

1824. use her certificate of registry for the return voyage. She, however, did use it, and sailed under its avowed protection, "not being entitled to the benefit thereof, according to the intent of the act."

200 Chests of  
Tea.

The judgment of the District Court is reversed, and a decree of condemnation awarded against the schooner and her appurtenances.

---

[INSTANCE COURT.]

### TWO HUNDRED CHESTS OF TEA, SMITH, *Claimant.*

In a libel of information, under the 67th section of the collection act of 1796, c. 128. against goods, on account of their differing in description from the contents of the entry, it is not necessary that it should allege an intention to defraud the revenue.

A question of fact, as to the rate of duties payable upon certain teas, imported as *bohea*. That term is used in the duty act in its known commercial sense; and the bohea tea of commerce is not usually a distinct and simple substance, but is a compound, made up in China, of various kinds of the lowest priced *black* teas.

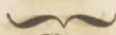
But, by the duty acts, it is liable to the same specific duty, without regard to the difference of quality and price.

### APPEAL from the Circuit Court of Massachusetts.

This was a libel of information, filed in the District Court of Massachusetts, against two hundred chests of tea, alleging that, on the 8th of September, 1819, the collector of the customs for the port of Boston seized at that port the said chests of

tea, as forfeited, for having been unlawfully imported at the port of New-York, in the ship Ontario, on the 29th of June, 1819, from Canton, in China, as being that kind and denomination of teas commonly called bohea teas, and afterwards transported coastwise to Boston, in the original chests and packages, and there entered as bohea; and that, on such seizure and examination, according to law, the chests and packages were found to differ in their contents from the entries, and the teas contained in them to be of a different kind and quality of black teas, and not bohea teas, as represented in the entries.<sup>a</sup> The claim interposed by T. H. Smith, stated, that the teas in question

1824.



200 Chests of  
Tea.

<sup>a</sup> The 67th section of the collection act of 1799, ch. 128. upon which this information was founded, provides, "that it shall be lawful for the collector, naval officer, or other officer of the customs, after entry made of any goods, wares or merchandise, on suspicion of fraud, to open and examine, in the presence of two or more reputable merchants, any package or packages thereof; and if, upon examination, they shall be found to agree with the entries, the officer making such seizure and examination, shall cause the same to be repacked, and delivered to the owner or claimant forthwith; and the expense of such examination shall be paid by the said collector or other officer, and allowed in the settlement of his accounts; but if any packages so examined, shall be found to differ in their contents from the entry, the goods, wares, or merchandise, contained in such package, or packages, shall be forfeited: *Provided*, that the said forfeiture shall not be incurred, if it shall be made appear, to the satisfaction of the collector and naval officer of the district where the same shall happen, if there be a naval officer; and if there be no naval officer, to the satisfaction of the said collector, or of the Court in which a prosecution for the forfeiture shall be had, that such difference proceeded from accident or mistake, and not from an intention to defraud the revenue."

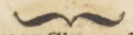
1824. were imported and entered by him, at the port of  
 200 Chests of New-York, as bohea teas, and that they are of the  
 Tea. kind and denomination called bohea teas, and not  
 of a different kind or quality of teas. The Dis-  
 trict Court pronounced a decree of condemna-  
 tion, upon the testimony taken in the cause, which  
 was affirmed, *pro forma*, in the Circuit Court, upon  
 appeal; and the cause was, thereupon, brought  
 to this Court.

*March 9th.* The cause was argued by Mr. *Webster* and  
 Mr. *D. B. Ogden*, for the appellant, and by Mr.  
*Blake*, for the respondents.

On the part of the appellant, it was contended,  
 that the examination and seizure authorized by the  
 67th section of the duty act of 1799, c. 128.  
 are limited to the collector of the district, where  
 the goods were originally entered, and the duties  
 secured upon importation; and that, consequently,  
 the case made out by the libel was not within the  
 purview of the act, even supposing the collector  
 might, by his general authority, make a seizure,  
 and assert the forfeiture in a libel properly framed  
 for that purpose. The United States were con-  
 cluded, by the entry and inspection of the teas, at  
 the port of New-York, where the importation from  
 a foreign port was made, and the duties paid and  
 secured. Besides, the libel contains no allega-  
 tion of an intention to defraud the revenue. By  
 the terms of the statute, no forfeiture is incurred if  
 the difference between the entry and the packa-  
 ges proceeded from accident and mistake, and not

from an intention to defraud the revenue. The want of such an allegation must, therefore, be considered as a substantial defect in the libel. The counsel also minutely examined the evidence, and insisted that the statute meant to describe the different kinds of teas in ordinary commercial language, and not with scientific precision. The tea now in question, is the bohea of commerce, whatever might be its botanical designation, or its Chinese name.

