

tain named questions to the Honorable John Mitchell, before whom the parties were heard at length, a large amount of evidence being introduced. The referee files his report, in which he finds that there was left in the hands of Mershon & Bancroft the sum of \$1,441.96, for which they are liable; subject, however, to a possible claim on behalf of Mershon & Bancroft for \$378.10, which sum is due them from the barbed-wire company, for losses sustained on wire of special sizes ordered by the wire company, and which Mershon & Bancroft had contracted for, and were obliged to take from the manufacturers. This sum is justly due defendants from the wire company, but it is denied that it can be deducted from the balance in hands of Mershon & Bancroft as against the City Bank of Boone. Giving the defendants the benefit of the sum claimed, and deducting it from the balance of \$1,441.96 which the referee finds was the balance left in hands of Mershon & Bancroft, and there would be left the sum of \$1,063.86, which, with interest added, would not vary greatly from the amount of the verdict; and hence defendants fail to show that the verdict is substantially erroneous. The plaintiff does not move for a new trial, and hence none can be granted, unless it be shown that error prejudicial to the defendant has been committed.

Counsel for both parties claim that there is error or mistake in the amount of the verdict, but totally disagree as to the result thereof. I shall not attempt to discuss the questions presented in argument, attacking the correctness of the findings of the referee. I am satisfied the verdict was fairly rendered, and effectuates justice between the parties, even though the amount thereof might be somewhat lessened or increased on another trial.

Motion for new trial is overruled, and judgment ordered on verdict.

NORDLINGER *et al.* v. ROBERTSON, Collector.

(Circuit Court, S. D. New York. January 26, 1887.)

CUSTOMS DUTIES—WHAT SUBJECT TO—"SEED"—MILLET FOR FOOD.

Millet seed, not in its natural state, but peeled, having the outer hull removed, and which will not germinate, used for making soup, and also for bird food, found by the jury not to be a "seed" within the meaning of the tariff act.

Action to Recover back Customs Duties.

The plaintiffs imported 200 packs of millet seed by the steamer Moravia, December 29, 1884, upon which the defendant, Robertson, collector of customs at the port of New York, levied a duty of 20 per cent. *ad valorem*, under section 2513, Heyl, Imp. D. 837, as an article manufactured in whole or in part, not enumerated or provided for. The plaintiff protested against this exaction, claiming the merchandise to be free under section 2503, Heyl, Imp. D. 760, within the clause, "Seeds of all

kinds, except medicinal seeds, not specially enumerated or provided for in this act." The merchandise was shown to be millet seed, hulled, used for bird food, and for cooking, and eating in soups. It was not in its natural state, and, upon trial in a germinator, would not sprout or grow.

Stephen G. Clarke, for plaintiffs.

Stephen A. Walker, U. S. Atty., and *Henry C. Platt*, Asst. U. S. Atty., for defendant.

SHIPMAN, J., (*charging jury*.) The question is whether this article is a seed. The plaintiffs must satisfy you by a fair preponderance of proof that it is a seed. It has the appearance and name of a seed. It is testified, and it is probably true, that it is not in the natural state; that it would not grow if planted; that the germ is destroyed; and that it is used for soups and for food for birds. What has been done to it is not shown by any testimony; what process has been applied to it is not stated. It is for you to say whether it has been changed from the condition of a seed to something else.

Verdict for defendant.

LELAR v. HARTRANFT, Collector.¹

(Circuit Court, E. D. Pennsylvania. October 3, 1887.)

CUSTOMS DUTIES—GINGER-ALE BOTTLES.

Bottles containing ginger-ale are not liable to any duty under the act of March 3, 1883.

Action to Recover back Customs Duties.

On the trial the following facts were proved: Plaintiff imported on October 1, 1883, 250 dozen bottles of ginger-ale. The invoice contained—*First*, an item of 250 dozen finest ginger-ale at a specified value; and, *second*, 250 dozen bottles at a specified value. The appraiser drew a red ink line embracing both items, and opposite this line wrote: "Ginger-ale, 20%." The collector thereupon exacted a duty of 20 per cent. upon the aggregate value of both ale and bottles. Due protest and appeal were made against the exaction of so much of this duty as was imposed upon the value of the bottles.

Frank P. Prichard, for plaintiff.

The act of March 3, 1883, contains the following clause: "Ginger-ale or ginger-beer twenty per centum *ad valorem*, but no separate or additional duty shall be collected on bottles or jugs containing the same." This clearly exempts the bottles from any duty as bottles, and if they be considered as coverings of the goods they are also exempt by the provisions of the same act that the value of the usual and necessary coverings shall not be estimated in ascertaining dutiable value.

¹ Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.