

ant respectively moved the court to direct the jury to find a verdict in his favor.

Stephen G. Clarke and Charles Curie, for plaintiffs.

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

LACOMBE, Circuit Judge, (*orally*.) The rugs in suit are of like character or description to Wilton or Tournay velvet carpets. The provisions for these and other carpets or carpetings, and also for rugs, contained in Schedule K of the tariff act of March 3, 1883, and similar provisions contained in various other tariff acts, from 1861 to March 3, 1883,—Act March 2, 1861, c. 68, § 13, (12 U. S. St. 178;) Act July 14, 1862, c. 163, § 9, (Id. 543;) Act June 30, 1864, c. 171, § 5, (13 U. S. St. 202;) Act March 2, 1867, c. 197, § 1, (14 U. S. St. 559;) Schedule L, § 2504, Rev. St.,—leave little doubt as to the question raised here. It appears that congress, after providing for a great many different kinds of carpets or carpetings by specific names, or by descriptive terms indicative of the materials of which they are composed, has further provided that all rugs of like character or description to any of these enumerated carpets or carpetings shall be subject to the rate of duty imposed on such carpet or carpetings. Having made provision for such rugs, it has then provided that all other rugs, not included in that provision, shall be subject to duty at the rate of 40 per cent. *ad valorem*. There is no reason to suppose, as contended by the plaintiff in support of his claim, that congress intended that rugs of like character or description to some one of the various enumerated carpets or carpetings, when they are, or are made from, portions thereof, should pay the same rate of duty as is imposed on such carpet or carpetings, but, when not so made, should pay a less rate of duty. On the contrary, there is strong reason to conclude that congress considered the character or description of rugs, if like the character or description of any one of such carpets or carpetings, a more important element in fixing their classification than their mode of manufacture. I therefore direct a verdict for the defendant.

INGERSOLL *et al.* v. MAGONE, Collector.

(Circuit Court, S. D. New York. February 13, 1891.)

CUSTOMS LAWS—TRAVELING RUGS.

Traveling rugs which were imported during the year 1888, and which are articles generally used for wrapping about the legs or the body of a person when traveling, and as coverings for lounges and beds, or for throwing over the body of a person when lying on a lounge or a bed, are not dutiable under the provisions for rugs contained in paragraph 373 of the act of March 3, 1883, (22 U. S. St. 488.)

At Law.

During the year 1888 the plaintiffs made an importation from England into the port of New York of certain articles invoiced as "woolen rugs."

These articles were classified for duty as "woolen shawls," under the provision for "woolen shawls" contained in Schedule K of the tariff act of March 3, 1883, (22 U. S. St. 488, Tariff Ind., New, par. 362,) and duty, accordingly as their value exceeded or did not exceed 80 cents per pound, was exacted thereon at the rate of 35 cents per pound and 40 per centum *ad valorem*, or 35 cents per pound and 35 per centum *ad valorem*, by the defendant, as collector of that port. Against this classification and this exaction the plaintiffs duly protested, claiming that these articles were "traveling or carriage rugs," and, as such, were dutiable at the rate of 40 per centum *ad valorem*, under the provisions for "all * * * other rugs," found in Schedule K of the aforesaid tariff act, (Tariff Ind., New, par. 378,) and in accordance with the decision of the department promulgated March 2, 1888. The plaintiffs at the same time made due appeals, which were decided adversely to them, in accordance with the decision of the department promulgated December 11, 1888, and, after such adverse decision, duly brought this suit to recover all duties exacted on these articles in excess of 40 per centum *ad valorem*. On the trial it appeared that the articles in suit were made of wool, and were of two kinds,—one, 5 feet long by 5 feet and 2 inches wide, weighing 4 pounds and 12 ounces, with a fringe at each of its two ends, and presenting on one side a bright colored striped appearance, and on the reverse side a twilled appearance in two colors; the other, 6 feet and 2 inches long by 5 feet and 2 inches wide, weighing 3 pounds and 6 ounces, without fringe, bound on all its edges with a binding, and presenting a dull striped appearance, alike, or nearly alike, on both sides; that the weight of each was much greater than that of a "shawl;" that articles like those in suit had been known to trade and commerce in this country only for the past 15 years; that during that period such articles were never known in trade and commerce in this country as "shawls," but always as "traveling rugs," and by no other name; that such articles were generally used for wrapping about the legs or the body of a person when traveling, and as coverings for lounges and beds, or for throwing over the body of a person when lying on a lounge or a bed; that a "shawl," as defined by Webster, is "a cloth of wool, cotton, silk, or hair, used especially by women as a loose covering for the neck and shoulders;" that a "rug," as defined by Webster, is "a coarse, nappy, woolen fabric, used for various purposes,—as (a) for the cover of a bed; (b) for protecting the carpet before a fire-place; (c) for protecting the legs against the cold in riding, as a railway rug."

