FALCONER et al. v. MILLER et al.

(Circuit Court of Appeals, Second Circuit. April 4, 1899.)

No. 149.

CUSTOMS DUTIES—HAIRCLOTH GOODS.

Women's and children's dress goods manufactured of hair imported between April 30, 1874, and June 24, 1874, were dutiable under Tariff Act, July 14, 1870, § 21, as amended January 30, 1871, prescribing the duty on "hair-cloth known as crinoline cloth, and all other manufactures of hair not otherwise herein provided for."

In Error to the Circuit Court of the United States for the Southern District of New York.

W. B. Coughtry, for plaintiffs in error.

Henry C. Platt, for defendants in error.

Before WALLACE and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. This case presents but a single question. The plaintiffs imported into the port of New York, at various times between April 30, 1874, and June 24, 1874, women's and children's dress goods manufactured of hair, and the importations were subjected to duty under the provisions of the tariff act of March 2, 1867, imposing duty upon "women's and children's dress-goods * * * composed wholly or in part of wool, worsted, the hair of the alpaca goat and other like animals." The question is whether they were dutiable under this provision, or under a provision of the tariff act of July 14, 1870 (as amended January 30, 1871), prescribing the duty on "hair-cloth known as crinoline cloth, and all other manufactures of hair not otherwise herein provided for."

Our decision in Dieckerhoff v. Miller, 93 Fed. 651, determines this case in principle. In that case, as in this, there was a provision in the earlier tariff act more specifically descriptive of the importations than the provision in the later act, but we held that they should have been classified under the provision of the later act, because congress intended by that act to prescribe the duty upon the entire class of articles of which they were a variety, exclusive of any exceptions not mentioned in the act itself. In this case they are "dress goods" specially enumerated in the earlier act; in the other case they were "bindings, braids and buttons," specially enumerated in the earlier act. As they were also manufactures of hair, and the later act was intended to establish the duty on all articles of that description, except such as were otherwise provided for by its own terms, they were dutiable under the provisions of the later act. Some observations in the opinion in Arthur's Ex'rs v. Butterfield, 125 U. S. 70, 8 Sup. Ct. 714, are relied upon by the defendants in error as inferentially suggesting that the court would not have decided that case as it did if the facts had been like those in this case; but these observations were not addressed to the point, and a careful reading of the opinion satisfies us that the rule of that case extends to the facts of the present case. As the court below directed a verdict for the defendants upon the theory that the goods were properly classified, the judgment must be reversed.

UNITED STATES ex rel. SCOTT v. McALEESE.

(Circuit Court of Appeals, Third Circuit. April 20, 1899.)

No. 34, March Term.

HABEAS CORPUS — FEDERAL QUESTION — JURISDICTION OF STATE COURTS—COMITY.

Where a debtor was arrested on process issuing from a state court on a charge of having violated a penal statute of the state against fraudulent insolvency, and afterwards, on petition of his creditors in the proper federal court, was adjudged bankrupt, and the state court, on hearing, then committed him for trial, and he thereupon applied to the United States circuit court for his release on habeas corpus, on the ground that the state statute was superseded by the bankruptcy law, *held*, that the state courts were competent to decide the federal question thus raised, and that, no circumstances of special urgency being shown, the federal courts should not assume its determination until the prisoner had exhausted his remedy in the state courts.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

The relator, J. McD. Scott, sued out a writ of habeas corpus in the circuit court, directed to John McAleese, as warden of the prison of Allegheny county, Pa., alleging that he was unlawfully restrained of his liberty by the respondent under certain commitments from the court of common pleas of said county. From an order of the circuit court discharging the writ and remanding the prisoner, the latter appeals.

J. S. Ferguson, for appellant.

W. A. Blakeley and W. A. Way, for appellee.

Before ACHESON and DALLAS, Circuit Judges, and McPHERSON, District Judge.

McPHERSON, District Judge. The defendant is the warden of the Allegheny county prison, and holds the appellant in custody by virtue of three commitments. One is for contempt of court in refusing to answer certain questions put to the appellant before a referee in bankruptcy; and as this commitment is formally unobjectionable, and has not been successfully attacked upon any ground appearing on the record, it would of itself support a judgment of affirmance. But for reasons that are satisfactory to us, although they need not be set out in this opinion, we have no doubt that the commitment for contempt should not be regarded as an existing process, and accordingly we shall treat it as furnishing no ground for the relator's detention.

It remains to consider the other two commitments. Concerning these the following facts are undisputed: The appellant was a merchant doing business in the city of Pittsburg. On October 12, 1898, he made an assignment for the benefit of creditors; and shortly afterwards, in the same month, several creditors proceeded against him by petitions for warrants of arrest under the Pennsylvania statute of July 12, 1842 (P. L. 339). The petitions averred that the relator had violated section 3 of the statute in certain particulars, and accordingly warrants of arrest were duly issued by a judge of the court of com-