

Case No. 8,243.

{3 Blatchf. 125.}²

LENNIG V. MAXWELL.

Circuit Court, S. D. New York.

Dec, 1853.

CUSTOMS DUTIES—WASTE, FLOCK OR SHODDY—“MANUFACTURE OF WOOL.”

1. Pulverized waste or flock or shoddy, being the refuse thrown off in shearing or finishing of woolen cloths, having been imported and used

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in that state and under those names, prior to the tariff act of July 30th, 1846, and being known in trade and commerce under those names, is liable to a duty of only 5 per cent., under Schedule H of section 11 of that act (9 Stat. 48, 49), as “waste or shoddy,” and is not liable to a duty of 30 per cent., as a “manufacture of wool,” under Schedule C of section 11 of that act (9 Stat. 44, 45).

[Cited in *Seeberger v. Cahn*, 137 U. S. 98, 11 Sup. Ct. 29.]

2. A collector is not justified, by the instructions of the treasury department, in imposing duties not warranted by law.

[Cited in *Munsell v. Maxwell*, Case No. 9,932; *Balfour v. Sullivan*, 17 Fed. 233.]

This was an action to recover back an excess of duties imposed by the defendant [Hugh Maxwell] as collector of the port of New York, and was removed by the defendant, by certiorari, into this court, from the supreme court of New York. The article imported was a refuse of woolen cloths, used by paper manufacturers in making velvet paper. The invoice was in French, and described the merchandise as “laine a velouter,” “belle laine rouge,” “belle laine marapa,” “belle laine fontaine,” “belle laine ecarlate.” The custom house appraisers returned it as “prepared or manufactured wool,” and the collector caused a duty of 30 per cent, to be imposed upon it, as “a manufacture of wool,” under Schedule C of section 11 of the tariff act of July 30, 1846 (9 Stat. 44, 45). The plaintiff [Frederick Lennig] paid the duty, making, at the time, his protest in writing, that the article “should be admitted as ‘waste,’ or excess nap of cloth, at 5 per cent., and not to be charged at 30 per cent., as a manufacture of wool.” This rating at the customhouse was proved to have been in obedience to instructions from the secretary of the treasury, directing the charge of 30 per cent. on “waste, flock, or shoddy, ground or pulverized.” The article was proved to be pulverized waste or shoddy—the refuse thrown off in the shearing or finishing of woolen cloths—and to be worthless in itself, but to have been imported and used by paper-makers, previous to the tariff act of 1840, in that state, and under the name of waste or flock, and to be known in trade and commerce as waste or flock. Schedule H of section 11 of the act of July 30, 1846 (9 Stat. 48), imposes a duty of 5 per cent, on waste or shoddy.

Before NELSON, Circuit Justice, and BETTS, District Judge.

THE COURT held: 1. That the construction of the tariff act by the treasury department, was not conclusive upon either party, and that the collector was not justified by such instructions, in imposing duties not warranted by law.

2. That, on the proofs, the article was entitled to be admitted to entry on payment of a duty of 5 per cent, ad valorem. Judgment for the plaintiff for the difference, with interest, the amount to be adjusted at the custom-house.

LENNOX, The M. A. See Case No. 8,987.

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