66TH CONGRESS, 1st Session. | SENATE. | REPORT No. 244.

RESTORATION OF EXCESS DUTIES.

OCTOBER 6, 1919.—Ordered to be printed.

Mr. LA FOLLETTE, from the Committee on Finance, submitted the following

REPORT.

[To accompany S. 495.]

The Committee on Finance, to whom was referred the bill (S. 495) for the relief of Walston H. Brown, sole surviving partner of the firm of Brown, Howard & Co., and of the Philadelphia & Reading Coal & Iron Co., having considered the same, report favorably thereon without amendment with the recommendation that the bill do pass.

This class of legislation is not new to the Senate. Congress has heretofore directed the restoration of the excess duty in this class of importations, as is evidenced by the act of January 9, 1903 (32 Stat., 764), and the act of February 24, 1905 (33 Stat., 809).

The Treasury Department states the amount already paid out in refunds under these two acts in detail, as follows:

Under the act of 1903:

J. F. Bailey & Co.	$77,462.55
H. E. Collins & Co.	12,399.60
Carnegie Bros. & Co. (Ltd.)	29,737.20
Albany & Rensellaer Iron & Steel Co.	2,259.30
Joilet Steel Co.	138,878.25
Cleveland Rolling Mill Co.	18,472.65
O. L. Garrison, for Vulcan Steel Co. and St. Louis Ore & Steel Co.	19,338.90
A. E. Godeffroy & Co.	30,895.80
Springfield Iron Co., of Springfield, Ill. (this included claim of Clarke, Post & Martin, agents, etc., for $18,045.57)	45,936.64
Henry A. V. Post.	6,015.18
Charles W. Matthews.	23,106.75
Henry W. Oliver, jr.	8,646.75
Schrader & Ellery.	6,957.30
Diamond State Iron Co.	23,278.95
Interstate Improvement & Construction Co.	31,511.55
Charles H. & Eugene Odell, agents for Sandusky Rolling Mill & Manufacturing Co. and Northern Pacific Railroad Co.	65,983.35
Northern Pacific Railroad Co.	38,079.45
Edgemore Iron Co.	8,222.10
Edward C. Smith.	43,266.75
William Selfridge.	12,627.75
Sam E. Merwin, jr.	20,400.56

Under said act of 1905, the refund was as follows:

Bates & Despard	$1,247.10
Estate of Charles L. Perkins, liquidating partner of Perkins & Choate	18,894.75
Illinois Steel Co. as assignee	23,483.10

The pending bill provides for the last of these claims that have not been provided for before by Congress. No more importations were made of this class, as Congress immediately fixed the duty for future importations at 45 per cent ad valorem, a prohibitory rate. (Act of Mar. 3, 1883, 22 Stat., p. 499.)

The claims in the pending bill were embraced in the civil omnibus claims bill, from the Committee on Claims, which passed the Senate without opposition in the Sixty-third Congress (see S. 6120, entitled "An act for the allowance of certain claims reported by the Court of Claims"), but reached the House too late for consideration. Again, a bill (S. 4398) embracing these claims was reported from the Committee on Finance in the first session of the Sixty-fourth Congress and passed the Senate without opposition (S. Rept. 220, 64th Cong., 1st sess.). Again, a bill (S. 4460) embracing these claims was reported from the Committee on Finance, Sixty-fifth Congress, second session, and passed the Senate without opposition (S. Rept. 543, 65th Cong., 2d sess.). The bill (S. 4398) embracing these claims was reported favorably by the House Committee on Claims, Sixty-fourth Congress, first session (see H. Rept. No. 701).

This class of importations was not named or classified in 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., pp. 465, 466).

The importers contended before the department that such importations were not manufactures or partially manufactured articles of steel or steel ingots, and that the lawful rate of duty was only 30 per cent ad valorem; but the department held otherwise and arbitrarily fixed the duties 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 importations as ingots of steel.

At the time of this Treasury decision there was no board of appraisers to fix rates in such cases.

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 the case which they instituted 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 claimants named in the pending bill did not know until the acts of January 9, 1903, and February 24, 1905, became law that such legislation was pending, and consequently they were not named in either act. However, ever since they have continued to ask Congress for like relief.

