

DAVIS V. SEEBERGER, COLLECTOR.

*Circuit Court, N. D. Illinois.*

July 31, 1890.

CUSTOMS DUTIES—CLASSIFICATION—MARBLE PAVING TILE.

Small pieces of marble, from three-quarters of an inch to half an inch square, used in making marble mosaic floors, which are worked into figures in the floor, and, after being imbedded in cement, are polished, are dutiable under the tariff act of March 3, 1883, (Heyl, cl. 467b,) as “marble paving tile,” there being no specification in the law as to the size of the latter, and not as a “manufacture of marble,” under clause 468, though they are often arranged in patterns, and held so by gummed paper, before importation.

At Law.

*Shuman & Defrees*, for plaintiff.

*W. G. Ewing*, U. S. Dist. Atty., for defendant.

BLODGETT, J. Plaintiff imported a quantity of small marble cubes or blocks for use in making marble mosaic floors, upon which the collector assessed a duty of 50 per cent, *ad valorem*, under clause 468 of Heyl’s arrangement of the tariff of March 3, 1883, as a manufacture of marble not specially enumerated or provided for. Plaintiff insisted that the article was dutiable under clause 467*b*; of Heyl, by reason of the assimilating clause in the tariff act, “as a marble paving tile, at one dollar and ten cents per cubic foot,” paid the duties imposed by the collector under protest, appealed to the secretary of the treasury, by whom the action of the collector was affirmed, and brought this suit in apt time to recover the excess of duties so paid. The article in question consists of small pieces of marble in a cubical, or nearly cubical, form, which are used to work into figures in the class of floors lately introduced in this country known as “marble mosaic.” These pieces or small blocks, from three-quarters of an inch to half an inch square, made up of different colored marbles, are worked, in the laying, into figures, and, after being imbedded in the cement, are polished by the application of polishing stones and rubbing, so as to bring out the colors and figures in contrast. It seems quite clear to me that, as imported, these little cubes are not a “manufacture of marble,” for, by themselves, they make nothing but a bag of little stones. The words “manufacture of marble,” under clause 468, seem to me to mean some article manufactured,—some completed, or approximately completed, article,—such as a statue, or a table top, or a marble column or pillar, or any other article which is imported complete for use; but the commodity in question has to be laid into the floor, and then laboriously rolled and solidified into the cement bedding, and after that polished by rubbing. It is true the proof shows that a part, and perhaps the larger part, of these small cubes are arranged in patterns before importation, and held there by gummed paper; but this does not make a manufacture of marble, as the bulk of the work is yet to be done upon them after they are laid into the cement. Marble paving tiles, the

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duty on which is provided for in clause 467 (Heyl) are usually understood to mean the small squares of marble intended to be

laid into floors in corridors, halls, etc., of public and private houses; but there is no language used in the statute which determines the size of a marble paving tile, or whether it shall be polished before importation, and several of the witnesses who were examined in the case on behalf of defendant say they understand by the term "marble paving tile" small slabs of marble, adapted to be laid into such floors as I have named, the smaller ones being from one and a half to two and a half inches square, or in octangles or triangles. There being no specification in the law as to the size of marble paving tile, it seems to me that the article in question assimilates more nearly in its use, as well as in the material of which it is composed, to "marble paving tile" than to any other description used in the law. I am therefore of opinion that the collector erred in assessing these bits of marble as a manufacture of marble, and that they should have been assessed as marble paving tiles, to which they are certainly more analogous than anything else described.