

taken by the collector, but by the importers. Upon receipt of this protest, as provided by section 14 of the aforesaid administrative customs act, the collector submitted the case thus presented to a second board of three general appraisers at this port, who overruled the importer's protest, and affirmed the decision of the collector as to the aforesaid assessment of duties. Within the time prescribed by section 15 of the aforesaid administrative customs act the importers applied to the United States circuit court for this district for a review of this last-mentioned decision.

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

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

LACOMBE, Circuit Judge, (*orally.*) An appraiser, whenever called upon to act, is not constrained at all by the rules that pertain to courts, but goes to work to satisfy his own mind, in the best way he can, what goods are worth; and he can do that notwithstanding he reaches the conclusion that the goods are worth more than the value fixed by the local appraiser. The decision of the board of United States general appraisers is therefore affirmed.

In re QUAINANCE.

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

CUSTOMS' DUTIES—CLASSIFICATION—SILK AND COTTON SHIRTINGS.

Silk and cotton shirtings, invoiced as "mixed shirtings," consisting of cotton warp threads, some white and some colored, and silk weft threads, the cotton constituting 63.27 per cent. in weight of the fabric, and the silk 36.73 per cent. in weight, the silk being largely the component material of chief value, *held*, that the merchandise was dutiable at 50 per cent. *ad valorem* under paragraph 414 of the tariff act of October 1, 1890, and not, as classified by the collector, at 10 cents per square yard, and 35 per cent. *ad valorem*, under paragraph 348 of the same tariff.

At Law.

Application by the collector of customs at New York for a review of the decision of the board of United States general appraisers reversing the decision of the collector on the classification of certain merchandise entered at the port of New York in March, 1891, which was invoiced as "mixed shirtings," and returned by the appraiser as "silk and cotton shirtings, silk chief value, 10/35," and duty accordingly assessed thereon by the collector at the rate provided for cotton cloth containing an admixture of silk, at 10 cents per square yard, and, in addition thereto, 35 per cent. *ad valorem*, under Schedule I, par. 348, of the tariff act of October 1, 1890. Against this classification the importers protested, claiming that their goods were dutiable only at 50 per cent. *ad valorem*, under the provisions of Schedule L of said tariff act, (paragraph 414,) as

manufactures of which silk is the component material of chief value, not specially provided for in the act. The board of general appraisers sustained the protest of the importers, finding as matters of fact: "(1) That the merchandise is known commercially as 'shirting;' (2) that it is not cotton cloth, but is a mixed fabric, composed of silk and cotton, of which materials silk is the greater value; (3) that it contains less than 200 threads to the square inch, counting both the warp and filling;" and that the merchandise was dutiable at 50 per cent. *ad valorem* under paragraph 414 of the tariff act. The collector procured the return of the board of general appraisers to be filed in the circuit court, pursuant to the provisions of section 15 of the act of June 10, 1890, and thereupon obtained an order from the court referring the matter to one of the said board of general appraisers as an officer of the court to take testimony therein. Upon this reference it was proved that the material in question consisted of cotton warp threads, some white and some colored, comprising 63.27 per cent. in weight of the whole fabric, and of silk weft threads, constituting 36.73 per cent. in weight of the whole. It was impossible to contradict the finding of the board of general appraisers that silk was largely the component material of chief value. On the trial in the circuit court it was contended on behalf of the government that the term "cotton cloth," as used in the present tariff, was not a trade term, as it was not under similar provisions in the tariff of 1883, as decided by the circuit court in *Ullmann v. Hedden*, 38 Fed. Rep. 95; and that the provision for cotton cloth with admixture of silk, in paragraph 348, was more specific than the provision for manufactures of silk in paragraph 414; and that the undisputed evidence showed the material was composed in weight of nearly two-thirds cotton and a little over one-third silk.

Edward Mitchell, U. S. Atty., and *J. T. Van Rensselaer*, Asst. U. S. Atty.

Comstock & Brown, for importers.