On March 20, 1906, a bill was introduced (S. 5188) providing for the adjudication of the claim of Walton A. Brown, etc. This bill was sent by Senator C. W. Fulton, the then chairman of the Senate Committee on Claims, to the Treasury Department for its comment. The Secretary of the Treasury, Leslie M. Shaw in his letter commenting upon this bill, said:

With regard to your request for an expression of the department as to the merits of this claim, I have to advise you that the relief to be afforded by this bill seems to be the same as that which was bestowed upon numerous other importers by the act of Congress entitled "An act providing for the adjudication of certain claims by the Court of Claims," approved January 9, 1903 (32 Stats., 764), and a like act approved February 24, 1905 (33 Stats., 809), and this bill appears to have the same merits as the acts above mentioned.

On February 16, 1910, a subcommittee of the Committee on Claims of the House of Representatives, holding a hearing upon a similar bill covering the same claim, called G. W. Ashworth, the law clerk of the customs division of the Treasury, before it and asked if the Treasury had any objection to the passage of the bill. Mr. Ashworth replied:

Not at all; no. We recommend it.

The CHAIRMAN. And you see no reason why the committee should not, if advisable, recommend the passage of the legislation proposed?

Mr. ASHWORTH. No. I think, in view of the act of 1903, that the cases are on all fours.

Mr. PRINCE. You feel perfectly justified in so stating in behalf of the Treasury Department, do you, as an officer of that department?

Mr. ASHWORTH. Yes; I think that is the attitude of the department. I handle all of those cases. I know just what our attitude was on the previous cases; and these are in line with it.

(See papers transmitted by the Secretary of the Senate in congressional, No. 15600.)

Finally, in 1912 and 1914, these claims were referred by resolutions of the Senate to the Court of Claims for findings of facts and conclusions of law.

Your committee deem it pertinent to present the following facts, substantially in the language of the court:

1. Claimants did not at the time of the payment of said duties make formal protest against the exaction of said legal rate of duty and were deterred from doing so through a well-grounded fear of an increase of the rate of duty to 2¼ cents per pound by the Treasury Department.

2. The imposition of a rate of 2¼ cents per pound on such importations would have resulted in a heavy loss on said importations.

3. The failure of claimants to make protest and appeal, as required by title 34, chapters 6, 7, and 8, Revised Statutes, was under circumstances amounting to duress.

4. Claimants are now the owners of said claims, respectively.

5. No part of said excess duties has been paid to claimants by the United States or by anyone else.

6. The steel en masse so imported, as aforesaid, was imported for claimants' own use and was used by them after being rolled into rails in railroad construction.

(See findings, S. Doc. 415 and S. Doc. 416, 63d Cong., attached to and made a part of this report.)

So that the excess duties had to be borne by these importers as a total loss.

Under section 151 of the Judicial Code of the United States the court is required "to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, and the amount, if any, legally or equitably due from the United States to the claimant." In the exercise of this power, the court conluded in each case, 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). (See court findings, S. Docs. 415 and 416, 63d Cong., 2d sess.)

This is not a claim against the Government in the sense that money of the Government is to be paid by it to the claimants; the money asked is the claimants' own money, paid by them to the Government, which the Government never should have collected.

The claims provided for in the pending bill aggregate the sum of $92,192.83 ($65,792.53 and $26,400,30), as found by the Court of Claims. The justice of the claims is beyond dispute, and these should be paid without further delay.

Your committee recommend the passage of the bill.

[Senate Document No. 415, Sixty-third Congress, second session.]

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 7, 1914.

Hon. THOMAS R. MARSHALL,
President of the Senate.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact and conclusion filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1911, known as the Judicial Code.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

[Court of Claims of the United States. Congressional, No. 15605. Walston H. Brown, sole surviving partner of the firm of Brown, Howard & Co., *v.* The United States.]

STATEMENT OF CASE.

The following bill was referred to the court by resolution of the United States Senate on the 29th day of February, 1912, under section 151 of the Judicial Code, approved March 3, 1911:

"[S. 5459, Sixty-second Congress, second session.]

