

Case No. 4,833.

[15 Int. Rev. Rec. 115.]

FISKE ET AL. V. SMYTHE.

Circuit Court, S. D. New York.

April 8, 1872.¹

CUSTOMS DUTIES—CLASSIFICATION—SILK NECKTIES.

[Silk neckties imported in 1868 are dutiable at 35 per cent. as “wearing apparel,” under the acts of 1861 and 1862 (12 Stat. 186, 555), and not at 60 per cent., as scarfs by similitude, under the act of August 30, 1842, § 20 (5 Stat. 565).]

[Distinguished in *Cohen v. Phelps*, Case No. 2,964.]

[See note at end of case.]

This was an action to recover duties claimed to be illegally exacted upon an importation of silk neckties made in October, 1868, upon which the defendant [Henry A. Smythe], then collector of the port of New York, had assessed and collected duty at the rate of 60 per cent., under the act of March 3, 1865 [15 Stat. 493], as upon “ready-made clothing of silk.” On appeal to the secretary of the treasury, the rate charged was affirmed, but the goods were classified as scarfs by similitude under section 20, act of August 30, 1842. Plaintiffs [Henry G. Fiske and others] contended that the articles were provided for as “wearing apparel and articles worn by men, women, or children,” at 35 per cent, under the tariff acts of 1861 and 1862. Evidence was introduced for the plaintiffs, showing that the article “neckties” was known in trade and commerce as gentlemen’s furnishing goods, and not as ready-made clothing; that they were not scarfs, which were made in a different way and of different patterns.

Edward Hartley and B. L. Ludington, for plaintiffs.

Noah Davis, Dist. Atty., for defendant.

After argument THE COURT charged the jury that the goods were not under the evidence, and in view of the cases cited, “ready-made clothing,” nor could they be liable to duty by similitude, under the act of 1842, because that law affected only non-enumerated articles, and these were enumerated under the title of wearing apparel; hence they were not dutiable as scarfs, and directed a verdict for the plaintiff.

[NOTE. The defendant Smythe sued out a writ of error on which this judgment was reversed by the supreme court, Mr. Justice Swayne delivering the opinion. It was held that the silk neckties were dutiable at 50 per cent, ad valorem under the provisions of the act of July 30, 1864 (13 Stat. 202), which act imposes a duty of 60 per cent, “on all dress and piece silks,” etc., and on all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, 50 per cent, ad valorem. It was held that the neckties were dutiable under this last clause as a manufacture of silk not otherwise provided for. *Smythe v. Fiske*, 23 Wall. (90 U. S.) 374.]

¹ [Reversed in 23 Wall. (90 U. S.) 374.]