 1842, which is a question for the jury to determine, then that caustic soda was liable to a duty of eight per cent, that being the rate of duty with which carbonate of soda is chargeable, under the act of 1857.

4th. That in order to maintain this action against the defendant, the plaintiffs must

show, to the satisfaction of the jury, in addition to the other matter which they are required to show, that within ten days after the decision of the collector in this matter, they gave notice to him of their dissatisfaction with his decision, and set forth distinctly and specifically therein the grounds of objection thereto; and did within thirty days after the date of such decision, appeal there from to the secretary of the treasury, and did within thirty days from the date of the decision of the secretary of the treasury in this matter, institute this suit.

The jury rendered a verdict in favor of the plaintiffs for one hundred and eighty-seven dollars, $187, (the amount claimed by the plaintiffs) and $6.88 interest from the 16th of April, 1858, making in all $193.88.

{A writ of error sued out by the plaintiff was dismissed by the supreme court for want of jurisdiction. 21 How. (62 U. S.) 390.}