

[CIVIL JURISDICTION.]

[ACTION No. 31, 1915.]

1916.
April 14.MORRIS, HEDSTROM LIMITED *v* RECEIVER-GENERAL.

Importation duty free of metal drums as inside and outside packages.

Held, the drums being of no commercial value in Fiji are exempt from duty.

Sir CHARLES DAVSON, C.J. The question here is whether certain iron drums in which naphthalite was imported into this Colony are liable to ad valorem duty, or whether they are duty free under the Customs Tariff, as amended by Ordinance No. 21 of 1913, which exempts—

Packages inside and outside of wood, tin, glass, paper, or other material, in which are contained only articles liable to a specific rate of duty or articles exempt from duty or both, and in which such articles are ordinarily and actually contained.

Plaintiffs paid duty under protest, appealed without success to the Customs Commissioners, and now bring this action, under section 136 of the Customs Regulation Ordinance 1881, to recover the duty paid relying on the enactment above quoted and averring that the drums are packages in which naphthalite is ordinarily contained. The statement of defence denies that naphthalite is ordinarily contained in such drums and states that the drums are of commercial value. This latter statement is, I think, as a matter of pleading, irrelevant, as the exemption clause makes no reference to commercial value,

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but the question of value is important in considering a point to which I shall come later.

The substantial point in issue is whether the drums are packages in which naphthalite is ordinarily contained when shipped and the uncontradicted evidence of Captain Issacson, Mr. Eva and, particularly, Mr. Horne satisfied me that this is the case: it may be shipped in other ways as well, but the word used is "ordinarily," not "exclusively." This being so, there is an end of the case, as far as the pleadings go, but a point was raised in argument with which I must deal, though it does not appear on the pleadings and was not relied on in the appeal to the Customs Commissioners.

It is contended that these metal drums do not come within the exemption because they are not *ejusdem generis* with "wood, tin, glass and paper," and that, therefore, they are not covered by the general words "or other material." In this connection the learned Attorney-General called my attention to the repealed Ordinance No. 8 of 1907. The schedule of exemptions to that Ordinance contains these items:—"inside and outside packages of wood, tin, glass, paper or other material in which goods are ordinarily and actually contained" and "iron drums and cylinders for exporting molasses and spirits, or for importing sulphuric acid," and the Attorney-General contended, and this contention deserves very serious consideration, that this shows that the legislature at that time would include iron drums. Mr. Crompton in reply contended that the words "or other material" must be taken in their ordinary sense, and pointed out that carbide drums, linseed oil drums and mustard oil drums are admitted free and that they are of material similar to, though not identical with, the material of the drums.

Now, I think that the *ejusdem generis* principle does apply here, because the specific words "wood, tin, glass, paper" all belong to the same genus in this sense, that they are all cheap things; that is, materials from which cheap packages can be made; and I take it that the object of the legislature is to prevent an importer bringing in, duty free, under the guise of a package, something which has a commercial value. I hold therefore that the words "or other material" must receive a limited construction in this sense. This brings us, then, to the consideration of the question of the value of these drums. The invoice shows that when shipped from San Francisco they were of considerable value, and Mr. Hedstrom says that they cost his firm some 19s. each. But the question I have to determine is whether they have any substantial

value to the importer here. On this question Mr. Hedstrom's evidence, which is uncontradicted, is very definite; he says: "We have not been able to sell the drums; I have tried; we have never sold an empty drum; and again "we shipped about 130 to San Francisco; we could not realise anything on them; we lost the freight. They cannot be refilled on account of the rust." Mr. Horne, who has had large experience as sub-manager of a firm of shipping agents in Vancouver, says: "A drum such as these would not be returned for a refill." The drums are therefore not of commercial value here.

I have given careful consideration to the argument of the Attorney-General founded on the Ordinance of 1907 as indicating the opinion of the legislature at that time, but in view of the above considerations and of the principle that in doubtful cases (assuming this to be a doubtful case) the Court should lean against the construction which imposes a burden on the subject, I hold that these drums are exempt from duty being packages within the meaning of the exemption clause above quoted.

I give judgment for plaintiffs with costs.

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