1824.



200 Chests of  
Tea.


For the respondents it was argued, that the construction of the 67th section of the act, which had been contended for by the claimant, would, if adopted by the Court, be fatal to the whole system of revenue laws. There was nothing in the terms of the section, or in other parts of the statute, which restricted it to the collector of the port and district where the original importation from abroad was made. On the contrary, the terms, "*a* collector," and "*the* collector," are used promiscuously throughout the act, where an authority is intended to be given to, or a duty imposed on, the collectors of the customs generally; and wherever it is intended to confine the authority or duty to the collector of any particular port, appropriate words are used for that purpose. It was altogether an erroneous supposition, that an entry of goods, brought coastwise from the collection district where they were originally imported to another, was not required by the revenue laws. On the contrary, whenever the value of such goods exceeds 400 dollars, and they are contained

1824. <sup>200 Chests of Tea.</sup> in the original packages as imported, an *entry* is required, upon their being transported from one port to another, although that precise term may not be used in the various revenue and navigation laws.<sup>a</sup> All the formalities required by these acts were complied with on bringing these teas from the port of New-York to the port of Boston, and consequently an entry was made with the collector of the latter port, so as to authorize him to make the examination and seizure under the 67th section of the collection act. Nor was any allegation of an intention to defraud the revenue necessary, since the libel pursues the language of the enacting clause of the act, by which the forfeiture is inflicted whenever the packages are found to differ in their contents from the entry; and the exemption from forfeiture, where the difference proceeds from accident or mistake, is contained in a separate proviso to the section, which is matter of defence for the claimant. By the act of April 16, 1816, c. 107. and by several preceding statutes, the first of which was enacted in 1789, a specific duty was imposed on "bohea tea." All these acts make a discrimination in terms, between "*bohea*" and "souchong and all other *black* teas." The Legislature must necessarily have had in view, in both cases, a certain commodity, known by those names respectively. Had this not been the fact, an *ad valorem* duty would long since have been imposed, in order to prevent the gross frauds upon the revenue, which must

<sup>a</sup> Act of Feb. 18, 1793, for enrolling and licensing ships and vessels to be employed in the coasting trade, &c. c. 153. [viii.] s. 16, 17. 19.

be the inevitable consequence of permitting such teas as those now in question to be imported as *bohea*. The same distinctive term is used in the British revenue laws, and is supported by the authority of various writers on commerce." It is exclusively applied to the common bohea tea, sometimes called *moji* or *moe* by the Chinese; and, consequently, the various instances of the mixtures of teas in China, which are spoken of by the witnesses, as being composed ordinarily of not more than one third part of that species, and the residue of old souchong, congo, and others of the higher order of teas, and thus imported into this country under the name of bohea, must be regarded, in a legal point of view, as being an evasion of the several statutes on that subject.

1824.


 200 Chests of  
Tea.

Mr. Justice STORY delivered the opinion of the Court. *March 15th.*

The two hundred chests of tea in controversy in this suit, were imported into the city of New-York, in the ship Ontario, from China, and entered there at the custom house, and the duties regularly secured as bohea teas. They were afterwards transported coastwise to Boston; and upon examination there, under the direction of the collector of the district, they were seized as forfeited, under the collection act of the 2d of March, 1799, ch. 128. s. 67. on account of their differing in de-

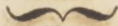
*a Stat. 43 Geo. II. c. 12. 24 Geo. III. c. 28. Milborne's Oriental Commerce, vol. ii. p. 521. Ree's Cyclopaedia, art. Tea. Thea. Morrison's Chinese Dict. art. Tea.*

1824. description from the contents of the entry. The libel states the facts specially, but contains no allegation of an intention to defraud the revenue. Upon this state of the case, the libel is assailed for a supposed defect, arising from the absence of such an allegation. But we think this objection cannot be sustained. The libel follows the language of the enacting clause of the act, which inflicts the forfeiture; and the exemption from forfeiture, when the collector or the Court shall be satisfied that the difference between the entry and the packages "proceeded from accident or mistake, and not from an intention to defraud the revenue," being found in a separate proviso, is properly matter of defence, to be asserted and proved by the claimant, and is not, according to the course of adjudications in this Court, essential to the structure of the libel itself. This objection, then, may be dismissed without further observation.

200 Chests of  
Tea.

Another question, of more serious importance, is, whether the examination and seizure authorized by the 67th section of the act, are not limited to the collector of the district where the goods were originally entered and the duties secured, upon importation; and so the case made by the libel is not within the purview of the act, whatever might be the authority of the collector to seize for forfeitures generally, and to assert the claim in a libel, properly framed for such a purpose. The decision of this question would require a very minute and critical examination of the whole revenue and coasting acts; and as the Court can satisfac-

torily dispose of the cause upon the merits, in point of fact, it is deemed unnecessary to institute so laborious an inquiry.

