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Is the Tomato a Fruit or a Vegetable

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CURIOSITIES OF THE LAW

IS THE TOMATO A FRUIT OR A VEGETABLE?

Ever since some venturesome iconoclast joyfully discovered that the tomato is not a poison, but a very delectable product, the question of whether this delicacy is a fruit or a vegetable has vexed men of both high and low degree. For years opinions have been diverse, and a final solution has seemed impossible. The botanists—who certainly should know—seem to agree that it is a fruit. To support their position, they point to the essential difference between a fruit and a vegetable. A fruit, they assert, is the edible product of a perennial plant, and contains its seed. A vegetable, on the other hand, must be planted every year and does not contain its seed. An apple is the proverbial example of the former category, as the potato is of the latter. Then in reply to those who contend that under such definition the tomato is a vegetable because it must be planted annually, the botanists say that the United States is not the native habitat of the tomato; it originated in the tropics, and in a warm clime is a perennial.

Unfortunately for lovers of exactitude, however, the majority of people do not consult experts when a classification is to be made. More or less arbitrary distinctions are set up, and often a word popularly acquires a meaning diametrically opposed to the scientific definition. The great majority list tomatoes as vegetables; the reasons for such classification are vague and ofttimes non-existent, but the tomato is a vegetable, just the same. General dictionaries furnish to aid. Most of them either skilfully avoid the question altogether, or are so vague in treatment that the reader is left in as much doubt as before. Thus, the Standard Dictionary defines the tomato as "the pulpy edible fruit of a familiar plant of the nightshade family, highly esteemed as a vegetable". In other words it is both a fruit and a vegetable—an awful compromise. Some lexicographers are not satisfied with this definition, as it implies a physical impossibility—how can two distinct natures inhere in the same object? —so they search for a more plausible explanation. In Webster's Revised Unabridged Dictionary (on page 1598) it is asserted that a

fruit is a product that can be eaten raw, but that a vegetable must be cooked before it is edible. The fact that several commodities, such as lettuce and celery, clearly vegetables, are edible without being cooked, is explained by the admission that this classification is perhaps a trifle loose, but generally appropriate. Then follows the amazing statement: "Tomatoes if cooked are vegetables, if eaten raw, are fruits." This suggests the question, at just what point in the cooking process is the alchemy wrought that changes the tomato from a fruit to a vegetable? Rather a neat problem for those addicted to niceties of reasoning, but too abstruse for the average man. Consensus of opinion seems to be that the tomato is a vegetable; no reason is given, none attempted.*

And there the matter should have rested, a nice question for discussion at seminars, but of little practical value. There seemed to be as much weight on one side of the argument as on the other. Finally, however, much to the dismay of those who claim that each man has a right to his own opinion, the question had cause to be determined authoritatively by a court of last resort. The Congress of the United States levied an import tax on vegetables, but allowed fruits to be admitted free. Now the question assumed more than an abstract, academic value, and became intensely practical. If the tomato were a fruit, its importers would be exempt from the tax; if a vegetable, the duty must be paid. The matter involved real dollars and cents, and the solution became vastly important. The adverse interests of the taxpayer and the collector required a definite ascertainment of the nature of the tomato. In *Nix v. Hedden,* 13 Supr. Ct. 881, the plaintiff sued the collector of the port of New York to recover duties paid under protest on tomatoes imported from the West Indies. The tomatoes were assessed under "Schedule G—Provisions" which imposed a 10% ad valorem duty on "vegetables in their natural state, or in salt or brine, not specifically enumerated or provided for in this Act". The plaintiff contended that the tomatoes came within the clause in the free list of the same Act: "Fruits, green, ripe or dried, not specifically enumerated or provided for in this Act". Since the tomato was nowhere specifically mentioned in the Act, its definite classification became necessary.

*Recent investigations seem to confirm this statement. The members of three Freshman English classes were asked to define the tomato. 20 classified it as a fruit, and 46 asserted it to be a vegetable. Four diffident freshmen declined to venture an opinion.

