REPORT

Of the Committee of Ways and Means, on the petition of certain distillers of the sixth collection district of Pennsylvania, with a bill for their relief.

JANUARY 23, 1822.

Read, and, with the bill, committed to a committee of the whole House.

The Committee of Ways and Means, to whom was referred the petitions of certain distillers within the sixth collection district of Pennsylvania,

REPORT:

That, on the 24th of July, 1813, an act was passed by Congress, entitled "An act laying duties on licences to distillers of spirituous liquors." By this act, section 2, it was provided, that, from the first day of January thereafter, distillers who employed stills in distilling spirits from domestic materials should pay a certain duty for a licence for the employment thereof, "*for each gallon of the capacity of every such still, including the head thereof.*"

At the passage of the law, it appears there were many stills within the county of Lancaster, which constitutes the sixth collection district of Pennsylvania, made according to Henry Witmer's improvement upon Anderson's condensing tub. And that, in stills of this construction, the steam, instead of passing immediately from the head into the worm to be condensed, as is the case in common stills, is conducted from the head into a copper globe above it, and is there condensed, and from thence passes into the worm. This globe or condensing chamber is deposited in a large vessel filled with the mash or beer prepared for distillation. The improvement consists in this, that, whilst the surrounding liquor condenses the steam in the globe, it becomes heated by the steam to within 20 or 30 degrees of the boiling point. A considerable saving in fuel is thus made by communicating the heat of the steam to the mash or beer, which would otherwise be put cold into the boiler.

Soon after the passage of the act of the 24th July, 1813, a question arose, whether, under its provisions, this globe was liable to duty, or, in other words, whether its capacity was comprehended

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within the words, "*the capacity of the still including the head thereof.*" Whilst the collector of the revenue within the sixth collection district of Pennsylvania was clearly of opinion that the globe should not be measured, the commissioner of the revenue was of a different opinion, and directed him to charge a duty on its capacity. The law was therefore carried into effect in this manner within that district. The distillers, however, still continued dissatisfied with this construction of the law, and in the month of June 1815, had determined to defend themselves against the payment of so much of their bonds as consisted of the duty charged upon the capacity of the globes of their stills. This information being communicated to the Secretary of the Treasury, he directed a suit to be brought in the circuit court of the United States at Philadelphia, against Colonel —— Anderson, of the county of Philadelphia, one of the patentees of the improvement, who had also refused to pay the duty upon the globes of his stills. During the pendency of this action, and before it was determined, Congress, on the 19th April, 1816, passed the "Act to abolish the existing duties on spirits distilled within the United States, and to lay other duties in lieu of those at present imposed on licences to distillers of spirituous liquors." In this act, they used the very same language, in imposing the duty, which had been used in the act of 1813, viz: "*the capacity of the still, including the head thereof.*" The suit brought by the United States vs. Colonel Anderson, was determined in favor of the defendant, on the 12th November, 1818, upon principles, of the correctness of which this committee are perfectly satisfied, and which are contained in the charge of the court to the jury. This charge they submit to the House as part of their report. Another case was brought before the circuit court, involving the same principle, wherein Jacob Leib, a distiller within the sixth collection district of Pennsylvania, was the defendant, which was determined in his favor on the 17th April, 1821. Immediately after the last decision, the acting commissioner of the revenue directed the collector "to deduct from the bonds which included the duty on the globe of the still, and which were then outstanding, that part which related to the globe, but not to refund any sum on account of the globe which had previously been paid to him, and by him into the Treasury; as, being in the Treasury, there was no authority to refund it without a special appropriation by Congress." The distillers who did not go to law with the government ask to be placed on the same footing as those who did, and your committee believe that their petition should be granted. The petitioners appear to have other and still stronger claims to relief. After they had determined not to pay their bonds until the question should be decided, and more than two years and seven months before the first decision of the circuit court, the commissioner of the revenue, by his letter, dated the 1st April, 1816, after informing the collector of the sixth district that he believed the suit would be decided in favor of the United States, directed him as follows: "In the mean time, I would recommend, that those who, having given bonds, entertain a different

opinion, be requested to pay the duty agreeably to their bonds, with the assurance, that, in case the final decision shall be on their side, the excess of duty shall be refunded to them."

This pledge at once divided the distillers into two classes—those who paid the money voluntarily, and trusted to the faith of the government, and those who refused to pay. The latter kept the whole amount of their bonds in their own hands till after the final decision in their favor, on the 17th April, 1821, the government before that time being unwilling to receive that proportion of the bonds which they were willing to pay. They have since been relieved by the express order of the acting commissioner of the revenue.

The committee submit a bill.

UNITED STATES *vs.* ANDERSON.

The only question in this cause, was, whether the condensing chamber of the defendants still constitutes a part of the capacity of the still, so as to be liable to the tax imposed by the act of Congress, of the 24th of July, 1813, c. 24, s. 2, 4th. vol. new edition, 572.

In the year 1801, the defendant invented, and obtained a patent for, an improvement in the art of distilling spirituous liquors, the principle of which is, the ascent of the steam by a tube, from the cap or head of the common still, into what he terms, the condensing chamber, which is deposited in a large vessel filled with the mash or beer prepared for distillation. The improvement consists in the condensation of the steam the instant it enters into this chamber, by means of the surrounding liquor; and the gradual heating of the liquor, by means of the steam, to within 20 or 30 degrees of the boiling point, so as to prepare it for immediate distillation, thereby saving the additional fuel and time which is consumed in the common way, where the mash is put cold into the boiler. The spirit, as soon as it is formed in the condensing chamber, is carried off by a lateral tube into the worm, and the heated mash descends, by a tub, with a stop cock in it, into the boiler, as soon as it is prepared to receive it; the effect of which is, that many stills more can be run off in 24 hours, by means of this improvement, than in the common way.