1824.  
  
 200 Chests of  
 Tea.

The claim admits, that the teas were imported and entered as bohea teas; and asserts, that they are of the kind and denomination called bohea teas, and not of a different kind or quality of teas; and this forms the main point in controversy between the parties. One of the earliest acts of Congress, (the act of the 20th of July, 1789, ch. 2.) imposes duties on teas in the following words: "On bohea tea, per pound, six cents; on all souchong or other black teas, per pound, ten cents; on all hyson teas, per pound, twenty cents; on all other green teas, per pound, twelve cents." The act of the 10th of August, 1790, ch. 39. varied the duties, but retained the same descriptions. The act of the 29th of January, 1795, ch. 82. declared that "teas commonly called imperial, gunpowder, or gomee," should "pay the same duties as hyson teas." The act of the 3d of March, 1797, ch. 64. laid an additional duty of two cents "upon all bohea tea." And the act of the 27th of April, 1816, ch. 107. under which this cargo was imported, levies duties on "bohea, twelve cents per pound; souchong and other black, twenty-five cents per pound; imperial, gunpowder, and gomee, fifty cents per pound; hyson, and young hyson, forty cents per pound; hyson skin, and other green, twenty-eight cents per pound." The legislation of Congress here detailed, exhibits a progressive discrimination in the kinds of green teas, but leaves

1824. the black teas with no other specific discrimination than that of bohea and souchong.

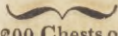
200 Chests of  
Tea.

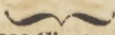
The argument on behalf of the United States, is, that the two hundred chests of tea, now in controversy, are in reality simple congo tea, and not bohea ; that the latter is a pure unmixed tea, entirely distinct from congo, and known in China by an appropriate name ; that it is to this pure and unmixed bohea tea, that the successive acts of Congress refer, and not to any other mixed tea, though known by the common denomination of bohea. If we were to advert to scientific classifications, for our guide on the present occasion, it is most manifest, from the works cited at the bar, that bohea is a generic term, including under it all the black teas, and not merely a term indicating a specific kind. But it appears to us unnecessary to enter upon this inquiry, because, in our opinion, Congress must be understood to use the word in its known commercial sense. The object of the duty laws 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, or whether it were a simple or mixed substance, was of no importance in the view of the Legislature. It did not suppose our merchants to be naturalists, or geologists, or botanists. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic. And it would have been as dangerous as useless, to attempt any other

classification, than that derived from the actual business of human life. Bohea tea, then, in the sense of all our revenue laws, means that article which, in the known usage of trade, has acquired that distinctive appellation. And even if the article has undergone some variations in quality or mixture, during the intermediate period from 1789 to 1816, when the last act passed, but still retains its old name, it must be presumed that Congress, in this last act, referred itself to the existing standard, and not to any scientific or antiquated standard.

The true inquiry, therefore, is, whether, in a commercial sense, the tea in question is known, and bought, and sold, and used, under the denomination of bohea tea. We think the evidence on this point is altogether irresistible. It establishes that the bohea tea of commerce is not usually a distinct and simple substance, but is a compound made up in China of various kinds of the lowest priced black teas, and the mixture is of higher or lower quality, according to the existing state of the market. Indeed, from the uniformity of its price in the midst of great fluctuations in the prices of all other teas, it seems rather to indicate the lowest quality of black teas, than any uniform compound. It is accordingly in proof, that old congo teas are often sold as bohea, and have sometimes been imported into our market under that denomination. In short, whenever black teas are deteriorated by age, or are of the lowest price, they are mixed up to form bohea for the market, and are suited to the demand and wishes of the

1824.


 200 Chests of  
Tea.

1284.  
  
 200 Chests of  
 Tea.

purchasers. It is not meant to affirm that there is no such simple and distinct tea known as bohea. All that the evidence justifies us in saying is, that this is not the common bohea of commerce. The latter may or may not be a simple substance, according to circumstances. The generic name bohea, comprehending under it all the varieties of black teas, whenever they are at the cheapest price in the market, or are of a very inferior quality, or are mixed up for sale, they lose their specific names, and sink into the common denomination.

