

SANTOS & JAHRLING, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G.R. No. 8315. February 18, 1914

Ponente: TRENT, J.

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TRENT, J.:

An appeal by the Insular Collector of Customs from a judgment of the Court of First Instance of Manila, setting aside the appellant's classification of Vino Quina Fer (wine of quinine and iron) and Syrup Quina Fer (sirup of quinine and iron) under paragraph 78 (a) of the Philippine Tariff Law of 1909, and admitting; the articles free of duty under paragraph 320 of the same law.

Paragraph 78 (a) reads: "Proprietary and patent medicinal mixtures and compounds; Chinese and similar medicines: (a) Without alcohol, or containing not to exceed fourteen per centum of alcohol, fifty per centum ad valorem."

The term "proprietary" is defined in section 5 of the above-mentioned law as follows: "The term 'proprietary as applied to medicinal remedies, wherever used in this Act, shall be held to mean a 'preparation the manufacture or sale of which is restricted, through patent of the drug or combination of drugs, copyright of the label or name, or any other manner, or a preparation concerning which the producer or manufacturer claims a private formula.' "

Paragraph 320 reads: "Cinchona bark, sulphate and bisulphate of quinine, alkaloids and salts of cinchona bark, in whatever form."

A chemical analysis showed that the wine contained 13.9 per cent alcohol and approximately 0.049 per cent quinine, and that the sirup contained 6 per cent alcohol and 0.016 per cent quinine. Both contained iron, but in amounts not stated. According to the circulars of the manufacturer the beneficial effects from both preparations result from the combination of iron and cinchona, the wine preparation being for those patients for whom it is more palatable than the sirup. This literature of the manufacturer further narrates that the medicinal properties of iron and cinchona combined had long been known, but that until success had crowned the experiments of Monsieur Laroche, the originator of these preparations, no combination had been evolved which could be administered without unpleasant effects to the patient. The preparation is sold under a distinctive manufacturers' label, and the process of manufacture is claimed to be a secret. The chief claim made for it is that it is a tonic; and that such is its use was the testimony of Doctor Newberne. Although the cinchona is dissolved and combined with the iron in both preparations, it is insisted, for the importers, that the general words "in whatever form" used in paragraph 320 of the Tariff Act are sufficiently comprehensive to include both of these preparations.

The tariff cannot be applied to an imported article by seizing upon one of its constituent elements and claiming that the classification of that particular element is the classification of the article. Few, indeed, are the articles subject to the tariff which are irreducible and indivisible. It has never been the practice to analyze an article seeking entry under a tariff act and give to each of its constituents that classification which it would have if imported alone, let alone classifying the aggregate under the name of one of its parts. In the present case, cinchona

is a common element to both preparations. So also, but in a much larger quantity, is alcohol.

Why should the mixture be called cinchona rather than alcohol? It is apparent, however, that neither designation is correct. The question to be determined is, What is the article as a whole? This is well illustrated in the case of *Meyer vs. Arthur* (91 U. S., 570; 23 L. ed., 455.) In that case the importers asked that certain articles known as white lead, nitrate of lead, oxide of zinc, and dry and orange mineral be classified as "all metals not herein otherwise provided for, and all manufactures of metals of which either of them is the component part of chief value * * *." A chemical analysis of each of these preparations disclosed that by far the greater percentage of each consisted of one or another minerals.

The court said: "When the Act speaks of 'manufactures of metals,' it obviously refers to manufactured articles in which metals form a component part. When we speak of manufactures of wood, of leather, or of iron, we refer to articles that have those substances respectively for their component parts, and not to articles in which they have lost their form entirely, and have become the chemical ingredients of new forms * * *. The truth is that, in the nature of things, a metal and its oxide or sulphate are totally distinct and unlike. Any substance subjected to a chemical change by uniting with another substance loses its identity; it becomes a different mineral species. The basis of common clay is the metal aluminium, and the basis of lime is the metal calcium. But no one would think of calling clay and lime metals; nor, if artificially made, would he call them manufactures of metals. They have lost all their metallic qualities. In just the same manner, iron ceases to be iron when it becomes rust, which is oxide of iron; or when it becomes copperas, which is sulphate of iron. None would think of calling blue vitriol copper. So white lead, nitrate of lead, oxide of zinc, and dry or orange mineral are not metals; they have no metallic qualities. In the poverty of language, they have no distinct names, it is true, as lime and clay and vitriol have; but each is designated by a scientific periphrasis, in which the name of the metal which forms one of its chemical elements is used. This use of the name has probably been one cause of the confusion which has arisen on the subject."