"A BILL For the relief of the Philadelphia and Reading Coal and Iron Company and Walston H. Brown, sole surviving partner of the firm of Brown, Howard and Company.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Philadelphia and Reading Coal and Iron Company the sum of $26,400.30

and to Walston H. Brown, sole surviving partner of the firm of Brown, Howard and Company, the sum of $65,792.53 as a refund of import duties paid by them either directly or through their agents or customhouse brokers to collectors of customs of the United States in excess of the duties imposed by law on steel blooms imported by them or their agents from the year 1879 to the year 1883, both years inclusive."

The claimant appeared and filed his petition in this court on the 21st day of March, 1912, in which he makes the following allegations:

That during the years 1881 and 1882, both years inclusive, said firm imported and entered at the port of New York, either directly or through their agents or custom brokers, goods known as steel blooms of the value of $439,889; that the lawful duty on the same was 30 per cent ad valorem, being the duty fixed by section 2504 of the Revised Statutes of the United States, page 466, edition of 1878, for steel in any form not otherwise provided for, and amounted to only $131,966.70; but that the officers of the United States demanded and exacted from said firm, either directly or through their agents or customhouse brokers, the sum of $197,950.05, and thus received from said firm, either directly or through its agents or customhouse brokers, $65,983.35 of import duties in excess of the duties imposed by law on said steel blooms imported as aforesaid by said firm.

A bill of particulars, marked "Exhibit A," setting forth said importations and other facts connected therewith, is appended hereto and made a part of this petition.

The difference between the above $65,983.35 and the $65,792.53, mentioned in the bill S. 5459, hereinafter referred to, is due to the facts that this bill contains only payments made by check, and that as to these payments made by check there was a clerical error of 7 cents in adding, the total so paid by check really being $65,792.60.

That said firm was deterred from complying with the provisions of section 2931 of the Revised Statutes of the United States relating to protest, appeal, and bringing suit through a well-grounded fear that, if protest was made, the Treasury Department would increase the rate of duty upon such steel blooms from 45 per cent ad valorem to 2½ cents a pound; and that, in view of the same state of facts, Congress has heretofore waived the statutory bar and granted relief to numerous claimants in this class of claims, under an act entitled "An act providing for the adjudication of certain claims by the Court of Claims," approved January 9, 1903. (Stat. 32, part 1, p. 764.)

That the said steel blooms were manufactured into steel rails for the use of said firm and used by said firm in construction work.

That no action upon said claim has been had in Congress, although bills have been repeatedly introduced for petitioner's relief, nor in the courts, nor by any department of the Government, other than as herein set forth; that no assignment or transfer of said claim, or any part thereof or interest therein, has been made.

That neither your petitioner nor either of the other members of said firm has in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States.

That the claimant, Walston H. Brown, is the sole surviving partner of said firm, the other, and only other partners, thereof, namely, Columbus R. Cummings and William B. Howard, being deceased.

The case was brought to a hearing on its merits on the 8th of December, 1913.

John H. Hazelton, Esq., and George C. Hazelton, Esq., appeared for the claimant, and the Attorney General, by J. Harwood Graves, Esq., his assistant and under his direction, appeared for the defense and protection of the interest of the United States.

The court, upon the evidence adduced and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States, residing at Dobbs Ferry, State of New York, and is the sole surviving member of the firm of Brown, Howard & Co. The other members of said firm were Columbus R. Cummings and William B. Howard, both of whom died some years ago, and the claimant as such sole surviving partner is the proper person to collect any moneys due the firm.

II. During the years 1881 and 1882 said firm imported and entered at the port of New York, either directly or through their agents or customhouse brokers, goods known as steel blooms of the value of $439,889, and said firm, either directly or through their agents or customhouse brokers, paid to the United States a duty of 45 per cent ad valorem thereon, amounting to $197,950.05.

