

Case No. 5,959.

[5 Int. Rev. Rec. 69.]

HALLETT ET AL. V. SMYTHE.

Circuit Court, S. D. New York.

1867.

CUSTOMS DUTIES—CLASSIFICATION—GAMBIA.

Gambia is exempt from duty under the tariff act of 1861 [(12 Stat. 292), under the name of “terra japonica,” the two names being synonymous].

Before SMALLEY, District Judge.

This is an action brought [by Henry Hallett and others against Henry A. Smythe] to recover a sum of \$913 alleged to have been illegally imposed on an importation of gambia made by the plaintiffs on the bark Fritz & Anton, May, 1866. The importation, gambia, is a designation synonymous with terra japonica in the books. It is a later word than terra japonica, which it appears, however, to have supplanted in commercial phrase, while on the other hand it appears to have been ignored in the tariff, terra japonica only being referred to. The importation in question under the latter designation is exempt from duty, and therefore the imposition of a tax of ten per cent ad valorem thereon, which was exacted, was paid, by the plaintiffs under protest and an appeal made to the secretary of the treasury. The assumed justification for the exaction, and the defence therefore, is based on a decision of the secretary of the treasury, set forth in, a circular letter, dated May, 1864, with regard to the proper rate of duty to be assessed on the article known in commerce as gambia. The circular, which is over the signature of the present Chief Justice Chase, states that the article is nowhere designated in any of the tariff acts by name, but has been included under the general term of “terra japonica,” a variety of the catechu or cutch. This latter article is liable

under the provisions of the fifth section of the act of July, 1862 [12 Stat 546], to an ad valorem duty of ten per cent and the act was applied under the circular of Secretary Chase, referred to, to the plaintiff's importation of gambia or terra japonica, and it was against this application of the fifth section of the tariff act, and to recover the amount exacted under its operations, the action was brought.

Mr. A. R. Culver, for plaintiff, opened the case, and submitted briefly to the court the law bearing on the issue. The act of March, 1861, provides that terra japonica, catechu or cutch shall be admitted to entry free of duty. The act of July, 1862, provides, that cutch or catechu shall pay a duty of ten per cent, ad valorem, and makes no allusion whatever to the other article, terra japonica, which, therefore, counsel contended, still stands, under the act of 1861, free of duty. Mr. Culver examined a number of witnesses, either at present engaged or lately engaged in importing and dealing in the article gambia or terra japonica, and catechu, or cutch, who clearly proved that in commerce, gambia, or terra japonica, was known as an entirely different and distinct article of trade from cutch or catechu, though to a considerable extent assimilating in their properties and the uses to which they can be applied. The articles, however, are different in origin, being imported from different countries of the East, and sold in the markets here and in England at about one-half the price, gambia being the cheaper article.

Mr. Courtney, U. S. Dist Atty., called but one witness for the defence, when Judge Smalley said that if there was nothing but cumulative evidence as to what gambia was, and whether it should come under the designation of cutch or catechu, or under that of terra japonica, taking such testimony would be a waste of time. It was clear from the evidence that gambia and terra japonica were synonymous, and that congress, when exempting terra japonica from duty, meant gambia.

THE COURT ordered the jury to return a verdict for the plaintiff in the full amount claimed. Verdict accordingly.