W. Wickham Smith and D. Ives Mackie, for plaintiffs.

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

LACOMBE, Circuit Judge, (*orally*.) The articles in suit were known in trade and commerce of the country at and prior to the passage of the tariff act of 1883 as "traveling rugs," and by no other name. This act provides for "rugs" simply, and not for "traveling rugs." "Rugs" have been provided for *eo nomine* in the different tariff acts for nearly 30

years past,—Act March 2, 1861, c. 68, § 13, (12 U. S. St. 178;) Act July 14, 1862, c. 163, § 9, (Id. 543;) Act June 30, 1864, c. 171, § 5, (13 U. S. St. 202;) Act March 2, 1867, c. 197, § 1, (14 U. S. 559;) Schedule L of section 2504, Rev. St.; Act March 3, 1883, Schedule K, (22 U. S. St. 488,)—and always in connection with provisions for carpets or carpetings, and for articles of a similar nature, and, like them, used on floors. “Traveling rugs” are generally used for wrapping about the legs or the body of a person when traveling, and as coverings for lounges or beds, and for throwing over the body of a person when lying on a lounge or bed. “Traveling rugs” have never been provided for *eo nomine* in any tariff act, and, according to the evidence in this case, have been known to trade and commerce of this country only for the past 15 years. In view of the history of the legislation of congress concerning “rugs,” as evidenced by the different tariff acts from 1861 to 1883, both inclusive, and of the evident intention with which it has used the word “rugs” in paragraph 378, in Schedule K of the tariff act of 1883, I am constrained to direct a verdict for the defendant.

In re CARRIER et al.

(District Court, D. New Jersey. October 29, 1891.)

BANKRUPTCY—PROCEEDINGS TO REALIZE ESTATE—OBJECTION TO JURISDICTION.

Where an assignee in bankruptcy applies for a rule against persons claiming lots by purchase from the bankrupt, to show cause why they should not be turned out of possession and restrained from interfering with a sale by the assignee, and they appear before the register and defend on the merits, and then fail to except to his report, on which the rule is made absolute, it is too late for them thereafter to seek to have the proceedings set aside as void for want of jurisdiction in the court as a court of bankruptcy.

In Bankruptcy.

This was a petition by A. J. and J. L. Long to set aside certain orders in bankruptcy proceedings against Carrier & Baum. The opinions of the court on former questions arising in the same proceedings are reported in 46 Fed. Rep. 850 and 47 Fed. Rep. 438.

James Fitzsimmons, for petitioners.

L. B. D. Reese, for assignee.

REED, J. A petition was filed December 31, 1889, by L. B. Duff, assignee of Carrier & Baum, setting forth that at the time of the filing of the petition in bankruptcy A. E. Baum was the owner of certain lots in the borough of Freeport, Armstrong county, Pa., and reciting at length of title by which said Baum held the lots. The petition further averred that the said lots, title to which it was claimed had passed to the petitioner as assignee, were held by one Ingersoll, who had been put into the building on the lots by Baum for the purpose of taking care of it, and that Ingersoll had agreed, after some legal proceedings