III. The physical constitution of steel is a crystalline condition. In the process of manufacture molten steel is cast into a mold and forms an ingot. The ingot is then reheated and rolled or hammered until it assumes the desired shape, and is thereby condensed and improved in quality, the crystals being broken up or made smaller or

elongated, while at the same time oxidization takes place. It is cut into specified lengths so as to secure as nearly as possible the requisite weight of material. In this new form the steel becomes known as a bloom, a well-known article of trade and commerce, and is developed by further rolling or hammering into various forms, large or small, according to the purpose for which it is intended. Should the bloom be elongated by further rolling or hammering, it becomes known to the trade as bar steel, though no chemical change has taken place in its constitution, it being merely reduced to another shape. Blooms intended to be converted into rails for railroads come in form about 4 feet long and about 6 or 7 inches square at the ends and weighing about 600 pounds. In their development definite dimensions and weights are sought to be attained. The further process of converting the bloom into a rail is to reheat it and do nothing more than roll it until it is sufficiently reduced in cross section and to the form intended and lengthened to the desired number of feet, when the ends are trimmed off.

IV. All the said importations were commercially known as steel blooms or blooms of steel, and were rough masses of steel approximately about 7 inches high, 7 inches wide, and 6 or 7 feet in length.

They are suitable only for use as raw material (steel) from which articles manufactured of steel, or of which steel is the component part, can be made. As such raw material they are suitable for the manufacture of a variety of articles, such as steel rails, steel beams, steel axles, etc. As such raw material they are also suitable to be rolled or hammered down into other forms of the raw material, steel, such as billets, bars, etc., which are suitable to be manufactured into a variety of smaller articles of manufacture, composed, of steel, or of which steel forms a component part. Steel is imported in a variety of forms, such as ingots, blooms, billets, bars, coils, sheets, etc.

Each form of the raw material, steel, is adapted to be used in the manufacture of a special class of articles. For example, steel ingots are adapted for manufacture into guns, armor plate, and sometimes rails. Steel blooms are adapted to be used in the manufacture of rails, beams, axles, etc. Steel billets are adapted to be used in the manufacture of lighter weights of rails, etc. Steel bars are to be used in the manufacture of small tools, etc. Steel sheets are adapted to be used in the manufacture of shovels and goods of that character, and in making the ingots, blooms, billets, bars, sheets, etc., they are usually made in such sizes as to be best adaptable for sale to the special trades which use them as raw material.

V. Prior to the time of these importations the railroads of this country had been laid with iron rails, and because of the heavy traffic which had begun and the consequent wear and tear it had been decided by the leading railroads to re-lay their tracks with steel rails. This caused a large demand for steel and caused the said importations. The steel industry was then controlled by the Bessemer interests, and these importations brought competition against them.

VI. In the year 1879 steel blooms were a new article of commerce, and on October 22, 1879, a conference was had at the Treasury Department in Washington at which were present representatives of the said importers and representatives of the said American manufacturers or Bessemer interests. The importers claimed that the correct rate of duty was 30 per cent ad valorem, while the Bessemer interests claimed that the true rate was 2¼ cents per pound, or about 200 per cent ad valorem.

VII. During the years 1879 to 1881, inclusive, merchandise classified as "steel in ingots, bars," etc., "valued at 7 cents per pound or less," was dutiable at 2¼ cents per pound, or about 200 per cent ad valorem.

VIII. During the years 1879 to 1881, both inclusive, the Treasury Department had power to increase the rate of duty by a reclassification.

IX. The lawful duty on the said steel blooms was 30 per cent ad valorem, that being the duty fixed by section 2504 of the Revised Statutes of the United States, page 466, edition of 1878, for "steel in any form not otherwise provided for."

X. The officers of the United States demanded of and exacted from the said firm of Brown, Howard & Co., upon said importations, a duty amounting to 45 per cent ad valorem, and received from said firm, either directly or through its agents or customhouse brokers, $65,983.35 of import duties in excess of the legal duties on said steel blooms so imported as aforesaid.

This amount is $190.82 more than the amount mentioned in Senate bill 5949 referred to this court as hereinbefore set forth. The discrepancy is due to the fact that the bill included only such duties in excess of the legal duty as were paid by check, and that a slight clerical error was made in addition.

XI. The steel blooms so imported as aforesaid by said firm of Brown, Howard & Co., were imported for their own use and were used by them after being rolled into rails in railroad construction. Said firm were railroad contractors and did not act as importers for others.

XII. Said firm of Brown, Howard & Co. did not at the time of the payment of said duties make formal protest against the exaction of said illegal rate of duty and were deterred from doing so through a well-grounded fear of an increase of the rate of duty to 2¼ cents per pound by the Treasury Department.