The plaintiff, after having introduced in evidence definitions from various dictionaries, all defining the tomato botanically as a fruit, called two witnesses. They were asked if the commercial definition of tomato was different from that agreed upon by the lexicographers. One of the witnesses testified that there was no difference, that to his knowledge, in trade "the term fruit is applied only to such plants or parts of plants that contain the seeds". The other witness testified virtually to the same effect. Thus, the plaintiff contended that since the tomato contains its seed, it is a fruit and therefore exempt from the vegetable tax.

Botanically, such definition is correct, admitted the court. But since the revenue act was not designed to apply to botanists, but rather to tradesmen who generally follow the popular usage, the word should be given its ordinary meaning. The court must take judicial notice of this meaning, and apply such definition. Evidence from dictionaries is not to be deemed conclusive in the matter, nor is the testimony of individuals. The evidence of each is admitted only for the purpose of aiding the understanding of the court. The court finally decided that for the purpose of revenue, the tomato is a vegetable: "Botanically, tomatoes are fruit of the vine, as are cucumbers, squashes, beans and peas. But in the common language all these are vegetables which are grown in the kitchen gardens, and which eaten cooked or raw, like potatoes, carrots, cabbages, celery, lettuce, etc., are usually served in, with, or after the soup, fish, or meats which constitute the principal part of the repast, and not like fruits generally, as dessert". Tomatoes are not given the distinction of being served as a separate course; therefore, applying the popular usage to people addicted to such use, tomatoes were held to be vegetables, and subject to the ad valorem tax. The riddle was solved; the Supreme Court of the United States is the modern Oedipus.

Nor is this the only time a court has preferred a popular definition or usage of a word to the scientific one. The rule seems to be this: whenever a word is capable of being given two or more interpretations, that interpretation will always govern which, from the evidence introduced, would seem to be generally accepted by persons of the same occupation, interests, or education of the litigants. If the popular usage of a word be opposed to the scientific definition the former will nevertheless obtain whenever the word was em-

ployed with reference to people who generally follow the popular usage. The reason for the preference is perhaps best explained by Mr. Justice Story, in *200 Chests of Tea (Smith, Claimant)*, 9 Wheat. 430. The government import tax on bohea tea was lower than on other kinds. The claimant imported a quantity of tea popularly known among American traders as bohea, although in China it undoubtedly was not real, bohea tea. Smith claimed that he was obliged to pay only the rate on bohea, but the revenue officers insisted that the word "bohea" was to be limited to its technical meaning, that this quantity was not technically bohea tea, and that consequently it was not privileged as to the tax. The court held that the tea was bohea, and ordered the tea restored to the claimant. Said Story: "The object of the duty law is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. Whether a particular article were designated by one name or another in the country of its origin was of no importance to the legislature. It did not suppose our merchants to be naturalists, or geologists, or botanists. * * * Bohea tea then, in the sense of our revenue law, means that article which in the known usage of trade, has acquired that distinctive appellation."

The reasoning of the Supreme Court in the tea case was followed in *Lutz v. Malone,* 14 Supr. Ct. 777. The plaintiff resisted the collection of a sugar tax levied on a large quantity of saccharine, contending that although saccharine is 300 times as sweet as sugar, is used for sweetening preservatives, and is popularly known as sugar, yet in reality the substance is an acid. In support of his contention he introduced evidence to show that saccharine bears the forbidding name of *orthosulphamin benjou acid anhydrid* and gives an acid reaction. The court refused to be intimidated by long words, however, and held that in view of the popular usage the saccharine was taxed properly as sugar. And so in *U. S. v. Buffalo Natural Gas and Fuel Co.,* 78 Fed. 110, natural gas was held to be justly taxed as gas, although chemically it is a mineral.

An interesting case in this connection is *Massey v. City of Columbus,* 70 S. E. 263. It is not strictly in point, since the disputed tax applied to all products sold at market, fruits as well as vegetables; but it furnishes an excellent example of how judges will sometimes turn their attention from the mere necessities of the case,