

the component material of chief value; that they were produced at a period prior to the year 1700; that they and two other antique Gobelin tapestries, produced at a like period, were all purchased by the said Louis Stern for the purpose of adding them to a collection of curiosities and bric-a-brac, which he owned at the time in New York; that the two tapestries in suit were placed by the said Stern in his apartment in a foreign country, while temporarily residing there, being thus designedly separated from the other two tapestries, so as to destroy the unity of assemblage; that the two in suit were ordered to be shipped to this country, and were shipped on a different vessel from that in which the other two were imported; that these tapestries were not suitable for souvenirs, or for a cabinet of collections of antiquarian curiosities, within the meaning of paragraph 524, and were not free of duty thereunder; and the board affirmed the decision of the collector as to the aforesaid classification and exaction made by him. From this decision of the board the importer appealed to the United States circuit court for a review of the questions of law and fact involved, and thereafter, upon the return made by the board, this case was tried.

W. Wickham Smith, of Curie, Smith & Mackie, for appellant.

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

WALLACE, Circuit Judge. Inasmuch as the question in this case can very readily be reviewed by the circuit court of appeals, I am not disposed to feel trammelled by any of the previous decisions in this circuit, or in any other circuit, in respect to it. I think a "collection" means something more than two articles. I also think that whether an article is dutiable or not under this particular clause does not depend upon the fact whether it has belonged to a collection or is imported to add to a collection, but whether it is a part of a collection when it is brought in. Therefore I hold that these tapestries were dutiable, and I affirm the decision of the board of appraisers.

In re Boyd et al.

(Circuit Court, S. D. New York. February 18, 1892.)

CUSTOMS DUTIES—ACT OF OCTOBER 1, 1890—CLASSIFICATION—COTTON LACE APRONS.

Aprons made of cotton lace held not to be dutiable, as articles of wearing apparel, at 50 per cent. *ad valorem*, under paragraph 849 of the act of October 1, 1890, but dutiable, as "articles made wholly or in part of lace," at 60 per cent. *ad valorem*, under paragraph 873 of said act.

(Syllabus by the Court.)

At Law. Appeal by collector of the port of New York from decision of the board of United States general appraisers under the act of June 10, 1890.

Boyd, Sutton & Co. imported into the port of New York, per steamer Cufic, November 3, 1890, certain merchandise, consisting of cotton lace aprons made up and ready to be worn, upon which the collector of customs at that port levied and assessed a duty of 60 per cent. *ad valorem*, as an "article made wholly or in part of lace," under the provisions of paragraph 373 of Schedule J of the act of October 1, 1890.

"Par. 373. Laces, edgings, embroideries, insertings, neck ruffings, ruchings, trimmings, tuckings, lace window curtains, and other similar tamboured articles, and articles embroidered by hand or machinery, embroidered and hemstitched handkerchiefs, and articles made wholly or in part of lace, ruffings, tuckings, or ruchings, all of the above-named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances, or either of them, or a mixture of any of them, is the component material of chief value, not specially provided for in this act, sixty per centum *ad valorem*: provided, that articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of which they are respectively composed."

The importers protested, and appealed to the board of United States general appraisers, under the act of June 10, 1890, claiming the same to be dutiable at 50 per cent. *ad valorem*, as cotton wearing apparel, under the provisions of paragraph 349 of Schedule I of said act:

"Par. 349. Clothing ready made, and articles of wearing apparel of every description, handkerchiefs, and neck-ties or neck-wear, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, all of the foregoing not specially provided for in this act, fifty per centum *ad valorem*: provided, that all such clothing ready made and articles of wearing apparel having India-rubber as a component material (not including gloves or elastic articles that are specially provided for in this act) shall be subject to a duty of fifty cents per pound, and in addition thereto fifty per centum *ad valorem*."

The board of United States general appraisers reversed the decision of the collector, and found as matters of fact that the articles were aprons composed of cotton, and made chiefly of lace, and were wearing apparel. They decided that the merchandise was more specifically provided for under the term "wearing apparel" than under the term "articles made of cotton lace," and reversed the decision of the collector. From their decision, appeal was duly taken by the collector to the United States circuit court.

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

Curie, Smith & Mackie, for defendants.

WALLACE, Circuit Judge. In the case of Boyd, Sutton & Co., I have come to the conclusion that the cotton lace aprons in controversy were properly classified by the collector, and I reach this conclusion almost wholly because of the force which I think must be given to the proviso in section 373. We know very well that the effect of a proviso is to

carve an exception out of the enacting clause, and therefore I must read the enacting clause as including wearing apparel among the articles made wholly or in part of lace. I think the question is a close one, yet I cannot arrive at any other conclusion, giving to the proviso in section 373 what I deem to be its due force and effect. The decision of the board of appraisers should be reversed. So ordered.

UNITED STATES *v.* ADLER *et al.*

(District Court, S. D. Iowa, C. D. March 3, 1892.)

1. PENSIONS—FRAUDULENT PRESENTATION OF CLAIM—INDICTMENT.

An indictment under Rev. St. § 4748, for knowingly procuring the presentation of a false affidavit concerning a claim for pension, is sufficient if it alleges the presentation of an affidavit with a signature known to be false and forged. It need not allege that the pension claim was false.

2. SAME.

The indictment charged that defendants on a certain day, "at the county of Wapello, in the southern district of Iowa, did then and there present to the commissioner of pensions at Washington, in the District of Columbia," etc. At its close it charged: "And that at the time and place aforesaid, that is to say, on * * * at the county of Wapello, state of Iowa, the said * * * did then and there present and cause to be presented to the commissioner of pensions aforesaid," etc. *Held*, construing the parts of the indictment together, that it charged the presentation of the false affidavit at Wapello county, Iowa, and not at Washington, D. C.

At Law. On demurrer to indictment. Overruled.

Lewis Miles, Dist. Atty., for the United States.

J. F. Lacey and *M. J. Williams*, for defendant Adler.

Before *SHIRAS* and *WOOLSON*, District Judges.

WOOLSON, District Judge. The indictment herein charges that on the 8th day of July, A. D. 1890, defendant—

"At the county of Wapello, in the southern district of Iowa, did then and there cause to be presented and present to the commissioner of pensions at Washington, in the District of Columbia, a certain false, forged, and counterfeited affidavit, in writing, which said false, forged, and counterfeited affidavit is in writing, and is in words and figures as follows, [here follows an affidavit, being a declaration for an invalid pension (in the ordinary form) for Daniel Boone, and purporting to be signed by Daniel Boone as affiant;] that said false, forged, and counterfeit affidavit is false, in this: that is to say, that the said false, forged, and counterfeited affidavit was never signed by Daniel Boone, but that in truth and in fact the same was signed by said George S. Boone, and that said George S. Boone signed the name Daniel Boone to said false and forged affidavit, which said false, forged, and counterfeited affidavit has marked thereon the receiving mark of the pension office of the United States, of date July 11, 1890; that at and long prior to the signing of the name Daniel Boone to said false and forged affidavit the said Daniel Boone, whose name was purported to be signed to said false and forged affidavit, had been deceased, and that at the time and place aforesaid, that is to say, on the 8th day of July, A. D. 1890, at the county of Wapello, state of Iowa, the