

HERMANN *ET AL.* V. ROBERTSON.

*Circuit Court, S. D. New York.*

January 4, 1888.

CUSTOMS DUTIES—IMITATION SEAL-SKIN.

Imitation seal-skin cloakings made of silk, or of which silk is the component material of chief value, are dutiable under Act 1883, § 383, as articles composed wholly or in part of silk, and not under Rev. St. U. S. § 2499, as articles not enumerated bearing similitude to one enumerated for duty.

At Law. Action to recover back customs duties.

Action by Henry Hermann *et al.* to recover excess of duties paid to William H. Robertson, collector of customs duties, on cloaking materials bought and sold as silk seals. The goods are used for making ladies' outer wraps, resemble the fur of the seal as dyed for wear, and are composed of a pile consisting of 85 per cent, of silk, and 15 per cent, of mohair, with cotton back. The silk is the component material of chief value. There is also an imitation seal known as "mohair seal," and made principally of the hair of the angora goat.

*Stephen G. Clark*, for plaintiffs.

*Stephen A. Walker*, Dist. Atty., and *McGrane Cone*, for defendant.

LACOMBE, J., (*orally*.) The decision of the supreme court in *Arthur v. Fox*, 108 U. S. 125, 2 Sup. Ct. Rep. 371, would be controlling of this case, were it not that it seems to have been conceded upon that argument, so far as we may draw any inferences from the text of the opinion, that the particular article of cow hair, vegetable fibre, and cotton therein referred to was a non-enumerated article. In the case at bar, however, that, is the very point in dispute. Under the similitude section, (2499,) the assimilated article must be one non-enumerated, and that to which it should bear a similitude must be an enumerated article. Defendant claims that the article to which he says these goods bear a similitude is an enumerated article; but he finds the sole enumeration thereof in this phrase, (section 363:) "All manufactures, of every description, composed wholly or in part of the hair of the alpaca goat or other animal." Such a phrase is in nowise more specific than is the phrase of the 383d clause: "All goods, wares, and merchandise made of silk, or of which silk is the component material of chief value." If the general phraseology of section 363 is sufficiently specific to constitute an enumeration of imitation seal-skin cloakings made of goats' hair, (a material not expressly enumerated therein,) then the general phraseology of section 383 is sufficiently specific to constitute an enumeration of the goods now before the court, viz.: Imitation seal-skin cloakings made of silk, or of which silk is the component material of chief value. Therefore, as enumerated articles, they are not within the provisions of the similitude clause.

Verdict is directed for the plaintiff.