

it I caution you against all suggestions of sympathy or prejudice. They have no proper place in a court of justice.

The point submitted by the defendants, to-wit: "That under all the evidence as presented, the verdict must be for the defendants," was reserved by the court.

Verdict for defendants.

The plaintiffs moved for a rule for a new trial, assigning for reasons that evidence was admitted concerning an experimental test of a different boiler than the one in question, but said to be constructed in a similar manner; that the court charged that the defendant was not guilty of negligence if the boiler in question was of a kind in common use and approved by manufacturers and the trade, and properly inspected and tested; and because the court declared that the plaintiff's case was so weak as hardly to justify a verdict in their favor.

Rule discharged.

Vide Rose v. Stephens & Condit Transp. Co. 11 FED. REP. 438.

VIETOR and others v. ARTHUR.

(Circuit Court, S. D. New York. February, 1884.)

CUSTOMS DUTIES — WOOLEN STOCKINGS — SPECIFIC STATUTE NOT REPEALED BY GENERAL.

The specific provisions of the act of July 14, 1862, § 13, fixing the duty upon "stocking, etc., made on frames," are not repealed, with respect to stockings made of either wool or worsted and cotton, by the general provisions of the act of March 2, 1867, § 2, regulating the duty upon "all manufactures of wool."

Motion for New Trial.

Stephen G. Clarke, for plaintiffs.

Elihu Root and *Samuel B. Clarke*, for defendant.

COXE, J. Prior to the Revised Statutes, the plaintiffs imported into this country stockings composed of either wool or worsted and cotton. They were made on frames and worn by men, women, and children. The collector assessed them under the second section of the act of March 2, 1867, as follows:

"On woollen cloths, woollen shawls, and *all manufactures of wool of every description made wholly or in part of wool, not herein otherwise provided for*, fifty cents per pound, and, in addition thereto, thirty-five per cent. *ad valorem*. On flannels, blankets, hats of wool, knit goods, balmorals, woollen and worsted yarns, and *all manufactures of every description composed wholly or in part of worsted, the hair of the alpaca, goat, or other like animals, except such as*

are composed in part of wool, not otherwise provided for, valued at not exceeding forty cents per pound," etc. 14 St. at Large, 559.

The importers insisted that they should have been classified under section 13 of the act of July 14, 1862, as follows:

"Caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, and all similar articles *made on frames, of whatever material composed, worn by men, women and children, and not otherwise provided for.*" 12 St. at Large, 556.

The supreme court, having the provisions of the Revised Statutes under consideration, as applicable to these identical importations, say, in *Vietor v. Arthur*, 104 U. S. 498:

"It is also well settled that when congress has designated an article by its specific name, and imposed a duty on it by such name, general terms in a later act, or other parts of the same act, although sufficiently broad to comprehend such article, are not applicable to it. * * * It is conceded that stockings made on frames have been dutiable *eo nomine* since 1842, and by four different enactments."

Here, then, is a general and long recognized rule of statutory construction applicable to the law as it existed both before and after the Revision, as applicable to the case at bar as to the case the supreme court were considering. Tested by it the position of the plaintiffs seems well taken. They imported "stockings made on frames worn by men, women, and children." It would be difficult to employ language more correctly describing the articles—the duty being imposed without reference to the material. But it is asserted that the general language of the act of 1867, viz., "manufactures of wool of every description" and "knit goods * * * composed wholly or in part of worsted" repealed the provisions quoted from the act of 1862. That it does not do this expressly is admitted, but it is argued that it operates as a repeal by implication.

The act of 1867 was, to use the language of defendant's brief, "intended to be a complete and exhaustive revision of the tariff so far as it related to wool and articles containing wool." It certainly was very comprehensive, specific, and minute in its classifications. That in such an act, where "buttons," "head-nets," and "hats of wool" were not forgotten, no mention should have been made of "stockings made on frames" or the acts which for many years imposed a duty upon them by that name, is indeed significant. Within the rule just quoted from the supreme court the specific description in the act of 1862 was not affected by the general description in the act of 1867. When the collector turned to the former act he found precisely what the law requires him to search for in the first instance—a particular description of the imported articles. There was no need to examine further. His duty was done.

The motion for a new trial is denied.

MIDDLETON PAPER Co. v. ROCK RIVER PAPER Co., Defendant, and another, Garnishee.

(Circuit Court, W. D. Wisconsin. January 26, 1884.)

1. FEDERAL COURT PRACTICE—PROCESSES—HOW ISSUED.

All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the supreme court, or a circuit court, shall bear *teste* of the chief justice of the United States. Section 911, Rev. St.

2. SAME—GARNISHEE PROCEEDINGS—SUMMONS IN—HOW ISSUED.

The summons in a garnishee proceeding is "process" within the meaning of the statute prescribing the manner in which processes shall issue from the federal courts, both the statutes and the decisions of the state courts regarding the garnishee proceeding as the commencement of a new suit against the defendant therein.

3. SAME—SUMMONS ISSUED BY THE ATTORNEY—AMENDMENT.

A process which has been issued by the attorney when it should have been issued by the clerk is no process at all, and cannot be amended as in the case of an irregularity. Under such a summons the court gets no jurisdiction of the case, and there is nothing to amend.

At Law.

Tenny & Bashford, for plaintiff.

Pease & Rugen, for defendant and garnishee.

BUNN, J. This action was brought by the plaintiff, a citizen of Ohio, against the defendant, the Rock River Paper Company, a citizen of Wisconsin, upon an acceptance made by said defendant in favor of the plaintiff. John Hackett, also a citizen of Wisconsin, was served with garnishee process, issued and signed by the plaintiff's attorneys, according to the forms of proceeding in such cases under the laws of Wisconsin. The defendant's attorneys, appearing for the garnishee for that special purpose, move the court to set aside the garnishee proceedings, on the ground that no sufficient process has been served upon the defendant. Section 911, Rev. St., provides that "all writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the supreme court or a circuit court shall bear *teste* of the chief justice of the United States. And rule 20 of the rules for this district provides that all process shall be issued by the clerk under the seal of the court, and shall be signed by the clerk issuing the same, and shall be returnable at Madison or La Crosse, as directed by the party applying therefor. The garnishee summons in this case, served upon the defendant in the garnishee proceedings, is in the form prescribed by the law and practice in the state court, runs in the name of the state of Wisconsin, has no seal, and is issued and signed by the plaintiff's attorneys.

The question is whether in view of the foregoing provisions such a practice can obtain in this court; and it seems quite clear that it