

v.41F, no.15-56

HERMAN *ET AL.* V. ROBERTSON.

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

December 12, 1889.

CUSTOMS DUTIES—CLASSIFICATION—CALF-HAIR AND COTTON CLOAKINGS.

Cloakings made of calf hair and cotton, imported in 1881, were dutiable at 80 per cent., under the provision of Schedule M, § 2504, Rev. St., for “all other manufactures of hair not otherwise provided for;” and, being thus enumerated, could not be held dutiable under the provision of section 2499, Rev. St., that “on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable.”

*(Syllabus by the Court.)*

At Law. Action to recover duties.

In 1881, plaintiffs imported from England certain cloakings, composed of calf hair or cow hair and cotton. The goods were classified by the defendant as manufactures of calf hair and cotton, assimilating to manufactures of goats' hair and cotton, and assessed for duty at 20 cents per pound and 35 per cent. *ad valorem*, under the provision in schedule L, § 2504, Rev. St., for “manufactures, of every description, composed wholly or in part of the alpaca goat or other like animals,” and the similitude provisions of section 2499, Rev. St. Against this exaction the plaintiffs protested, claiming that their goods were non-enumerated, composed of two materials, and were dutiable only at the highest rate chargeable on any of the component parts, viz., cotton, at 35 per cent. Upon the trial, counsel for defendant moved for direction of a verdict, claiming that plaintiffs' goods were not non-enumerated, and that therefore neither the collector's classification nor the plaintiffs' claim was correct; that the goods were properly dutiable under the provision of Schedule M, § 2504, Rev. St., for “manufactures of hair not otherwise provided for;” and that, as the plaintiffs had not made a claim under that provision in their protest, they could not recover in the suit.

*Stanley, Clarke & Smith*, for plaintiffs.

*Edward Mitchell*, U. S. Atty., and *W. Wickham Smith*, Asst. U. S. Atty., for defendant.

LACOMBE, J. In disposing of this case I feel controlled by the decision in *Arthur v. Butterfield*, 125 U. S. 70, 8 Sup. Ct. Rep. 714, to hold that these goods are manufactures of hair, and, as such, provided for by the clause in Schedule M, § 2504, of the Revised Statutes, under the phrase, “and all other manufactures of hair, not otherwise provided for, thirty per centum *ad valorem*.” The precise point now raised, viz., whether this grade of cattle-hair goods are manufactures of hair”, does not seem to have been presented to the supreme court in the three earlier cases where such goods were before that court, (*Arthur v. Herman*, 96 U. S. 141; *Arthur v. Fox*, 108 U. S. 125, 2 Sup. Ct. Rep. 371; *Herman v. Arthur's Ex'rs*, 127 U. S. 363, 8 Sup. Ct. Rep. 1090;) and therefore, in opin-

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ions given in those cases, there is found no discussion of that clause. I shall therefore follow the construction of the similar clause which was approved in the *Butterfield Case*. This particular case is then left to be determined

on the form of protest; and inasmuch as that, in both its clauses, evidently insisted upon the classification of the article as one non-enumerated, it is not sufficiently specific to warrant a recovery. Verdict directed for defendant.