XIII. The imposition of a rate of 2¼ cents per pound on such importations would have resulted in a heavy loss to said firm on said importations.

XIV. After the payment of the said duty by the said firm, as aforesaid, it was held in the United States Circuit Court in the Southern District of New York, in a suit brought by Downing *v.* Robertson, collector, upon a verdict of the jury under instructions of the court, that this merchandise herein referred to as steel blooms should have been classified as "steel in a form not otherwise provided for," and dutiable at 30 per cent ad valorem. An appeal from such decision was dismissed by the Supreme Court of the United States, and the Treasury Department by letter under date of February 11, 1885, directed that there should be no further litigation on the subject.

XV. Thereupon certain importers of steel blooms presented a bill to Congress for their relief, which bill conferred jurisdiction upon the Court of Claims (notwithstanding any statutory bar of limitation, and notwithstanding the requirements of the statutes as to payment under protest, appeal to the Secretary of the Treasury, and notice to bring suit ordinarily in such cases, as prescribed in title 34, Collection of Duties, chapters 6, 7, and 8, Revised Statutes) to hear, try, determine, and render judgment as in an original suit, with the right of appeal as in other cases, the claims of the said importers.

Said bill was passed by Congress and approved by the President January 9, 1903 (32 Stats., 764).

XVI. The firm of Brown, Howard & Co. was not named in said act nor in the act of February 24, 1905, and said firm did not learn of the refund to other importers of steel blooms of the 15 per cent ad valorem duty paid by such importers in excess of the legal duty until the year 1905, since which time this claim has been before Congress until its reference to the court, as hereinbefore set forth in the statement of the case.

XVII. No part of said excess duties has been repaid to said firm of Brown, Howard & Co. by the United States.

XVIII. The failure on the part of said firm to make protest and appeal, as required by title 34, chapters 6, 7, and 8, Revised Statutes, was under circumstances amounting to duress.

XIX. Neither the claimant nor any other member of the firm of Brown, Howard & Co. ever in any way voluntarily aided, abetted, or gave encouragement to rebellion against the United States.

XX. Claimant 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 of the Treasury, and notice of suit as then required by law, would be entitled to a judgment of this court.

CONCLUSION.

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 as much as $65,792.53, the amount mentioned in the bill referred to the court. (Post *v.* United States, 49 C. Cls., —.)

BY THE COURT.

Filed January 5, 1914.
A true copy.
Test this 7th day of February, A. D. 1914.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[Senate Document No. 416, Sixty-third Congress, second session.]

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 7, 1914.

Hon. THOMAS R. MARSHALL,
President of the Senate.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact and conclusion filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1911, under the Judicial Code.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[Court of Claims. Congressional No. 15601. Philadelphia & Reading Coal & Iron Co. v. The United States.

STATEMENT OF CASE.

The following bill was referred to the court by resolution of the United States Senate on the 29th day of February, 1912, under section 151 of the Judicial Code, approved March 3, 1911:

"[S. 5459, Sixty-second Congress, second session.]

"A BILL For the relief of the Philadelphia and Reading Coal and Iron Company and Walston H. Brown, sole surviving partner of the firm of Brown, Howard and Company.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Philadelphia and Reading Coal and Iron Company, the sum of $26,400.30, and to Walston H. Brown, sole surviving partner of the firm of Brown, Howard and Company, the sum of $65,792.53, as a refund of import duties paid by them, either directly or through their agents or customhouse brokers, to collectors of customs of the United States in excess of the duties imposed by law on steel blooms imported by them or their agents from the year 1879 to the year 1883, both years inclusive."

The claimant appeared and filed its petition in this court on the 13th day of March, 1912, in which it alleges the following:

That it is a corporation, organized and existing under the laws of the State of Pennsylvania.

That during the years 1880, 1881, and 1882 it imported and entered at the port of Philadelphia, Pa., goods known as steel blooms of the value of $176,002; that the lawful duty on the same was 30 per cent ad valorem, being the duty fixed by section 2504 of the Revised Statutes of the United States, page 466, edition of 1878, for steel in any form not otherwise provided for, and amounted to only $52,800.60; but the officers of the United States demanded and exacted from your petitioner the sum of $79,200.90, and thus received from petitioner the sum of $26,400.30 of import duties in excess of the duties imposed by law on said steel blooms imported by it.

