

"In construing an act of congress, we are not at liberty to recur to the views of individual members in debate, nor to consider the motives which influenced them to vote for or against its passage. The act itself speaks the will of congress, and this is to be ascertained from the language used. But courts, in construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it. *Aldridge v. Williams*, 3 How. 24; *Preston v. Browder*, 1 Wheat. 120."

The letter set forth in the present indictment is a private, personal letter, containing nothing of the character of a publication, unless we assume that it became a publication by the act of mailing, and this we cannot do under the law as interpreted by the supreme court.

It follows, therefore, that the letter is not within the inhibition of the statute, and the demurrer must be sustained, and it is so ordered.

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#### HIRZEL et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. December 5, 1893.)

##### CUSTOMS DUTIES—CLASSIFICATION—CRUDE COCAINE.

Crude cocaine, extracted from the leaves of the coca plant by the aid of diluted alcohol, is dutiable at 25 per cent. ad valorem, as a chemical compound or alkaloid, under the tariff act of October 1, 1890, Schedule A, par. 76, and not at 50 cents per pound, as a medicinal preparation in the preparation of which alcohol is used, under paragraph 74. Its occasional use upon the surface of the skin for surgical or dental purposes does not constitute it a medicinal preparation. 53 Fed. 1006, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Application by Hirzel, Feltman & Co. for review of a decision of the board of general appraisers concerning certain importations of crude cocaine by them. The circuit court affirmed the decision of the board of general appraisers. The importers appeal. Affirmed.

Edwin B. Smith, for appellants.

Edward Mitchell, U. S. Atty., and Jas. T. Van Rensselaer, Asst. U. S. Atty., for appellee.

Before LACOMBE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. Hirzel, Feltman & Co., in the year 1891, imported into the port of New York sundry invoices of crude cocaine, upon which the collector assessed a duty of 25 per cent. ad valorem, under the provisions of paragraph 76 of the tariff act of October 1, 1890. The paragraph is as follows:

"Products or preparations known as alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all chemical compounds and salts, not specially provided for in this act, twenty-five per centum ad valorem."

The importers duly protested against this classification, upon the ground that the merchandise was a medicinal preparation, in the

preparation of which alcohol was used, and dutiable at 50 cents per pound, under the provisions of paragraph 74 of the same act. The paragraph is as follows:

"All medicinal preparations, including medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not specially provided for in this act, 50 cents per pound."

The board of general appraisers sustained the decision of the collector, upon the ground that the article was not a medicinal preparation; and upon appeal the circuit court for the southern district of New York affirmed the decision of the board. From the latter decision the importers appealed to this court.

It is conceded that crude cocaine is an alkaloid, which is extracted from the leaves of the plant coca, which grows in South America in large quantities. The article which is now being imported is first prepared, as a rule, by extraction from the leaves by the aid of diluted alcohol. It is a crude article, and is used in a very small degree for medicinal purposes. It is not employed in filling prescriptions, but is mainly used in the manufacture of cocaine wines, which are generally proprietary preparations, and of oleates. It is also used for medical purposes when refined. Its common use in its impure condition is for the manufacture of the pure or advanced forms in which cocaine becomes known as a medical article, and which may properly be called medicinal preparations. Its occasional use, for the sake of economy, upon the surface of the skin for surgical purposes or for dental purposes, does not constitute it a medicinal preparation.

The conclusion of the board of appraisers and of the circuit court was amply justified by the evidence, and the decision of the latter is affirmed.

MCCORMICK HARVESTING MACH. CO. v. C. AULTMAN & CO. et al.

SAME v. AULTMAN, MILLER & CO. et al.

(Circuit Court, N. D. Ohio, E. D. June 27, 1893.)

Nos. 4,484, 4,485.

1. PATENTS FOR INVENTIONS—REISSUE PROCEEDINGS—REJECTION OF ORIGINAL CLAIMS.

Where a patentee voluntarily resubmits his patent to the examination and revision of the patent office, and then acquiesces in the rejection of claims, or in a construction which narrows or restricts them, the same principles apply as in the case of acquiescence in rejection on original proceedings.

2. SAME—RESTRICTION OF CLAIMS—REFERENCE LETTERS.

Where the elements which go to make up the combination of a claim are mentioned specifically and by reference letters, such specific reference operates to restrict the claim to the particular devices described.

3. SAME—SUBSEQUENT APPLICATION FOR SIMILAR DEVICE.

Where a claim alleged to be infringed describes a specific device, the fact that the patentee subsequently procured another patent for a different device, which defendant's device resembles, must be considered as at least a recognition on the part of the patentee and of the patent office