

**At Law. Appeal by importers from decision of United States general appraisers. Affirmed.**

The Standard Varnish Works imported by the steamer California on May 18, 1891, certain merchandise known as "candle tar" or "palm pitch," which was classified and assessed for duty by the collector of customs at New York as a nonenumerated manufactured article, at 20 per cent. ad valorem, under section 4 of the act of October 1, 1890. The importers duly protested, claiming the same to be dutiable at 10 per cent. ad valorem, as "waste," under paragraph 472 of said act. The board of United States general appraisers affirmed the assessment of the collector, and an appeal was taken by the importers to the United States circuit court, under the provisions of the act of June 10, 1890. The subject of the importation was produced by subjecting tallow, animal grease, and palm oil to treatment in closed retorts or boilers to superheated steam, whereby the stearine and the candle tar were separated, the stearine carried out of the retort by distillation, and the candle tar remaining in the retort. This manufacture resulted in the two products,—stearine and candle tar; the latter of which is used for waterproofing barrels, covering roofs, and also for increasing the body of varnish. The importers claimed it to be mere waste, and not a biproduct.

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

W. Wickham Smith, for importers.

COXE, District Judge, (orally.) The merchandise in this case is a manufactured article, and is imported, bought, sold and used, as an article of trade and commerce. It is not a natural product, and there is no evidence in the record to show that it can be made, except by the process described.

The decision of the United States general appraisers is affirmed.

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In re WHITE et al.

(Circuit Court, S. D. New York. January 5, 1893.)

1. CUSTOMS DUTIES—APPEAL FROM GENERAL APPRAISERS—EVIDENCE.

The decisions of the board of United States general appraisers on disputed evidence as to the facts will not be disturbed by the court.

2. SAME—CLASSIFICATION—BURLAPS.

Paddings or canvas, from 18 to 24 inches in width, and used chiefly in the clothing trade, and for making small bags, and for similar purposes, are dutiable, under the act of October, 1890, as "burlaps," at 1½ cents per pound, under paragraph 364, and not as "manufactures of jute," at 40 per centum ad valorem, under paragraph 374 of said act.

3. SAME—CONSTRUCTION OF ACTS.

The act of March 3, 1883, provided specially for a duty upon "paddings" and "canvas" (paragraph 334) different from "burlaps," (paragraph 338.) but the act of October 1, 1890, omitted any special mention of paddings or canvas in any paragraph. Held that, as jute paddings or canvas are a species of "burlaps," they are now dutiable, as such, under the latter act.

**At Law. Appeal from decision of the United States general appraisers. Affirmed.**

The imported merchandise in this suit consisted of jute goods woven, from 18 to 24 inches in width, commonly known in the trade as "paddings" or "canvas," which were classified by the collector as "manufactures of jute," dutiable at 40 per cent. ad valorem, under paragraph 374 of the tariff act of October 1, 1890. The importers duly protested, claiming said merchandise to

be properly dutiable as "burlaps," of jute, not exceeding 60 inches in width, at 1½ cents per pound, under paragraph 364 of said act. The board of United States general appraisers sustained the protest of the importers, that the goods in controversy were burlaps, and reversed the decision of the collector. The collector appealed from their decision to the United States circuit court, under the provisions of the act of June 10, 1890.

It was contended, on behalf of the collector, that the merchandise in suit was of that character and make which had always been known, prior to the passage of the act of October 1, 1890, in trade and commerce, as paddings or canvas, and was chiefly used in the clothing trade; that congress in the tariff act of March 3, 1883, had differentiated canvas and paddings from burlaps and placed a different rate of duty thereon, (quoting paragraphs 334 and 338 of the tariff act of March 3, 1883); that prior tariff acts had also made the same distinction between the two articles; that the decisions of the treasury department had for many years made his distinction; that under the act of 1883 several cases had been tried in the United States circuit court wherein juries had found that paddings and canvas, under the act of 1883, were a different article from the burlaps of commerce; that congress, in the act of 1890, must be presumed to have legislated in view of the prior decisions of the department and the courts, and of the distinction always made in prior legislation; that as congress had seen fit in the act of October 1, 1890, to omit the paddings and canvas paragraph of the act of 1883, and had not provided specifically for a duty thereon, they intended such articles to fall under paragraph 374, and to be included within the terms "all manufactures of jute," and under the principles of construction laid down by the supreme court in the case of *Robertson v. Rosenthal*, 132 U. S. 460, 10 Sup. Ct. Rep. 120, paddings and canvas, such as those in suit, were not relegated to the burlap clause (paragraph 364) of the act of October 1, 1890.

