

ruling that one may be discharged after verdict against all, and the others held, may be lawful enough under some circumstances; but a court acting impartially towards all parties must feel a sense of its injustice when it appears that neither in the declaration, the pleas, the arguments of counsel, nor the charge of the court were the jury invited to give their consideration to that subject, and that they rendered a verdict supposing, as they might do, that all were to share its burdens, if all were able to do it. It is too much like a verdict by the court than one by the jury to take advantage of these technicalities by refusing two of the defendants a new trial which is given to the other. Another jury will vindicate the plaintiff just as surely as this has done, if the facts and the law entitle him to the vindication he has received at the hands of this jury, whose enforcement of the right of exemption from wrongful arrest and imprisonment is in every way to be commended, and whose verdict is set aside most reluctantly for no fault of theirs. But the court will be better satisfied that such vindication comes from the verdict of a jury, with full knowledge of all the facts, than from a ruling of the court, however technically correct, that imposes upon two a liability the jury intended that three should bear.

New trial granted.

In re WILMERDING et al.

(Circuit Court, S. D. New York. March 9, 1892.)

CUSTOM DUTIES—TARIFF ACT OF OCTOBER 1, 1890—CRASH OR CANVAS.

Crash or canvas, 15 and 17 inches in width, respectively, made of flax tow, and of from 1 to 2 per cent. of cotton, and containing less than 100 threads to the square inch, counting both warp and filling, is not dutiable at 40 per cent. *ad valorem*, as manufactures of other vegetable fiber except flax, or of which other vegetable fiber except flax is the component material of chief value, under the provision for such manufactures contained in paragraph 374 of the tariff act of October 1, 1890, (chapter 1244, 26 U. S. St. p. 567.)

At Law. Appeal by importers from decision of the board of United States general appraisers.

During the year 1891 the firm of Wilmerding & Bisset imported from a foreign country into the United States at the port of New York certain merchandise, consisting of crash or canvas. This merchandise, having been returned by the local appraiser as manufactures of flax and jute, flax chief value, not exceeding 100 threads to the square inch, was classified for duty as manufactures of flax, under the provisions for such manufactures contained in paragraph 371 of the tariff act of October 1, 1890, (chapter 1244, 26 U. S. St. p. 567,) and duty at the rate of 50 per centum *ad valorem*, as provided by that paragraph, was exacted thereon by the collector of customs at that port. Against this classification and this exaction the importers protested, claiming that this merchandise, having, as its component material of chief value, tow,

was dutiable at the rate of 40 per centum *ad valorem* under the provision for "all manufactures of jute, or other vegetable fiber, except flax, hemp, or cotton, or of which jute, or other vegetable fiber, except flax, hemp, or cotton, is the component material of chief value, not specially provided for in this act," contained in paragraph 374 of the same tariff act. The board of United States general appraisers, to which the invoice of this merchandise, and all the papers and exhibits connected therewith, were transmitted by the said collector pursuant to section 14 of the administrative customs act of June 10, 1890, (chapter 407, 26 U. S. St. p. 131,) after taking evidence, (September 17, 1891, § 11,882, G. A. § 73,) found that this merchandise was crash or canvas, 15 and 17 inches in width, respectively; that it consisted mainly of flax tow, and, in the case of one portion thereof, 1 per cent of cotton; of another portion, 1½ per cent. of cotton; and of still another portion, 2 per cent. of cotton; that it contained less than 100 threads to the square inch; that tow was the coarse and broken part of flax; that, by specific provision of the aforesaid act, such portion of flax, when imported in bulk, was dutiable at one-half of 1 cent per pound; that textile fabrics, however, woven of this substance, become a manufacture of flax, and are subject to the rate of duty applicable thereto, when imported into the United States; and that the aforesaid classification of the collector was correct. From this decision of the board the importers appealed to the United States circuit court for a review of the questions of law and fact involved therein. Thereafter the board made its return, and upon the same the case was tried.

W. Wickham Smith, of Curie, Smith & Mackie, for importers, argued, in substance, that, as tow of flax was specifically provided for by paragraph 359 of the aforesaid tariff act, the merchandise in suit was therefore not a manufacture of flax, within the meaning of the provision for such manufactures contained in said paragraph 371; but was a manufacture of a vegetable substance other than flax, and dutiable as such, under the provision for such manufactures contained in said paragraph 374; citing, in support of this contention, the remarks of the supreme court as to "shoddy" found in the case of *Seeberger v. Cahn*, 137 U. S. 95-97, 11 Sup. Ct. Rep. 28.

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

LACOMBE, Circuit Judge, (*orally*.) I shall affirm the decision of the board of United States general appraisers in this case, upon the ground that I cannot find that this article is composed of any other vegetable fiber except flax; and therefore I do not find that it is within the designation of the particular paragraph referred to by the importers. Whether or not it is a manufacture of flax I do not now decide. I cannot see that it is a manufacture of some vegetable fiber other than flax. Decision of the board of United States general appraisers affirmed.

In re SCHEFFER et al.

(Circuit Court, S. D. New York, March 9, 1892.)

CUSTOMS DUTIES—CLASSIFICATION—WORSTED SHAWLS EMBROIDERED.

Worsted shawls, embroidered with silk, are dutiable as worsted shawls under Schedule K, par. 392, tariff act of October 1, 1890, and not as embroideries made of worsted, under the proviso contained in paragraph 373, Schedule J, and paragraph 398, Schedule K, of said tariff act.

At Law. Application by the importers under the provisions of section 15 of the act of congress, entitled "An act to simplify the laws in relation to the collection of the revenues," approved June 10, 1890, for a review by the United States circuit court of the decision of the board of United States general appraisers at the port of New York, affirming the decision of the collector on the classification for duty of certain merchandise imported into said port in the month of April, 1891. The merchandise in question consisted of so-called shawls, being manufactures of worsted embroidered with silk. They were returned by the United States appraiser as "worsted shawls, embroidered, 60/60," and duty was assessed thereon by the collector at the rate of 60 cents per pound, and 60 per centum *ad valorem* under the provisions of paragraph 398 of Schedule K, and the proviso contained in paragraph 373, Schedule J, of the tariff act of October 1, 1890. Said paragraph 398, omitting the provisions immaterial to this case, is as follows:

"On webbings, * * * and embroideries * * * wrought by hand or braided by machinery, * * * made of wool, worsted, the hair of the camel, goat, alpaca, or other animals, * * * the duty shall be sixty cents per pound, and in addition thereto sixty per centum *ad valorem*."

The proviso in paragraph 373 is as follows:

"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 the materials of which they are respectively composed."

Against this classification the importers protested, claiming (1) that the goods were specifically provided for in Schedule K, paragraph 392, of the act of October 1, 1890, and, being worth over 40 cents per pound, were dutiable at 44 cents per pound, and 50 per centum *ad valorem*; or (2) that the shawls were dutiable as wearing apparel under paragraph 396 of Schedule K of said tariff act; or (3) that the goods were not at and prior to October 1, 1890, commercially known as "embroideries." Said paragraph 392, as far as applicable, provides as follows:

"On woollen or worsted cloths, shawls, * * * valued at above forty cents per pound, the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and, in addition thereto, fifty per centum *ad valorem*."

The board of United States general appraisers affirmed the decision of the collector, and the importers thereupon procured the return of the