

UNITED STATES v. NICHOLS *et al.*

(Circuit Court, D. Massachusetts. May 14, 1891.)

CUSTOMS DUTIES—ADHESIVE FELT.

"Felt, adhesive, for sheathing vessels," is among the articles enumerated in "the free list" of the tariff act of 1883, (22 St. 519.) This description is held to cover adhesive felt such as was used at the date of the act for sheathing vessels, although such felt may be imported for other uses. The use of an article does not necessarily control its classification for tariff purposes.

At Law.

Appeal from decision of general appraisers under section 15 of customs act of June 10, 1890. The following was the decision of the board of general appraisers, November 15, 1890, from which the appeal was taken by the collector to the circuit court:

"The merchandise was classified as an unenumerated manufactured article, under section 2513, Rev. St., (Act 1883,) and duty was assessed at 20 per cent. Appellants claim free entry as adhesive felt for sheathing vessels, under Tariff Ind. par. 696. The felt in question is in sheets and double sheets, and the appraiser reports that 'the article itself is identical in character with that which is usually imported for sheathing vessels.' The appellants do not claim that the felt is intended for sheathing vessels, while the collector and appraiser state that it is imported for other use. Paragraph 696, Act 1883, places on the free list 'felt, adhesive, for sheathing vessels.' It would be impracticable to follow up imported merchandise to its destined uses, and it would be impossible in most cases to penetrate the intentions of manufacturers, shippers, and importers. Nor does the use of an article necessarily control its classification. There is no disagreement as to the fact that the adhesive felt in question is suitable, fit, and of the kind commonly used for sheathing vessels, and it must therefore be classified under paragraph 696, Act March 3, 1883. The entry should be reliquidated accordingly."

Frank D. Allen, U. S. Atty., for collector.

J. P. Tucker, for appellees.

NELSON, J. I think there is nothing whatever in the point raised by the plaintiff in this case. The words "for sheathing vessels," as used in the clause of the tariff act of 1883 referred to, are descriptive of the article intended to be exempted from duty, and the clause is to be construed as if it read: "Adhesive felt, such as is now used for sheathing vessels." *Hartranft v. Langfeld*, 125 U. S. 129, 8 Sup. Ct. Rep. 732. That it has been discovered since the act was passed that adhesive felt of this description could be used for some other purpose than sheathing vessels affords no ground for taking the article out of the free list, when used for the new purpose, and making it dutiable as an unenumerated manufactured article, under section 2513 of the tariff act of March 3, 1883.

Upon the facts agreed, the decision of the general appraisers was clearly right, and should be affirmed. Ordered accordingly.

In re McCARTY.

(Circuit Court, S. D. New York. May 11, 1891.)

CUSTOMS DUTIES—VALUES ON ENTRY—HOW ESTIMATED—FOREIGN CURRENCIES.

Merchandise purchased in Bohemia, within the empire of Austria-Hungary, of which country the florin was the standard currency, was invoiced to the importer at New York, and the values given in rix marks and florins; the value of the florin of Austria-Hungary being stated in the United States consul's certificate, annexed to the invoice, as 41.57 cents, estimated in United States gold dollars. *Held*, that the value of the merchandise in the entry should have been estimated by the collector of the port of New York in florins of Austria-Hungary reduced to United States currency on the basis of 34.5 cents to the florin, as declared by the director of the United States mint, and proclaimed by the secretary of the treasury on the 1st of January previous, and not in rix marks, at 23.8 cents to the rix mark, although the total value of the goods in United States money was greater by the latter process of calculation.

At Law.

Application by the collector of the port of New York for a review by the United States circuit court of a decision of the board of United States general appraisers reversing the decision of the said collector in this matter, pursuant to section 15 of the act of June 10, 1890, "An act to simplify the laws in relation to the collection of the revenues." The merchandise in question was imported by McCarty & Co., per steamer *Rugia*, from Hamburg, and entered at the port of New York, July 29, 1890. It was invoiced from Dux, in Bohemia, a province of the empire of Austria-Hungary, of which country the silver florin was the standard currency, and the values were given on the invoice in rix marks and florins. On the entry the value of the goods was likewise stated in rix marks and florins,—the rix marks reduced to United States currency, giving \$330, and the florins at 34.5 cents to the florin, giving \$275, to which figure the sum of \$55 was added "to equal marks," thus raising the amount to \$330 likewise. Upon the total, as stated in rix marks, the value of the merchandise for the purpose of estimating the duties was computed, and against this method of computation the importers duly protested and appealed to the board of United States general appraisers under the act of June 10, 1890, who reversed the decision of the collector, holding that the invoiced, entered, and appraised value should have been liquidated upon the basis of the silver florin, the standard coin of Austria-Hungary, from whence the merchandise was imported, the value of which florin in the currency of the United States at the time of the liquidation of the entry as established by the director of the mint, and proclaimed by the secretary of the treasury, was 34.5 cents.

Edward Mitchell, U. S. Atty., and *James T. Van Rensselaer*, Asst. U. S. Atty., for collector.

Wm. Wickham Smith, for importers.

LACOMBE, Circuit Judge, (*after stating the facts as above.*) It appears on the back of the invoice that the appraiser, who is the officer who fixes the value, has approved of the value of 1,496.75 marks, and of the de-