

CROSS V. SEEBERGER, COLLECTOR, ETC.

*Circuit Court, N. D. Illinois.*

March 14, 1887.

CUSTOMS DUTIES—FROZEN FISH—IMMEDIATE USE.

Fresh fish, that is, unsalted or uncured fish, imported in bulk, or otherwise than in barrels or half barrels, in a frozen condition, to be put upon the market and sold for immediate use, are to be admitted free of duty, upon the importer furnishing to the collector of the port of entry reasonable or proper proof or assurances of an honest intention to put them on the market for immediate use. Clause 699. New Tariff Index.

At Law. Action to recover duties paid under protest.

*P. L. Skuman*, for plaintiff.

*W. G. Ewing*, U. S. Atty., for defendant.

BLODGETT, J. Plaintiff imported from Winnipeg, Canada, into the port of Chicago, a quantity of frozen fish, which were assessed by the collector with a duty of 50 cents per hundred pounds under clause 280 of the New Tariff Index. Plaintiff claimed that they should have been admitted free of duty, under clause 699 of the New Tariff Index, as “fresh fish for immediate consumption.” The duties so assessed were paid under protest, an appeal taken to the, secretary of the treasury, who affirmed the action of the collector, and this suit brought in apt time to recover the duties so exacted. The proof shows that the fish in question were naturally frozen; that is, they were caught in the winter from holes cut through the ice and frozen as fast as caught, and in this frozen condition brought in bulk to this market.

Clause 280, under which this duty was assessed, reads as follows: “Foreign-caught fish, imported otherwise than in barrels or half barrels, whether *fresh*, smoked, dried, salted, or pickled, not specially enumerated or provided for in act, fifty cents per hundred, pounds.” While section 2503 of the Revised Statutes, as amended by the act of March 3, 1883 declares that “the following articles, when imported, shall be exempt from duty;” and among the articles specifically enumerated in this section are “(699) fish, fresh, for immediate use, free.”

The two paragraphs are apparently, in conflict with each other, as paragraph 280 by its terms includes *fresh fish* when imported otherwise than in barrels, or half barrels; but one of the most universally accepted canons for the construction of statutes is that effect must be given, when possible, to every part and all the words of a statute. *U. S. v. Warner*, 4, McLean, 463; *U. S. v. Bassett*, 2 Story, 389. Also that “every part of a statute must be considered for the purpose of discovering the mind of the legislature.” *Pennington v. Coxe*, 2 Cranch, 33.

Applying this rule to the tariff, as revised by the act of March 3, 1883, we must, if possible, give effect to that portion of section 2503 which provides that fresh fish for immediate use shall be admitted free of duty, although it would seem on first reading to be repugnant to paragraph 280, which imposes a duty of 50 cents per hundred pounds on such importation when made in bulk; and it seems to me the test as to whether fresh fish are to be admitted duty free depends upon the fact whether they are imported for immediate use. This is a question of fact which the importer is bound to establish by proof to the satisfaction of the collector of the port of entry. If there is good ground for doubt as to the use to which the importation is to be applied, the collector may perhaps require a bond that they shall be sold only for immediate consumption while fresh; but certainly there should be no difficulty in making the proof as to the use or purpose for which an importation is to be applied.

The words “fresh fish,” as used in paragraph 699, undoubtedly mean fish which have not been salted, or subjected to any of the known processes for curing them, such as

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pickling, smoking, or drying; but these words do not exclude, fish which have been frozen either naturally or artificially, as all persons living in the cold latitudes know as a matter of common knowledge that meats and fish are kept fresh by freezing,

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and so long as they are kept frozen they retain substantially their natural juices and flavors, without the aid of antiseptics or desiccation, and are in condition for immediate use.

I am therefore of opinion that fresh fish, that is, unsalted or un-cured fish, imported in bulk, or otherwise than in barrels or half barrels, in a frozen condition, to be put upon the market and sold for immediate use, are entitled to admission to the ports of this country free of duty; and that the importer is only obliged to furnish the collector at the port of importation with proper or reasonable proof or assurances of his purpose in good faith to put them upon the market for immediate use, to be entitled to have them so passed.

The issue is found for the plaintiff.