

*Mr. Assistant-Attorney-General Smith* for the plaintiff in error.

*Mr. H. E. Davis, Jr., contra.*

MR. JUSTICE HUNT delivered the opinion of the court.

The articles imported by the defendant in error are embraced in the general words of the act of 1864, and, if there were nothing else in the case, would be subject to the duty therein provided.

They are, however, commercially known as "hat braids," used exclusively for enamelling hats and bonnets. These articles are specifically enumerated in the acts of 1861 and 1862, and are there made subject to a different and a lower duty.

By these acts, and by the Revised Statutes, Congress establishes and recognizes the distinction between "cotton braids" and "other manufactures of cotton not otherwise provided for," and "hat braids." 12 Stat. 178; id. 543, 551; Rev. Stat., sect. 2504.

Under the principles laid down in *Arthur v. Morrison*, *Arthur v. Lahey*, and *Arthur v. Unkart* (*supra*, pp. 108, 112, 118), the specific designation should prevail; and the judgment in favor of the plaintiff for the excess of duties paid by him was right, and must be affirmed.

*Judgment affirmed.*

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ARTHUR v. STEPHANI.

1. For tariff purposes, Congress has at all times, since the passage of the act of May 2, 1792 (1 Stat. 259), intended to preserve the distinction between "chocolate" and "confectionery."
2. Chocolate, *eo nomine*, is, by the first section of the act of June 6, 1872 (17 Stat. 231), dutiable at the rate of five cents per pound; and, although put up in a particular form and sold as "confectionery," is not subjected to the duty imposed on the latter article by the first section of the act of June 30, 1864 (13 id. 202).

ERROR to the Circuit Court of the United States for the Southern District of New York.

This was an action by A. Stephani & Co., to recover an

alleged excess of duty paid upon certain chocolate imported by them from Liverpool, in 1873, and upon which the collector of the port of New York, holding it to be "confectionery," exacted a duty of fifty cents per pound *ad valorem*, under the first section of the act of June 30, 1864 (13 Stat. 202). The importers claimed it to be dutiable as "chocolate," under the first section of the act of June 6, 1872 (17 id. 231), which imposes a duty of five cents per pound.

The case was tried by the court below, without the intervention of a jury; and, by an agreed statement of facts, it was admitted that the chocolate was in boxes containing thirty-six little bricks, done up in separate papers, each box weighing about half a pound; and that the chocolate, being such as is ordinarily sold by confectioners as confectionery, and by the box or package, was valued at over thirty cents per pound. It was also admitted that chocolate comes in other forms.

Judgment having been rendered in favor of the plaintiffs, the collector brought the case here.

*Mr. Assistant-Attorney-General Smith* for the plaintiff in error.

*Mr. Edward Hartley, contra.*

MR. JUSTICE HUNT delivered the opinion of the court.

The first section of the act of June 30, 1864, imposes "on all confectionery not otherwise provided for, made wholly or in part of sugar, valued at thirty cents per pound or less, a duty of fifteen cents per pound; on all confectionery valued above thirty cents per pound, or when sold by the box, package, or otherwise than by the pound, fifty per cent *ad valorem*." 13 Stat. 202.

The act of June 6, 1872, imposes a duty of five cents per pound "on chocolate." 17 id. 231.

The article in question was chocolate simply, but presented in a form in which it was ordinarily sold as confectionery. Was it dutiable as confectionery, or as chocolate?

The case differs from those already decided, in this, that the last act expressing the legislative will is that which imposes the lower rate of duty. It is like the others, in this, that it presents the question whether the articles are dutiable under general



terms which may embrace them, or under that specific language which can be applied to nothing else. That the latter is the rule by which the duty is fixed is too well settled to require argument. *Reiche v. Smythe*, 13 Wall. 162; *Homer v. The Collector*, 1 id. 486; *Movius v. Arthur*, 95 U. S. 144.

Should it be admitted, therefore, that chocolate is composed in part of the same substances that enter into the composition of ordinary confectionery, it must, nevertheless, stand upon the customs list as the distinct article so often described in the acts of Congress by its specific name.

As early as 1792, chocolate, *eo nomine*, was subjected to a duty of three cents per pound. 1 Stat. 259.

In 1816, the same duty was again imposed upon it. 3 id. 311.

In 1824, a duty of four cents per pound was imposed upon it by name. 4 id. 28.

In the Revised Statutes, it is subject to a duty of five cents per pound. Rev. Stat. p. 478.

Contemporaneously and side by side, all the way down, the statutes provide for different rates of duty on the varieties of sugar and on confectionery, as well as on chocolate. Confectionery and chocolate are uniformly recognized as being different articles for the purpose of duties.

In the first paragraph of sect. 8 of the tariff act of 1842 (5 Stat. 558), sugar of various kinds, comfits, sweetmeats, and confectionery are subject to a duty of twenty-five per cent *ad valorem*; in the second paragraph of the same section, a duty four cents per pound is imposed upon "chocolate."

In the tariff act of 1846 (9 id. 44), "comfits and sweetmeats" are dutiable at forty per cent; "confectionery" of all kinds, at thirty per cent; and "chocolate," at twenty per cent.

In the act of 1861, "comfits and sweetmeats" are placed at thirty per cent; "confectionery of all kinds, not otherwise provided for," at thirty per cent; "chocolate," at twenty per cent. 12 id. 180, 189.

By the act of July, 1870, chocolate is again made dutiable by name (16 id. 262); and again by the act of June, 1872 (17 id. 231).

In the Revised Statutes, "sugar-candy and confectionery" are

provided for, as are "comfits, sweetmeats, and preserved fruits;" and, separately, "chocolate," at a different rate of duty. Rev. Stat. pp. 472, 478.

It is quite evident that Congress has at all times intended to preserve the distinction between these articles, and that the circuit judge decided correctly when he held that chocolate, although in the form and of the character described, was not dutiable as "confectionery" under the act of 1864.

*Judgment affirmed.*

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ARTHUR v. SUSSFIELD.

1. The similitude clause of the act of Aug. 30, 1842 (5 Stat. 565), applies only to non-enumerated articles.
2. In 1872 and 1873, a quantity of spectacles made of glass and steel were imported at New York, upon which the collector of the port, under the third section of the act of June 30, 1864 (13 Stat. 205), exacted a duty of forty-five per cent *ad valorem*. Held, that they were dutiable under the ninth section of that act, which imposes "on pebbles for spectacles and all manufactures of glass, or of which glass shall be a component material, not otherwise provided for," a duty of forty per cent *ad valorem*.

ERROR to the Circuit Court of the United States for the Southern District of New York.

In 1872 and 1873, the plaintiffs, Sussfield, Lorsch, & Co., imported, at New York, a quantity of spectacles made of glass and steel.

Arthur, the collector, held them to be subject to a duty of forty-five per cent, under the third section of the act of June 30, 1864, which reads, "On all manufactures of steel, or of which steel shall be a component part, not otherwise provided for, forty-five per cent" (13 Stat. 205), and exacted the duty at that rate.

The importers insisted that the duties were to be chargeable under the ninth section of the same act, which reads, "On pebbles for spectacles and all manufactures of glass, or of which glass shall be a component material, not otherwise provided for, forty per cent." Id. 211.

Having paid the duty under protest, they brought suit to