DORR ET AL. V. HOYT.

Case No. 4,008.

[2 Hunt, Mer. Mag. 261.]

Circuit Court, S. D. New York. Jan. 22, 1840.

SILK TWIST—SEWING SILK.

[Twist composed entirely of silk, even if used for sewing, is not dutiable as "sewing silk," under the act of March 2, 1833, unless it is known as such in commerce; if not so known, it is free of duty as "a manufacture of silk."]

The defendant [Jesse Hoyt], collector of the customs at New York, had exacted from the plaintiffs [S. & F. Dorr & Co.] duties at the rate of 40 per cent upon silk twist, imported by the plaintiffs during the year 1839, insisting on the right to duty as on sewing silk. The plaintiffs paid the duty, protesting against the right to exact any duty, and brought this suit to recover back the duty.

The plaintiffs insisted that the twist was a manufacture of silk, and, as such, made free by the 4th section of the act of March 2, 1833 (4 Story's Laws, 2338 [4 Stat. 630]). The plaintiffs proved that the article in question was known in trade, among importers, dealers, and consumers, as "twist," and not as "sewing silk;" that although made wholly of silk, and used only for sewing, yet it was a different article from sewing silk, and they could not both be used for the same purpose.

D. Lord, Jr., for plaintiffs.

B. F. Butler, Dist Atty., for defendant

THE COURT charged, that if the article was known in commerce as "sewing silk," then the verdict must be for the defendant; but if not, then, as it was a manufacture of silk, it was free. That it was for them to determine whether the article was known in commerce under the name of "sewing silk" or not If it was not, although it was composed of silk and used for sewing, it was free.

The jury found for the plaintiffs.

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