

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Colonial Sugar Refining Company, Limited v. The Attorney-General for Victoria, from the Supreme Court of Victoria ; delivered the 13th June 1901.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD JAMES OF HEREFORD.

LORD LINDLEY.

SIR RICHARD COUCH.

SIR FORD NORTH.

*[Delivered by Lord Macnaghten.]*

The question in this case is what is the duty payable by the Appellants the Colonial Sugar Refining Company Limited in respect of molasses imported by them into Victoria and cleared there for home consumption after undergoing treatment at their works at Yarraville in a bonded warehouse approved under Section 12 of the Customs Act 1890. The Attorney-General contends that these molasses ought to pay duty as "molasses, refined in bond." The Appellants maintain that they are only chargeable as "molasses, unrefined." The duty on "molasses, unrefined" is 2s. per cwt. On "molasses, refined in bond" the duty now is 5s. per cwt.; before the 5th of June 1895 the duty was 4s. per cwt. The question is one of some difficulty. Madden C.J. by whom the action was tried decided in favour of the Appellants. The Full Court on appeal reversed his decision.

The molasses imported by the Appellants into Victoria are produced at their sugar mills at Sydney in New South Wales. There cane juice is treated with lime in order to coagulate the albuminous matter in it. It is then passed through flannel or cotton or crushed cane to remove the albumen. The liquid so filtered is a bright solution which is reduced by evaporation so as to allow sugar to crystallise. It is then worked in a centrifugal machine. The process is repeated two or three times. The residuum uncrystallised which is known as molasses is a thick solution of little commercial value. It is run into large open tanks. The bulk is afterwards discharged into the sea, but as much as can be disposed of profitably is allowed to remain in the tanks until it is sent to Yarraville. While lying in the tanks uncovered the stuff contracts impurities of all sorts: dust ashes flies beetles and even frogs get into it. Before it can be used it is subjected to a treatment intended to remove these foreign impurities and restore it to the condition in which it was when originally produced, and in which, according to one of the witnesses, it would have remained if it had been run into "airtight receptacles," instead of open tanks. The process of purification is as follows:—The raw molasses are mixed up in an iron vessel, water is added and steam injected. The syrup so diluted and heated is passed through filtering bags into which hot water is afterwards poured in order to extract any saccharine matter left in the sediment. The liquid collected is then reduced by evaporation in vacuum pans to the proper consistency and added to refined cane sugar syrup, or "golden syrup" as it is called, in the proportion of about eight or ten per cent. This mixture is sold in the market as "refined treacle."

The object of adding water and injecting steam is merely to facilitate filtration, and the vacuum pans are used merely for the purpose of removing the surplus water. In the process molasses undergo no chemical change whatever. Their colour is not altered. Their peculiar taste and smell are retained unimpaired. The molasses impart colour and flavour to the golden syrup with which they are mixed. The mahogany tint and the acid taste or bite are said to suit the fancy of the public, and the mixture sells better than pure golden syrup.

It is common ground that there is no article known, or in other words sold in the market as "refined molasses," and that molasses as treated by the Appellants are not sold unmixed or used except for the purpose of colouring and flavouring golden syrup. In refining sugar upon which a corresponding duty is placed charcoal is used and according to the evidence has a chemical as well as a mechanical effect. It removes colour, and it was admitted by the principal witness for the Crown that "to a sugar expert 'refining' means to a great extent removal of colour."

On the evidence before him Madden C.J. came to the conclusion that the molasses strained and filtered at the Appellants' works at Yarraville could not properly be described as "refined molasses" and were not in fact "molasses refined in bond" within the meaning of that expression as used in the Customs Act.

The Full Court on appeal held that the Legislature intended to tax some article and that the Appellants must pay the higher duty as there was nothing to which the term "refined molasses" could apply except to molasses subjected to such a process as that to which the Appellants had subjected their molasses.

It appears, however, that on this point the Full Court was in error. Although no article is or apparently ever has been sold as

“refined molasses,” there is a well known process of refining molasses by charcoal, much in the same way as sugar is commonly refined. From 1857 to 1887 a company who were the predecessors in business of the Appellants, passed all their molasses over charcoal, and it appears that a firm in Victoria, trading as “Swallow and Ariell,” used charcoal in refining molasses up to the year 1899. In fact it was only when they abandoned the process as being too costly that the customs officer in charge of the factory at Yarraville raised a question as to the Appellants’ process which had been going on since 1893, without objection.

Their Lordships are of opinion that the view of Madden, C. J. is correct, and they will humbly advise His Majesty that this Appeal ought to be allowed, and the judgment of the Chief Justice restored, and that the Respondent ought to pay the costs of the Appeal to the Full Court, and repay to the Appellants any costs paid to him in pursuance of the Order of that Court of the 10th of May 1900.

The Respondent will pay the costs of the Appeal.

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