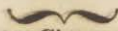
Such is the conclusion which, in the opinion of the Court, the evidence in this record justifies and requires. It is true, that the Boston witnesses very strongly state that the present teas are pure unmixed congo; and their testimony is entitled to very great consideration, from their personal respectability as well as their long experience. But the New-York witnesses speak with equal positiveness and point, that the present teas are the common bohea of the market, and have been bought and sold as such without hesitation. These witnesses, also, are entitled to entire credit, for the same reasons; they have had great experience, and are of unquestioned credibility. In this apparent conflict of competent and credible witnesses, the only way of reconciling the testimony, is to suppose that they do not speak *ad idem*; that the Boston witnesses speak to the specific nature of the particular teas in controversy, and the New-York witnesses to their known commercial denomination in their actual state. In

this way of considering the testimony, the conflict exhibits more a matter of apparent than real diversity of opinion. But if it be not thus reconcilable, it appears to us that the weight of the evidence is so strong, that teas of this description have been long imported into our market as bohea, that no Court of justice would feel itself authorized to inflict the forfeiture under the statute, upon a presumed intentional violation of its provisions. There is, indeed, something that applies still more forcibly to the claimant, under these circumstances, than applies in common cases. He came into the tea trade since the peace of 1815, and has been most extensively engaged in it. At the time of his first commercial enterprise, teas of this description were publicly and commonly imported into New-York as bohea, and had acquired a known commercial character. He acted upon this settled usage; and if the present seizure can be sustained, he is to suffer for a forfeiture, which he had no adequate means to avoid, and could not have foreseen.

Then, as to the intention of fraud. It is said that these teas were imported in congo chests, covered with a thin paper, for the purposes of disguise, and that, upon inspection, it is clear that the original congo still remained in the chests. The circumstance that these are congo chests, whose structure is perfectly known, would not justify the conclusion that there was an intention to defraud the revenue, since that structure might attract observation, and thus lead to immediate

1824.

200 Chests of  
Tea.

1824.  
  
 200 Chests of  
 Tea.

detection. It would have been more natural to have disguised congo teas in bohea boxes. But the difficulty that lies in the argument derived from this source, is, that upon opening the chests, the contents are proved to be exactly what the New-York witnesses call bohea, and the Boston witnesses congo. So that the question of fraudulent disguise depends upon the fact, whether the tea be or be not bohea; and if it be settled to be the latter, then the suspicion from this circumstance vanishes. The same answer may be given to all the other circumstances relied on as badges of fraud. They become utterly unimportant, if there was not a real misrepresentation of the quality of the tea.


There is one cogent fact, which presses with peculiar weight in the consideration of this part of the case. It is, that after the present seizure was made, and the whole train of suspicions disclosed, the remaining teas, of the same denomination and importation, which were yet in the public stores at New-York, underwent a strict examination there under the authority of the officers of the customs. The result of that examination was an unequivocal opinion, that they were the common bohea of commerce; and this result being communicated to the government, no farther proceedings were thought necessary to vindicate its rights.

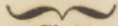
But another fact, which is decisive against the supposition of a fraudulent intention, is, that the teas were purchased in China as bohea, at the usual bohea price, and upon their importation into

New-York, were there sold at the usual bohea price. They were sold at prices from thirty-one to thirty-six and a half cents per pound, when, at the same time, and in the same place, congo sold at forty-eight cents per pound. This is not a matter of doubtful or equivocal evidence; it is admitted and proved in the most positive manner. What then could have been the inducement to fraud? Men do not perpetrate frauds upon the revenue from the mere love of mischief, or the wanton disregard of duty. There must be some leading interest, some enticing object in view, to lead them to such a violation of social law and moral sentiment. In the present case, no such motive could exist, for the whole conduct of the party is at war with the supposition. Nay, more, the perpetration of the fraud would have been against his interest. We do not here allude to his private reputation as an opulent merchant, engaged in an extensive commerce in teas, nor to the powerful influence that, under such circumstances, public opinion must have upon him, in its stern and severe, though silent rebukes. But his immediate interest in the same trade and in the same voyage, would be sacrificed by such unworthy proceedings. He would hazard large interests upon a paltry saving in duties, from which he could in the end derive not the slightest benefit.

It has been said, that unless the present libel can be maintained, a wide door will be opened for the admission of frauds in the importation of teas. If this be true, it forms no reason for a different judicial construction of the acts of Con-

1824.


 200 Chests of  
Tea.

1824.  
  
 200 Chests of  
 Tea.

gress, much less for the enforcing a forfeiture where the facts will not warrant it. Congress can provide an easy remedy, by changing the specific duty to a duty *ad valorem*, a policy which has already obtained the sanction of other nations.

It is unnecessary to go farther into the discussion of the merits of this case. The judgment of the Court is, that the decree of the Circuit Court of Massachusetts, given *pro forma*, ought to be reversed, the libel of the United States be dismissed, and the 200 chests of tea be restored to the claimant. But the Court are also of opinion that there was probable cause of seizure, and direct it to be certified upon the record.

Decree reversed.