

the plaintiff had not proven facts sufficient to entitle him to recover, and the plaintiff's counsel moved the court to direct the jury to find a verdict in favor of the plaintiff for the amount, with interest, of so much of the aforesaid duties as was exacted in excess of 10 per centum *ad valorem*, on the ground that the articles in suit were "precious stones."

Comstock & Brown, for plaintiff.

Edward Mitchell, U. S. Atty., and *Thomas Greenwood*, Asst. U. S. Atty., for defendant.

LACOMBE, Circuit Judge, (*orally*.) These articles would, in ordinary speech, it seems to me, be clearly included within the broad meaning of the term "precious stones." What testimony there is here as to how the trade regards them also shows that in trade and commerce in this country they are considered "precious stones." As to any particular meaning which congress in the past may have given to the phrase "precious stones," and as to the distinction suggested in the argument for the defendant of a variety known as semi-precious stones, it is sufficient to say that, for the elaborate and somewhat involved phraseology which congress has from time to time used in the past when laying duty on articles of this class, there has been substituted the comprehensive phrase "precious stones of all kinds," just as in the same tariff act, for the somewhat elaborate and more or less involved description of different varieties of jewelry, there was substituted the phrase "jewelry of all kinds." Heretofore this court has held (in *Robbins v. Robertson*, 33 Fed. Rep. 709) that the words "jewelry of all kinds" in the act of 1883 were sufficiently broad to cover imitation jewelry, as well as real jewelry. I am led to make the same disposition of this case, and to hold that the phrase "precious stones of all kinds," when used in this act of 1883, is broad enough to cover stones which may sometimes be called "semi-precious stones," and which are of the class which, in the broad use of the term "precious stones," is by the community at large regarded as comprised in that family. I shall therefore direct a verdict in favor of the plaintiff.

In re STRAUS *et al.*

(Circuit Court, S. D. New York. April 21, 1891.)

CUSTOMS DUTIES—BOHEMIAN GLASSWARE—ACT OF OCTOBER 1, 1890.

The tariff act of October 1, 1890, held to be a substitute for all prior tariff legislation, so far, at least, as such legislation lays a duty upon imported articles of any kind; and Bohemian glass, imported after October 6, 1890, although specifically enumerated *eo nomine* in the tariff act of March 3, 1883, and only generally enumerated as an "article of glass, colored," etc., in the act of October 1, 1890, is dutiable under the latter act, and not under the former act, which is no longer in force, as to the imposition of duties.

At Law. Appeal from board of United States general appraisers.

The firm of L. Straus & Son on October 11 and 29, 1890, imported by the Polynesia and Arabia certain Bohemian glassware, which was duly entered at the port of New York and classified and assessed by the collector of customs at that port at 60 per cent. *ad valorem*, as an "article of glass, colored," under paragraph 106 of the tariff act of October 1, 1890. The importers protested, claiming that the said goods were dutiable under Schedule B, par. 143, of the tariff act of March 3, 1883, at 45 per cent. *ad valorem* as "Bohemian glass," and claiming that said merchandise, being specifically mentioned or enumerated in said act of October 1, 1890, the former act was still in force, and applicable to the particular merchandise in suit. An appeal was taken by the importers from the decision of the collector to the board of United States general appraisers, under the provisions of the act of June 10, 1890. The board of general appraisers affirmed the decision of the collector. The importers then applied for a review of the decision of the said board by the United States circuit court. The board of general appraisers in their return to the court found that "the merchandise under consideration is commonly known as Bohemian glassware, well recognized under this description in the trade and in popular parlance," and that "the present tariff law does not provide for duty on it by enumeration *o nomine*, as prior tariff acts had done for many years." They also found "that Bohemian glassware imported since October 6, 1890, although omitted to be named by specific mention, is provided for and made dutiable under paragraphs 106 or 108 of the new tariff act, according to the nature of the article, and not under the act of 1883."

Samuel H. Ordway and *Benjamin Barker, Jr.*, for importers.

Edward Mitchell, U. S. Atty., and *Henry C. Platt*, Asst. U. S. Atty., for collector.

LACOMBE, Circuit Judge. Taking the language of the new tariff act as a whole and in its entirety, from beginning to end, I cannot escape the conviction that it manifests a plain intention to substitute that tariff act in the place and stead of all prior tariff legislation, so far, at least, as such legislation lays a duty upon imported articles of any kind. The decision of the appraisers is therefore affirmed.

GRIER v. BAYNES *et al.*

(Circuit Court, N. D. New York. June 5, 1891.)

1. PATENTS FOR INVENTIONS—LICENSE—ASSIGNMENT.

Where a patentee for a stipulated royalty granted an exclusive license to manufacture and sell under his patent, and subsequently, with the knowledge of his licensee, assigned for a valuable consideration a portion of the royalty, he cannot, by a secret assignment to the licensee, cut off the rights of such third party.

2. SAME—NOTICE.

A subsequent assignment by the licensee to a third party having knowledge of the facts will not free the patentee or said third party from the obligation to pay the portion of the royalties so conveyed. The latter took subject to the obligation to pay such royalty.