

Statement of the Case.

business the petitioner was assisted by his wife, and that she was twice arrested for larcenies committed from persons visiting his saloon, and in one case convicted of the offence and sentenced to be imprisoned, and in the other held to answer. These larcenies alone were a sufficient indication of the character of the place in which the business was conducted, for the exercise of the discretion of the police commissioners in refusing a further license to the petitioner.

The order discharging the petitioner must be

Reversed, and the cause remanded with directions to take further proceedings in conformity with this opinion, and it is so ordered.

SEEBERGER v. CAHN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ILLINOIS.

No. 47. Argued November 3, 1890. — Decided November 17, 1890.

Cloths popularly known as "diagonals," and known in trade as "worsteded," and composed mainly of worsted, but with a small proportion of shoddy and of cotton, are subject to duty as a manufacture of worsted, and not as a manufacture of wool, under the act of March 3, 1883, c. 121.

THIS was an action of assumpsit against a collector of customs to recover back duties paid under protest. Plea, non assumpsit. A jury was duly waived, and the case submitted to the court, which made the following finding of facts:

"The plaintiffs imported an invoice of cloths popularly known as 'diagonals,' which were classed by the collector as woollens, and a duty of 35 cents per pound and 35 per cent ad valorem assessed upon them under paragraph 362, new tariff index. The plaintiffs claimed that the goods should have been classed as 'manufactures of worsted not otherwise provided for' under paragraph 363, new tariff index, and the duty assessed at 24 cents per pound and 35 per cent ad valorem. The duties were paid under protest, appeal taken, and

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suit brought, all in apt time. The goods in question are used mainly for the manufacture of men's wearing apparel, and are denominated or known to the trade as 'worsted,' and are composed mainly of worsted, but the worsted fibre is mixed with at least 10 per cent of shoddy, this shoddy being made from wool, and some cotton. Worsted is made by combing the long-fibred wools, so that the fibres shall lie or be arranged alongside of each other; while wool is worked by carding, so as to interlock the fibres with each other. Shoddy is a separate manufacture of wool, and is added to the worsteds in question for the purpose of giving weight and body to the fabric."

Upon these facts the court gave judgment for the plaintiffs. 30 Fed. Rep. 425. The defendant sued out this writ of error.

Mr. Assistant Attorney General Maury for plaintiff in error.

Mr. Edwin B. Smith, (with whom was *Mr. Charles Curie* on the brief) for defendants in error.

MR. JUSTICE GRAY, after stating the case as above, delivered the opinion of the court.

The act of March 3, 1883, c. 121, under "Schedule K, Wool and Woollens," (22 Stat. 508, 509,) imposes duties as follows:

"Woollen cloths, woollen shawls, and all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for in this act, valued at not exceeding eighty cents per pound, thirty-five cents per pound and thirty-five per centum ad valorem; valued at above eighty cents per pound, thirty-five cents per pound, and in addition thereto forty per centum ad valorem.

"Flannels, blankets, hats of wool, knit goods, and all goods made on knitting-frames, balmorals, woollen and worsted yarns, and all manufactures of every description, composed wholly or in part of worsted, the hair of the alpaca, goat or other animals (except such as are composed in part of wool), not specially

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enumerated or provided for in this act, valued at not exceeding thirty cents per pound, ten cents per pound; valued at above thirty cents per pound, and not exceeding forty cents per pound, twelve cents per pound; valued at above forty cents per pound, and not exceeding sixty cents per pound, eighteen cents per pound; valued at above sixty cents per pound, and not exceeding eighty cents per pound, twenty-four cents per pound; and in addition thereto, upon all the above-named articles, thirty-five per centum ad valorem; valued at above eighty cents per pound, thirty-five cents per pound, and in addition thereto forty per centum ad valorem."

In the interpretation of the customs acts, nothing is better settled than that words are to receive their commercial meaning; and that when goods of a particular kind, which would otherwise be comprehended in a class, are subjected to a distinct rate of duty from that imposed upon the class generally, they are taken out of that class for the purpose of the assessment of duties.

Of the two successive paragraphs in the customs act of 1883, upon which the parties respectively rely, the first imposes a certain scale of duties on "all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for in this act;" and the second imposes a lower scale of duties on "all manufactures of every description, composed wholly or in part of worsted." It is hardly necessary to observe that the subsequent words enclosed in a parenthesis "(except such as are composed in part of wool)" evidently qualify only the intervening clause "the hair of the alpaca, goat or other animals," and have no bearing upon this case.

Though worsted is doubtless a product of wool, and might in some aspects be considered a manufacture of wool, yet manufactures of worsted being subjected by the second paragraph to different duties from those imposed by the first paragraph on manufactures of wool, it necessarily follows that a manufacture of worsted cannot be considered as a manufacture of wool, within the meaning of this statute.

That shoddy, though a product, and in some sense a manu-

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facture, of wool, is not to be considered as itself wool, or a manufacture of wool, within the meaning of the statute, is clearly shown by the paragraph next preceding the two above quoted, which makes the duty on "woollen rags, shoddy, mungo, waste and flocks, ten cents per pound." *Lennig v. Maxwell*, 3 Blatchford, 125.

It being distinctly found, as matter of fact, that the goods in question are called or known in the trade as "worsteds," and are composed mainly of worsted, but mixed with a small proportion of shoddy and of cotton, the Circuit Court rightly held that they were subject to duty as manufactures of worsted, and not as manufactures of wool.

The cases of *Elliott v. Swartwout*, 10 Pet. 137, and *Riggs v. Frick*, Taney, 100, are directly in point; and our conclusion is supported by many decisions of this court in analogous cases. *Homer v. The Collector*, 1 Wall. 486; *Reiche v. Smythe*, 13 Wall. 162; *Movius v. Arthur*, 95 U. S. 144; *Arthur v. Morrison*, 96 U. S. 108; *Arthur v. Lahey*, 96 U. S. 112; *Arthur v. Stephani*, 96 U. S. 125; *Arthur v. Davies*, 96 U. S. 135; *Arthur v. Rheims*, 96 U. S. 143; *Swan v. Arthur*, 103 U. S. 597; *Vietor v. Arthur*, 104 U. S. 498; *Robertson v. Glendenning*, 132 U. S. 158.

Judgment affirmed.

FITZGERALD AND MALLORY CONSTRUCTION COMPANY *v.* FITZGERALD.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF NEBRASKA.

No. 1141. Submitted October 23, 1890. — Decided November 17, 1890.

Where jurisdiction has been obtained by service of garnishee process in a proceeding *in rem*, the court has power to proceed notwithstanding defect in service on the person.

In such case, objection to jurisdiction over the person, to be availing, must not be raised in connection with denial of jurisdiction over the subject matter.

The defendant below having denied the power of the court to proceed at all, and upon decision against it having joined issue and gone to trial