For the defendant it is insisted that both of the preparations in question should be classified as proprietary medicines under the definition of that term in section 5, *supra*. Both are put up in bottles bearing labels designed with considerable care, and have stamped thereon the facsimile signature of Monsieur Laroche, all of which conforms with the practice adopted in more recent times by the manufacturers of many proprietary and patent medicines which have gained a reputation, in order to prevent imitations being sold to the public. All of these precautions certainly tend to restrict the sale of the article to that prepared by the manufacturers themselves. But, aside from this, it seems clear that the preparation falls within the italicized words of section 5, as the manufacturer of the preparations under consideration expressly claims that the process of manufacture is a secret.

A case analogous to the one at bar was that of *Ferguson vs. Arthur* (117 U. S., 482; 29 L. ed., 979). Calcined magnesia was a well-known medicinal preparation, a formula therefor being contained in all the dispensaries. The question was whether "Henry's Calcined Magnesia" should be classified as a proprietary medicine or as "magnesia, calcined." That "Henry's Calcined Magnesia" was universally known by that name and had a character of its own, distinctive from the ordinary article, although used for the same purpose; that it had been prepared by the same family for one hundred years and sold on the market at more than double the price of the American preparation of the highest repute; that it had a peculiar reputation on account of the nicety with which it was prepared; that each bottle bore a trade-mark and was accompanied with literature warning the public against imitations, and claiming that the calcined magnesia prepared by them "will be found to be perfectly deprived of carbonic acid, free from taste, smell, or other disagreeable property, and without roughness or grittiness to the touch or the palate;" were facts held sufficient to justify its being called a proprietary medicine.

The preparation now in question is not a mere refinement of the commercial article known as cinchona bark or

any of its derivatives. Its only claim for classification with such drugs is the fact that it contains a small percentage thereof. Precautions against imitations and the same claims of special process in preparation are made for it as were made for "Henry's Calcined Magnesia."

In *Arthur vs. Stephani* (96 U. S., 125; 24 L. ed., 771), where the question was whether chocolates put up in confectionery form should pay duty as confectionery or as chocolate, *eo nomine*, it was held that the latter classification should prevail, after stating the following rule for the construction of tariff acts: The case "presents the question whether the articles are dutiable under general terms which may embrace them, or under that specific language which can be applied to nothing else. That the latter is the rule by which the duty is fixed is too well settled to require argument."

In *Robertson vs. Salomon* (130 U. S., 412; 32 L. ed., 995), the Collector of Customs classified "white beans" as "vegetables" under the general category of "articles of food." The importers insisted that they should be admitted free as seeds, "not otherwise specified." In holding that white beans should be classified as "foods" the court disapproved of an instruction to the jury below to the effect that "the commercial designation of the article, or what the article is called in trade and commerce * * * has nothing to do with the question."

The Supreme Court said: "We think the court erred in this instruction. The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of the tariff laws. (Citing several cases.) But if the commercial designation fails to give an article its proper place in the classifications of the law, then resort must necessarily be had to the common designation."

In the present case, even on the assumption that the general phrase "in whatever form" in paragraph 320 is sufficiently comprehensive to include the medicinal preparations in question, it seems clear that the specific language of paragraph 78 (a) is also applicable, and must therefore govern under the rule of *Arthur vs. Stephani*, *supra*. Again, these preparations would undoubtedly be termed proprietary medicines by "the trade" and patent medicines or nostrums by the public generally.

At the trial, a letter from the Collector of Customs to the Director of Science asking for an analysis of the articles in question, and the latter's reply, in which it is stated that the articles should be classified under paragraph 320, was admitted in evidence over the objection of the defendant. This was manifestly error.

"Clearly it is not the province of the expert to act as judge or jury. Hence, all questions calling for his opinions should be so framed as not to call upon him to determine controverted questions of fact, or to pass upon the preponderance of testimony. Thus, it would obviously be improper to ask the witness to state his opinion upon all the testimony in the case as to any given question, if the truth or part of such evidence were in dispute. When the question is so framed as to call upon the expert to determine on which side the evidence preponderates or to reconcile conflicting statements, he is in effect asked to decide the merits of the case which is a duty wholly beyond his province. Whatever liberality may be allowed in calling for the opinions of experts or other witnesses, they must not usurp the province of the court and jury by drawing those conclusions of law or fact upon which the decision of the case depends." (Jones on Evidence, sec. 372.)

For the reasons above stated, the judgment appealed from is reversed, and the articles in question are held to be dutiable under paragraph 78 (a) of the Tariff Act of 1909.

Let judgment be entered accordingly. No costs will be allowed in either instance.

Arellano, C. J., Moreland and Araullo, JJ., concur.

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