It was contended, on behalf of the importers, that "burlaps" was a general name for a class of goods that were used by various trades, such as the upholstery bagging, oil cloth, clothing trades, etc., and that the different trades used different widths and makes of the same articles of "burlaps;" that in the clothing trade the narrow burlap was known as canvas or padding, and as congress had seen fit to omit any special mention of canvas or paddings, by name, in the act of October, 1890, the most specific description thereof to be found in that act was the term "burlaps" in paragraph 364, which more specifically described and designated the articles in suit than the more general term "manufactures of jute."

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

Stephen G. Clarke, for importers.

COXE, District Judge, (orally.) The only question in this cause is one of fact. It is conceded on all sides that the term "burlaps," (paragraph 364), found in the act of 1890, is a more specific designation of the imported goods than the term, "manufactures of jute or other vegetable fibre, etc., not specially provided for in this act," (paragraph 374.) Are they burlaps? This question of fact was thoroughly tried out before the board of appraisers, and the board has reported that all of the articles in controversy are burlaps. Giving to their decision only the weight which would be given to the report of a master in chancery, it does not seem to me that this court, sitting in review, would be justified in reversing their finding upon this question of fact. They have advantages which an appellate tribunal cannot have. They see and hear witnesses and can better determine what weight should be given to their testimony. Witness after witness called by the importer testified that these articles were commercially known as "burlaps;" and, stating

the case as favorably for the appellant as the facts warrant, there was simply a dispute upon the evidence before the board. They having reached a conclusion, which I think was amply sustained by the proof, it seems to me that their decision should be undisturbed. The decision of the board is affirmed.

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FACHRI v. MAGONE.

(Circuit Court, S. D. New York. November 22, 1892.)

CUSTOMS DUTIES—ALLOWANCE OF TARE—JUTE IN BALES.

Under section 2898, Rev. St. U. S., which provides that "actual tare shall be allowed," an allowance must be made, in estimating the duty on jute in bales, for the weight of jute tie ropes with which the bales are bound up; it appearing that between buyer and seller these ropes are regarded as tare, and are never charged for, a deduction equal to their weight being made from the total weight of the bale, and only the net weight being billed.

At Law. Action to recover duties paid. Verdict directed for plaintiff.

Plaintiff imported at the port of New York, in 1886 and 1887, certain bales of jute secured by tie bands or ropes, also of jute, but so tangled, knotted, and broken as to be worthless except for paper stock. The bales were invoiced at prices per bale of 400 pounds; and the United States weigher reported to the collector of customs their gross weight only, omitting to report the weight of the tie bands and the net weight of jute in each bale. Duty was assessed by the defendant, as collector of customs, at 20 per cent. ad valorem on the value stated in the invoices, under the provision for "jute" contained in paragraph 333, Schedule J, Heyl, (Act March 3, 1883; 22 St. at Large, p. 507;) and the importer, having duly protested and appealed, as required by law, brought this action to recover the same percentage of the duty exacted which the weight of the tie bands represented of the total weight of the bales. The importer cited Rev. St. § 2898, which provides that in certain cases invoice tare, or an agreed tare, may be allowed, and then that "in all other cases the actual tare should be allowed." Upon the trial evidence was given, and not contradicted, that the tie bands weighed, invariably, six pounds per bale of jute; that they were useless except as paper stock,—for which the tariff act then in force provided free entry, (paragraph 754, Heyl;) that they were regarded by all weighers as "tare," and also by dealers in jute, who, selling it by the pound, always made an allowance of six pounds from the total weight of each bale, and charged only for the remainder.

Defendant's counsel then moved for a direction of verdict for defendant, and plaintiff's counsel made a similar motion in his behalf.

Comstock & Brown, for plaintiff.

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

LACOMBE, Circuit Judge, (orally.) I direct a verdict for the plaintiff for the amount of duty exacted on these tie bands.