It was contended by the District Attorney and Binney, for the United States, that the condensing chamber is, in fact, the head of the still, and constitutes a part of the capacity of the still. They relied upon the following authors for a description of the different parts of a still, and for information upon the process of distillation. 2 Nicol's Natural Philosophy, 130, last edit. Lavon, 461, 2. 1 Fourc. 158, 194. Black's Chemistry, 166.

CHARGE. *Washington, J.* This case turns altogether upon the construction of an act of Congress, which the writings of chemists and philosophers will assist very little, if at all, to explain. The only question is, what constitutes the head of a still? and if it were not for the definitions given by the learned authors whose works

have been referred to, the question could receive but one answer from plain practical men, possessing the slightest acquaintance with the common mode of distilling spirituous liquors in the United States.

Had this question been asked in the year 1791, when the first law imposing a duty upon stills, was passed, in which the very words on which the present question is raised, viz: "the capacity of the still, including the head thereof," were used, there could have been no hesitation in answering, that, the cap which covers the boiler, and receives and contains the steam, till it passses towards the worm, formed the head. If so, and Congress has thought proper, at the distance of 12 years after the defendant's improvement was patented and known, to make use of the very same expressions in the law under consideration, we shall be most likely to give effect to the intention of that body, by giving to them the same construction. For, it is much more probable that the framers of these laws used the term *head* in its common and popular acceptation, as it was called and known by the distillers of spirituous liquors, and others in the United States than according to the definitions of the term to be found in works of Philosophy.

Upon the authority of these writers, it is contended by the counsel for the United States that the head of the still is that part which receives and confines the steam, and condenses or directs it into the worm, to be condensed. There is no other objection to this definition, as applicable to the common stills used in the distillation of spirits, except that the condensation most usually, if not always, takes place after the steam has left the head. It may readily be admitted, however, that the definition is not less correct when applied to the common still, whether condensation takes place before or after the steam has passed from the head. But if the counsel for the United States mean to contend that that only is the head of the still where the steam is condensed, or whence it is directed, laterally, to a worm, to be condensed, the argument cannot, in the opinion of the court, be maintained; and if it would, nothing would be more easy than to escape from the consequence of such definition, since it is obvious, that the tube which conducts the steam to the condensing chamber of the defendant's still, above the boiler, might be placed diagonally to conduct it to a like condenser placed in that direction,

But whether the steam ascend or be conducted laterally to the refrigerator to be condensed, cannot change the name of the cap, or part of the still, which receives and confines the steam, until it is disposed of, which is universally denominated the head. The court must always be understood as speaking of stills used in the distillation of spirituous liquors, to which alone the law in question applies; and the different parts of which are known and distinguished by appropriate names. To test this, let us imagine a common still with three tubes, having stop cocks in each, the one leading laterally to a worm, another to a condensing chamber, or worm above, immersed in the mash to be warmed, and the third, to a similar condenser, on the side, or in a diagonal position from the still, whilst the passage of the steam is impeded from passing either way: could

a doubt exist that the part of the still which confines the steam is the head? This is admitted, if it pass into the common worm by opening the oven that leads to it, and if so, can it lose its name by its being permitted to ascend, or to pass diagonally, to the condenser? In either case, the cap receives and contains the steam, and directs it to the condenser. If, notwithstanding, it be insisted, as it has been, that the defendant's condensing chamber is a head, then it would follow that this still has two heads, both of which, it must be admitted, cannot be taxed under this law, which is confined to the head.

It should never be forgotten that the use of the defendant's improvement, by himself and others, commenced soon after the year 1801, when he obtained his patent: that, in his specification, the cap of the old still used in the common distillation of spirits, is denominated the *head*, and the part which is now contended to be the head, the *condensing chamber*: that the former receives and contains the steam so far as to prevent its escape in that form into the open air, as much so as the head of the common still, which equally parts with it, though in a different direction: that, notwithstanding these nominal, as well as substantial distinctions, between the different parts of this still, recorded in the office of the Secretary of State, Congress, at the distance of twelve years after the date of the patent, passed the law under consideration, in which the *capacity* of the still on which the duty is imposed, is expressed in the very same words as were used in reference to the old stills, in a law passed ten years before the defendant's patent was granted. If, on account of the increased productiveness of these improved stills, Congress had thought proper to subject them to a higher rate of taxation, it would certainly have been imposed by terms better calculated to evince such intention than are used in this law.

It has been contended that the defendant's condensing chamber, if it be not the head, is at least a part of the still, increasing its capacity, and, consequently subject to the tax.

With equal propriety might this be said of the worm, which, it is believed, has never yet been contended for by any person within or without the Treasury Department. In short, there is no foundation for the argument in the expressions of the law itself, and if we appeal to philosophers upon this subject, they inform us, that the process of distillation ceases at the point where condensation commences. If so, the worm can form no part of the capacity of the still, the use of which is to carry on the process of distillation. If we appeal to the common understanding of mankind, we arrive at the same result. In short, it is obvious that the *capacity* of the still is strictly those parts only, which are commonly denominated the boiler, and the head, which the Legislature has thought proper, by express words, to include as part thereof. But, the capacity of the still is not of necessity increased one pint by means of the condensing chamber. The truth is, that the only use of this part of the defendant's improvement, beneficial to the owner as it must be admitted to be, is

by means of the steam which it receives to heat and prepare the beer for rapid distillation, whilst in return the steam is condensed by the liquid which it warms. Upon the whole, we are of opinion, that the capacity of the condensing chamber is not subject to the duty.

Verdict for defendant.