That a bill of particulars marked "Exhibit A" sets forth such importations and all the details concerning same and is attached hereto.

That petitioner was deterred from complying with the provisions of section 2931 of the Revised Statutes of the United States relating to protest, appeal, and bringing of suit through a well-grounded fear of an increase of the rate of duty from 45 per cent ad valorem to 2½ cents a pound, and that, in view of the same state of facts, Congress has heretofore waived the statutory bar and granted relief to numerous claimants in this class of claims under an act entitled "An act providing for the adjudication of certain claims by the Court of Claims," approved January 9, 1903 (32 Stat., pt. 1, p. 764).

That the said steel blooms were manufactured into rails and other railroad appliances and delivered to the Philadelphia & Reading Railroad Co. by your petitioner at a time when substantially all the capital stock of petitioner was owned by the said railroad company.

That no action upon said claims has been had in Congress, although bills have been repeatedly introduced for petitioner's relief, nor in the courts, nor by any department of the Government other than as above set forth; that no assignment or transfer of said claim, or any part thereof, or interest therein, has been made; that petitioner is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; that neither your petitioner nor any officer of said corporation has in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States.

The case was brought to a hearing on its merits on the 8th of December, 1913.

C. C. Clements, Esq., appeared for the claimant, and the Attorney General, by J. Harwood Graves, Esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a corporation organized and existing under the laws of the State of Pennsylvania.

II. Claimant imported and entered at the port of Philadelphia, Pa., during the years 1880, 1881, and 1882, goods known as steel blooms, of the value of $176,002.

III. The physical constitution of steel is a crystalline condition. In the process of manufacture molten steel is cast into a mold and forms an ingot. The ingot is then reheated and rolled or hammered until it assumes the desired shape, and is thereby condensed and improved in quality, the crystals being broken up or made smaller or elongated, while at the same time oxidization takes place. It is cut into specified lengths so as to secure as nearly as possible the requisite weight of material. In this new form the steel becomes known as a bloom, a well-known article of trade and commerce, and is developed by further rolling or hammering into various forms, large or small, according to the purpose for which it is intended. Should the bloom be elongated by further rolling or hammering, it becomes known to the trade as bar steel, though no chemical change has taken place in its constitution, it being merely reduced to another shape. Blooms intended to be converted into rails for railroads come in form about 4 feet long and about 6 or 7 inches square at the ends and weighing about 600 pounds. In their development definite dimensions and weights are sought to be attained. The further process of converting the bloom into a rail is to reheat it and do nothing more than roll it until it is sufficiently reduced in cross section and to the form intended, and lengthened to the desired number of feet, when the ends are trimmed off.

IV. All the said importations were commercially known as steel blooms or blooms of steel, and were rough masses of steel approximately about 7 inches high, 7 inches wide, and 6 or 7 feet in length.

They are suitable only for use as raw material (steel) from which articles manufactured of steel, or of which steel is the component part, can be made. As such raw material they are suitable for the manufacture of a variety of articles, such as steel rails, steel beams, steel axles, and so forth. As such raw material they are also suitable to be rolled or hammered down into other forms of the raw material, steel, such as billets, bars, and so forth, which are suitable to be manufactured into a variety of smaller articles of manufacture, composed of steel, or of which steel forms a component part.

Steel is imported in a variety of forms, such as ingots, blooms, billets, bars, coils, sheets, and so forth.

Each form of the raw material, steel, is adapted to be used in the manufacture of a special class of articles. For example, steel ingots are adapted for manufacture into guns, armor plate, and sometimes rails. Steel blooms are adapted to be used in the manufacture of rails, beams, axles, etc. Steel billets are adapted to be used in the manufacture of lighter weights of rails, etc. Steel bars are to be used in the manufacture of small tools, etc. Steel sheets are adapted to be used in the manufacture of shovels and goods of that character, and in making the ingots, blooms, billets, bars, sheets, etc., they are usually made in such sizes as to be best adaptable for sale to the special trades which use them as raw material.