LACOMBE, Circuit Judge. I do not find any difficulty in interpreting paragraphs 348 and 414. Reading them together, they seem to provide that cotton cloth shall pay a certain rate of duty when it contains an admixture of silk, but, if that admixture of silk is present to such an extent that it becomes a manufacture of which silk is the component material of chief value, then the rate of duty to be paid by the article is not the one provided by paragraph 348, but is that provided by paragraph 414. I shall therefore affirm the decision of the board of appraisers.

In re MUSER et al.

(Circuit Court, S. D. New York. March 21, 1892.)

1. CUSTOMS DUTIES—BOARD OF APPRAISERS—REVIEW BY CIRCUIT COURT—EVIDENCE.

On a review by the circuit court, under Act Cong. June 10, 1890, § 15, of the decision of the board of general appraisers, a motion to strike out testimony taken before the board will be denied, although the record, as certified, states that the facts were found "from the evidence and common knowledge," and included evidence taken in other cases, in which the importers were not concerned, and had had no opportunity to answer or controvert the same.

2. SAME.

It is clearly the intention of the act, as shown by the proceedings in congress leading to its passage, that the board of general appraisers should possess expert knowledge of their own, and that their decision should be based upon such knowledge and the evidence submitted, or upon no evidence at all, or in the absence of the importer and his witnesses. *Rector of Holy Trinity v. U. S.*, 12 Sup. Ct. Rep. 511, applied.

3. SAME—EVIDENCE.

All evidence taken before the board is by section 15 made competent before the circuit court on review, but the importer is then entitled to controvert it under the ordinary rules of evidence.

At Law.**STATEMENT BY LACOMBE, CIRCUIT JUDGE.**

The importers in this case have applied to the circuit court for a review of the decision of the board of general appraisers, acting under the act of June 10, 1890, known as the "Administrative Customs Law." The board had duly filed the return required by section 15 of that act, and motion is now made to strike therefrom certain evidence included in such return.

W. W. Smith, for the motion.

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

LACOMBE, Circuit Judge. The importers, in this case, being dissatisfied with the decision of the collector as to the classification of their goods, and rate of duty imposed thereon, gave the notice in writing required by section 14 of the customs administrative act. Thereupon all the papers and exhibits were transmitted to the board of three general appraisers, which board proceeded to examine and decide the case thus submitted. To assist them in reaching a conclusion the testimony of witnesses produced by the importers and by the collector of the port of New York was taken under oath, and such testimony is returned by them. A statement of the facts involved in the case, as found by the board, is duly certified to this court, prefaced by the statement that they find the facts "from the record and the evidence, and from common knowledge." There is also included in the return evidence taken in two other cases, with which these importers had no concern, of the existence of which testimony they were wholly ignorant, and which they never had any opportunity to answer or controvert before the board. If the proceedings in these cases before the board of general appraisers are to

