

## Statement of the Case.

appeal has elapsed ; (3) Where the appeal is allowed at a term subsequent to that of the decree or judgment, a citation is necessary, but may be issued properly returnable, even after the expiration of the time for taking the appeal, if the allowance of the appeal were before ; (4) But a citation is one of the necessary elements of an appeal taken after the term, and if it is not issued and served before the end of the next ensuing term of this court, and not waived, the appeal becomes inoperative. *Hewitt v. Filbert*, 116 U. S. 142 ; *Richardson v. Green*, 130 U. S. 104 ; *Evans v. State Bank*, 134 U. S. 330 ; *Green v. Elbert*, 137 U. S. 615. *Appeal dismissed.*

## SALTONSTALL v. BIRTWELL.

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

No. 116. Argued November 24, 1893. — Decided December 4, 1893.

Findings of fact in an action brought to recover duties on importations paid under protest, which do not show what the collector charged the plaintiff, nor sufficiently describe the articles imported, and a record which fails to show under what provisions of the tariff act the parties claimed respectively, leave this court unable to direct judgment for either party.

In such case the opinion of the court below cannot be resorted to to help the findings out.

THIS was an action to recover duties paid under protest on importations made in 1888. The first count of the plaintiff's declaration was on an account annexed as follows :

" BOSTON, *July 3, 1888.*

" Leverett Saltonstall, collector, etc., to Joseph Birtwell, Dr.

" Feb. 29, 1888. To excess of duty paid on 432 pieces of manufactures of iron entered ex-steamship Jan Breydel, Feb. 27, 1888..... \$1800

" Mch. 14, 1888. To excess of duty paid on 4 pieces of manufactures of iron entered ex-steamship Petre de Connick, Mch. 14, 1888.... 75 "

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The case was tried by the court under a stipulation waiving a jury, as provided by sections 649 and 700 of the Revised Statutes. No exceptions to rulings in the progress of the trial were saved, and the court made the following findings:

"1st. That as a matter of law the descriptions of iron in the clause under which the defendant acted in this case refer to and are intended to provide for such described forms and shapes of iron in that condition of manufacture when they are complete and merchantable, salable, and dealt in as such described forms and shapes of iron, and do not refer to or provide for such forms and shapes of iron when they have been advanced by manufacture beyond such merchantable salable condition to and for a specific purpose and use as a new product or component parts of a new product.

"2d. It is found as a fact that the imports in this case were not within the descriptions of iron provided for in the clause under which the defendant acted as understood, considered, and treated in trade among dealers, users, and manufacturers in 1883 and since that time.

"3d. It is found as a fact that the described forms and shapes of iron provided for in the clause under which the defendant acted are, as understood in trade among dealers, users, and manufacturers complete as such described forms and shapes of iron when they are completed by rolling and squaring ends, and it is further found as a fact that the imports in this case had been since completed by rolling and squaring ends, advanced by manufacture, fitting, shaping, etc., and made complete, ready, and intended for use as component parts of the frame or foundation of the floor in the third story of the court-house now being erected in Boston.

"4th. It is further found as a fact that in commercial designation, habit, and dealing among merchants, users, and manufacturers, the descriptive words applied to iron in the clause used by the defendant did in 1883 mean or refer to such described forms and shapes of iron as are rolled with ends squared, and did exclude such described forms and shapes of iron when manufactured beyond such rolled condition to and for a special particular use and purpose.



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"5th. It is further found as a fact that the imports in this case could not be bought and sold in the open general market at regular prices as and for any of the descriptions of iron named in the clause under which the defendant acted.

"6th. It is further found as a fact that the plaintiff duly protested to the defendant collector against the exaction of the duty paid, and appealed to the Secretary of the Treasury, who affirmed the action of the defendant, whereupon the plaintiff in due time brought this suit."

Judgment was thereupon rendered for the recovery of the sum of \$1853.75 damages, and costs. This writ of error was then sued out and the following errors assigned: "That said judgment is erroneous in that the facts are not sufficient to authorize the same in law; and that said judgment is erroneous, from the facts found, in not being a judgment in favor of the defendant." The record contains the opinion of the court, which is reported in 39 Fed. Rep. 383.

*Mr. Assistant Attorney General Whitney* for plaintiff in error.

*Mr. William A. Maury* and *Mr. J. P. Tucker* for defendant in error.

MR. CHIEF JUSTICE FULLER, after stating the case, delivered the opinion of the court.

We are of opinion that the facts set forth in the special findings are not sufficient to support the judgment. The findings do not show what the collector charged the plaintiff; nor sufficiently describe the articles imported; nor does it appear from the record under what provisions of the tariff act of March 3, 1883, 22 Stat. 488, c. 121, the parties claimed respectively. The opinion might help the findings out, but cannot be resorted to for that purpose. *Dickinson v. Planters' Bank*, 16 Wall. 250.

We are unable, therefore, to direct judgment for either party. *Chesapeake Ins. Co. v. Stark*, 6 Cranch. 268, 273;

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*Harden v. Fisher*, 1 Wheat. 300, 303; *Barnes v. Williams*, 11 Wheat. 415; *McArthur v. Porter's Lessee*, 1 Pet. 626; *Ex parte French*, 91 U. S. 423; *Ryan v. Carter*, 93 U. S. 78, 81; *Hodges v. Easton*, 106 U. S. 408, 411; *Fort Scott v. Hickman*, 112 U. S. 150, 165; *Tyre & Spring Works Co. v. Spalding*, 116 U. S. 541, 545, 546; *Allen v. St. Louis Bank*, 120 U. S. 20, 30, 40; *Raimond v. Terrebonne Parish*, 132 U. S. 192; *Lloyd v. McWilliams*, 137 U. S. 576.

*Judgment reversed and cause remanded for a new trial.*

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SEEBERGER *v.* HARDY.

SPALDING *v.* YOUNG.

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

Nos. 93, 276. Argued November 21, 1893. — Decided December 4, 1893.

In estimating the amount of duty to be imposed upon shell opera glasses under the tariff act of March 3, 1883, 22 Stat. 488, c. 121, the value of the materials should be taken at the time when they are put together to form the completed glass.

The question whether the opera glasses should be regarded as falling within the description of paragraph 216, as a manufacture composed wholly or in part of metal is not raised by the record, and, no instruction based upon that interpretation having been asked of the court below, this court does not find it necessary to express an opinion on the subject.

THESE were actions against the collector of the port of Chicago to recover duties claimed to have been erroneously assessed upon certain consignments of pearl opera glasses. The facts and the questions of law involved in the two actions were similar, except in some unimportant details. The opera glasses consisted of lenses in a metal frame, with an outer covering of shell. The question litigated was under which of the three following provisions of the tariff act of March 3,