V. Prior to the time of these importations the railroads of this country had been laid with iron rails, and because of the heavy traffic which had begun and the consequent wear and tear it had been decided by the leading railroads to re-lay their tracks with steel rails. This caused a large demand for steel and caused the said importations. The steel industry was then controlled by the Bessemer interests, and these importations brought competition against them.

VI. In the year 1879 steel blooms were a new article of commerce, and on October 22, 1879, a conference was had at the Treasury Department in Washington, at which were present representatives of the said importers and representatives of the said American manufacturers or Bessemer interests. The importers claimed that the correct rate of duty was 30 per cent ad valorem, while the Bessemer interests claimed that the true rate was 2¼ cents per pound, or about 200 per cent ad valorem.

VII. During the years 1879 to 1881, inclusive, merchandise classified as "steel in ingots, bars," etc., "valued at 7 cents per pound or less" was dutiable at 2¼ cents per pound, or about 200 per cent ad valorem.

VIII. During the years 1879 to 1881, both inclusive, the Treasury Department had power to increase the rate of duty by a reclassification.

IX. The lawful duty on the said steel blooms was 30 per cent ad valorem, that being the duty fixed by section 2504 of the Revised Statutes of the United States, page 466, edition of 1878, for "steel in any form not otherwise provided for."

X. The officers of the United States demanded and exacted from claimant upon said importations a duty amounting to 45 per cent ad valorem, and received from claimant $26,400.30 of import duties in excess of the legal duties on said steel blooms so as aforesaid imported by the claimant.

XI. The steel blooms so imported as aforesaid by claimant were manufactured into rails and other railroad appliances and were used either by the claimant or were turned over to or disposed of to the Philadelphia & Reading Railroad Co. at a time when all of claimant's capital stock was owned by said railroad company and claimant was a subsidiary company of said railroad company.

XII. Claimant did not at the time of the payment of said duties make formal protest against the exaction of said illegal rate of duty, and was deterred from doing so through a well-grounded fear of an increase of the rate of duty to 2¼ cents per pound by the Treasury Department.

XIII. The imposition of a rate of 2¼ cents per pound upon such importations would have resulted in a heavy loss to claimant on said importations.

XIV. After the payment of said duty by the claimant as aforesaid, it was held in the United States Circuit Court in the Southern District of New York, in a suit brought by Downing *v.* Robertson, collector, upon a verdict of the jury under instructions of the court, that this merchandise herein referred to as steel blooms should have been classified as "steel in a form not otherwise provided for," and dutiable at 30 per cent ad valorem. An appeal from such decision was dismissed by the Supreme Court of the United States, and the Treasury Department by letter under date of February 11, 1885, directed that there should be no further litigation on the subject.

XV. Thereupon certain importers of steel blooms presented a bill to Congress for their relief, which bill conferred jurisdiction upon the Court of Claims (notwithstanding any statutory bar of limitation, and notwithstanding the requirements of the statutes as to payment under protest, appeal to the Secretary of the Treasury, and notice to bring suit ordinarily in such cases, as prescribed in title 34, Collection of duties, chapters 6, 7, and 8, Revised Statutes), to hear, try, determine, and render judgment as in an original suit, with the right of appeal as in other cases, the claims of the said importers.

Said bill was passed by Congress and approved by the President January 9, 1903 (32 Stats., 764).

XVI. Claimant was not named in said act and did not learn of the refund to other importers of steel blooms of the 15 per cent ad valorem duty paid by such importers in excess of the legal duty until 1905, since which time his claim has been before Congress until its reference to the court, as hereinbefore set forth in the statement of the case.

XVII. No part of said excess duties has been paid to claimant by the United States or by anyone else.

XVIII. The amount of duties paid as aforesaid in excess of the duty warranted by law is $26,400.30.

XIX. The failure to make protest and appeal, as required by title 34, chapters 6, 7, and 8, Revised Statutes, was under circumstances amounting to duress.

XX. Claimant 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 this court for the sum of $26,400.30.

CONCLUSION.

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 $26,400.30, and retains said sum in the Treasury. (Post *v.* United States, 49 C. Cls.)

BY THE COURT.

Filed January 5, 1914.

A true copy.

Test this 7th day of February, A. D., 1914.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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