be regulated in accordance with the principles which prevail on the trial of causes in courts, a system of procedure as abnormal as this could be supported only by the clearest and most unmistakable language in the statute providing for it. But the board of appraisers do not sit merely as a tribunal created to determine a controversy between parties upon evidence introduced by one side or the other. Whatever may be the language of the statute, the true rule for its interpretation is to be found in the intention of its makers, and we may find that intention in the record of the proceedings which terminated in its enactment. *Rector, etc., of Holy Trinity Church v. U. S.*, 12 Sup. Ct. Rep. 511. The excerpts from the debates in the senate (volume 21, pt. 4, Cong. Rec. 51st Cong. 1st Sess. p. 4004 et seq.) which were submitted on the argument by the district attorney leave no doubt as to the character and functions of the board which congress intended to create. The appraisers were to be experts, with knowledge of their own as respects the values and classification of imported goods,—knowledge derived, not only from sworn evidence taken in the particular case in hand, but from countless other cases involving similar goods. A clause securing to the importer the privilege of being present before the board of general appraisers, with or without counsel, as he might elect, was stricken out before passage, with the express intent that the proceedings before the board might be to a large extent informal, and that they might sit, not as a court, but as an *ex parte* revenue tribunal, before which the parties were to have no right to be heard by counsel, to be confronted with witnesses, or to make argument, although the board might, if it chose, require the attendance of witnesses, and invite the importer to attend and state his case personally or by counsel. It was plainly contemplated by the framers of the act that the board would sit as experts to decide in a summary manner questions of value and classification arising under the tariff laws, reaching their decision from their own expert knowledge and from the evidence submitted to them, or such as they might obtain. A remonstrance by importers against the passage of the act in its present shape, which was presented and read in the senate, expressly criticised the pending bill because “no right is given to the importer to be present, with or without counsel, at the proceedings of the board, or to cross-examine the government’s witnesses,” and because “the board can fix the classification and rate upon any or even no evidence at all, in the absence of the importer and any witnesses he might be able to secure,” and because “all the testimony that the board may thus obtain or choose to use is made competent evidence before the circuit court, if an appeal is taken.” I do not find anything in the letter of the act itself which requires a different interpretation of its meaning, and, even if I did, should not, since the decision in the *Holy Trinity Case, supra*, feel warranted in abiding by its letter, in the light of such unmistakable evidence as to the intention of its makers.

As the act (section 15) expressly provides that all the evidence taken by and before the appraisers shall be competent evidence before the circuit court, and as their return shows that the evidence in the two cases with

which this importer was not concerned was taken by or before them, the motion to strike it out is denied. The importer has abundant opportunity to controvert any such evidence, upon the reference to which he is entitled under the fifteenth section of the act.

In re Cook.

(Circuit Court, E. D. Wisconsin. April 4, 1892.)

1. **HABEAS CORPUS—INTERSTATE EXTRADITION.**

In interstate rendition, the warrant of the executive is not conclusive of the fact of flight. The courts upon *habeas corpus* may inquire and determine the fact, and this at any time before the actual surrender of the prisoner to the demanding state.

2. **SAME.**

The executive warrant is, however, *prima facie* evidence of flight, and, being unassailed before delivery of the prisoner to the demanding state, the surrender is lawful. The executive warrant has, upon surrender of the prisoner, spent its force. He is then held in lawful custody, under process of the state, and cannot thereafter assert that he was not a fugitive from justice.

3. **SAME—FUGITIVE FROM JUSTICE.**

One who personally, within a state, has set in motion the machinery for crime, and departs the jurisdiction, after the commission of an act in furtherance of, but before the consummation of, the offense, is a "fugitive from justice," within the meaning of the law.

4. **SAME—TRIAL FOR OTHER OFFENSES.**

Whether one surrendered by one state to another can be tried for any other offense than that for which he was surrendered, *quære?*

(*Syllabus by the Court.*)

Writ of *Habeas Corpus*.

STATEMENT BY JENKINS, DISTRICT JUDGE.

On the 13th of February, 1892, upon the petition of Charles E. Cook, claiming to be restrained of his liberty by one Colden A. Hart, sheriff of the county of Dodge, state of Wisconsin, a writ of *habeas corpus* was issued out of this court, to which the sheriff made due return, which the petitioner duly traversed. The facts disclosed by the record, so far as essential to the determination of the matter, are substantially these:

On the 5th day of March, 1891, one George W. Morse complained to a justice of the peace of the county of Dodge that the petitioner, Charles E. Cook, and one Frank Leek, on the 7th of May, 1889, opened a bank at Juneau, in the county of Dodge, styled the "Bank of Juneau," and entered upon and engaged in a general banking business, having a pretended capital of \$10,000, and continued in such business, soliciting and receiving deposits up to and including the 20th day of June, 1890, upon which day the bank closed its doors and failed. That Cook was the principal owner of such bank, owning nine-tenths interest therein, Leek owning one-tenth interest therein. That Cook was an officer of the bank, and had the general supervision of the business, which was transacted either by him personally, or, under his order and direction, by one Richardson, acting as his agent. That from January 6, 1890, to