66TH CONGRESS, 1st Session. | SENATE. | REPORT No. 245

ESTATE OF HENRY A. V. POST.

OCTOBER 6, 1919.—Ordered to be printed.

Mr. MCCUMBER, from the Committee on Finance, submitted the following

REPORT.

[To accompany S. 2300.]

The Committee on Finance, to whom was referred the bill (S. 2300) for the relief of the estate of Henry A. V. Post, having considered the same, report favorably thereon without amendment with the recommendation that the bill do pass.

This bill provides for the refund of import duties paid by the firm of Clark, Post & Martin, composed of Henry A. V. Post, Archer N. Martin, and others, in excess of duties imposed by law on steel blooms imported by said firm.

The Court of Claims found, December 1, 1913, that on October 31, 1881, said firm was dissolved by voluntary dissolution, and therefrom the said Henry A. V. Post became the liquidating partner thereof and was and is vested with all the rights, property, and assets of said firm and the right to receive and collect the same, including this claim.

The court further found that said Post is now the owner of said claim and, except for the statute of limitations and failure to comply with the statutes relating to payment under protest, appeal to the Secretary and notice of suit as then required by law, would be entitled to a judgment of the court for the sum of $50,359.35, and that the failure to make said protest and appeal was under circumstances amounting to duress. (See copy of court's decision.)

This claim, with the claim of Brown, Howard & Co. and the Philadelphia & Reading Coal & Iron Co., was embodied in a bill (S. 4398) Sixty-fourth Congress, first session, and was favorably reported and passed the Senate. Copy of the report is hereto attached and sets out in full the facts in the case except that it does not cover the alleged duress, which consisted of a warning by the then Assistant Secretary of the Treasury, Mr. French, that those

importers who were disposed to protest against the 45 per cent ad valorem rate levied should remember that he had authority to reclassify the imports and increase the duty to 2¼ cents a pound, which would be approximately 180 per cent ad valorem. It further appears that one firm of importers, H. E. Collins & Co., of Pittsburgh, ignored this warning and that in their case the increase of duty was actually made after payment of the former duty.

Claimants were never indemnified for the loss they sustained from the payment of ~~the unlaw~~ful duty exacted and collected by the Government, and the evidence is clear on this point and shows the blooms were not imported for sale but manufactured into rails and other appliances for the claimant's own use.

Payments of these claims have been recommended by the Treasury Department at a hearing before the Committee on Claims of the House of Representatives. At that hearing a representative of the department, who appeared by request of the committee, referred to the acts of Congress passed in 1903 and 1905, respectively, which provided for the payment of all claims of this character except the three referred to in bill S. 4398, and stated that the cases were on all fours with other claims that had been allowed and that the department had no objection to the payment of the same, but recommended it.

[Senate Report No. 220, Sixty-fourth Congress, first session.]

The Committee on Finance, having had under consideration the bill (S. 4398) for the refund of excess duties on steel blooms, report the same with the recommendation that it do pass.

It appears from the records of the Treasury Department that large quantities of steel blooms were imported into the United States by numerous manufacturers of steel from 1879 to 1882, inclusive.

Steel blooms were not named or classified in the tariff laws, and therefore the question presented to the department was whether they were dutiable at 45 per cent ad valorem as manufactured or partially manufactured articles of steel; or at 30 per cent ad valorem as steel in form not otherwise provided for; or at 2¼ cents a pound—equivalent to about 180 per cent ad valorem—as steel in ingots. (Rev. Stats., p. 465, 466.)

The importers contended before the department that steel blooms were not manufactured or partially manufactured articles of steel or steel in ingots, and that the lawful rate of duty was only 30 per cent ad valorem; but the department held otherwise and arbitrarily fixed the duty at 45 per cent ad valorem, and informed numerous importers that it had authority to increase the rate to 2¼ cents per pound by classifying the blooms as ingots of steel.

The attitude of the department intimidated many of the importers and deterred them from protesting against the 45 per cent rate; but the firm of Downing & Co. did protest against and appealed from the action of the department, and in their case against the collector of customs at the port of New York the United States Circuit Court for the Southern District of New York held the lawful rate of duty to be only 30 per cent ad valorem. The Treasury Department accepted that decision as final and adopted it as its rule.

Thereafter many importers persistently sought relief through Congress for the excess of duties paid, and on January 9, 1903, jurisdiction was conferred upon the Court of Claims to hear and determine their claims for relief, notwithstanding the bar of any statute of limitations. (Stat. L., pt. 1, p. 764.) In adjudicating these claims the Court of Claims followed the decision of the circuit court in the Downing case and rendered judgment in favor of the importers, whose claims have since been paid.

On February 24, 1905, Congress referred the like claims of Bates and Despard and the Illinois Steel Co. to the Court of Claims for judgment (33 Stats., pt. 1, p. 809), and the same were subsequently paid.

The only remaining claimants are named in the pending bill. They did not know until the acts of January 9, 1903, and February 24, 1905, became law that such legisla-

tion was pending, and consequently they were not named in either act; but they have continued to ask Congress for like relief ever since, and finally, in 1912 and 1914, their claims were referred by resolutions of the Senate to the Court of Claims for findings of fact; and the findings and conclusions of the court are the same in effect as under the acts of January 9, 1903, and February 24, 1905.

The conclusion of the court in each case is as follows:

"Upon the foregoing findings of fact the court concludes that the claim is not a legal one. It is equitable in the sense that the United States exacted of claimant sums in excess of the legal rate of duty under the tariff law, aggregating * * *" [here follows the amount in each case, being the sums named in the pending bill].

It is to be noted that the title to the money involved in these claims has never passed from the claimants, but they are without remedy to recover it.

These claims passed the Senate March 3, 1915, and they aggregate $142,552.18, as found by the Court of Claims.

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