

States attorney in behalf of the collector and government, and by counsel for the importers, the circuit court delivered the following decision.

Stanley, Clarke & Smith, (Stephen G. Clarke, of counsel,) for importers.

Edward Mitchell, U. S. Atty., and James T. Van Rensselaer, Asst. U. S. Atty., for collector and the United States.

COXE, District Judge, (orally.) The question at issue in this cause is whether or not the importation should be classified as an "alkaloid" under paragraph 76 of the act of 1890, as classified by the collector, or as a "medicinal preparation" under paragraph 74 as the importer insists it should have been classified. It is conceded on all sides that the importation is an "alkaloid." The burden, therefore, is upon the importer to establish two propositions: First, that the importation is a medicinal preparation; and second, that the term "medicinal preparation" is more specific than the term "alkaloid." It seems to me that the question first stated is one of fact, which, upon the testimony, the appraisers might well have determined as they did, namely, that the importation was not a "medicinal preparation." Certainly within the established rule, the court will not be justified in setting aside their finding as against the weight of evidence. But irrespective of this suggestion, it appears in proof, uncontradicted, that all alkaloids are medicinal; and that all medicinal preparations are not alkaloids. Therefore, on the proof, the term "alkaloid" would be a more specific designation than the one contended for by the importer. In other words, if it were established that both sections of the statute describe the importation, the collector has chosen the more specific of the two upon the evidence now presented to the court.

The decision of the board is affirmed.

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#### INGERSOLL et al. v. MAGONE.

(Circuit Court of Appeals, Second Circuit. February 7, 1893.)

##### CUSTOMS DUTIES—TRAVELING RUGS.

Traveling rugs imported during the year 1888, were dutiable at 40 per cent. ad valorem, as rugs, under paragraph 378, Schedule K, of the tariff act of March 3, 1883, (22 St. at Large, p. 510,) and not at 35 cents per pound and 40 per cent. ad valorem, as manufactures of wool not specially enumerated, under paragraph 362, Schedule K, of that act. 48 Fed. Rep. 159, reversed.

In Error to the Circuit Court of the United States for the Southern District of New York.

At Law. Action by David B. Ingersoll and William P. Glenney against Daniel Magone to recover an alleged excess of customs duties levied by defendant as collector of the port of New York. The circuit court directed a verdict for defendant. 48 Fed. Rep. 159. Plaintiffs bring error. Reversed.

Edward Hartley, for plaintiffs.  
Thomas Greenwood, Asst. U. S. Atty., for defendant.  
Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is an action at law for the recovery of \$60.67, the amount alleged to have been paid, under protest, as an excess of duties upon a certain importation made into the port of New York. In September, 1888, the plaintiffs imported certain goods, described in the invoice which was presented on entry as "rugs," which the defendant classified for duty as woolen shawls, upon which he, as collector of the port, collected duty under paragraph 362 of Schedule K of the act of March 3, 1883, (22 St. at Large, p. 508.) The paragraph is as follows:

"Woolen cloths, woolen shawls, and all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for in this act, valued at not exceeding eighty cents per pound, thirty-five cents per pound, and thirty-five per centum ad valorem; valued at above eighty cents per pound, thirty-five cents per pound, and, in addition thereto, forty per centum ad valorem."

The importers protested upon the ground that the goods were bought and sold as rugs, and were used as rugs or robes for the protection of the person in carriages, and for house purposes, and were dutiable only under paragraph 378 in Schedule K of the act of March 3, 1883, which paragraph is as follows:

"378. Carpets and carpetings of wool, flax, or cotton, or parts of either or other material, not otherwise herein specified, forty per centum ad valorem; and mats, rugs, screens, covers, hassocks, bedsides, and other portions of carpets or carpetings, shall be subjected to the rate of duty herein imposed on carpets or carpeting of like character or description; and the duty on all other mats not exclusively of vegetable material, screens, hassocks, and rugs, shall be forty per centum ad valorem."

The goods were made of wool, and were of the same general character as the two samples, which were described as follows:

"One was 5 feet long by 5 feet and 2 inches wide, weighing 4 pounds 12 ounces, with fringe at each of the 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 was 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 appearance, alike, or nearly alike, on both sides."

The record shows that this class of goods is 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, and that these articles are, and were prior to March, 1883, bought and sold by the name of "traveling rugs." At the close of the plaintiffs' testimony the defendant moved the circuit court to direct the jury to find a verdict for the defendant, upon the ground that the articles in suit are not the rugs mentioned in the paragraph which has been quoted. This motion was granted by the court, and a verdict for the defendant was rendered. The plaintiff having excepted to the ruling, the question as to its propriety comes to this court by writ of error.

The provisions already quoted, of the tariff act of 1883, in regard to mats, screens, and rugs, have existed, in substantially the same language, with the exception of the limitation respecting mats not exclusively of vegetable material, and in the same connection with provisions for carpeting, since the act of March 2, 1861, (12 St. U. S. p. 184,) and have been repeated in the acts of July, 1862, (12 St. U. S. p. 552,) of June 30, 1864, (13 St. U. S. p. 207,) and of March 2, 1867, (14 St. U. S. p. 562.)

Since 1859, when the question arose in regard to the classification of traveling rugs, as between "blankets" and "manufactures of wool," the proper classification of these articles has been occasionally the subject of discussion in the treasury department. In 1866 and 1869 the department decided that they should be classified as manufactures of wool not otherwise provided for. A similar decision seems to have been made in 1870. In 1888 the department decided to modify its previous rulings, and to concede that these articles should be classed as rugs, upon the ground that they were such both under the comprehension and the commercial significations of the word. The only testimony in the record in regard to commercial designation, and which was given for the purpose of distinguishing the importations from shawls, was from a witness who said that they were always and prior to March, 1883, bought and sold by the name of "traveling rugs," and that he had never heard them called "shawls."

The word "rug" is defined in Webster's Dictionary (Ed. 1875) to be "a coarse, nappy, woollen fabric used for various purposes, as (a) for cover of a bed; (b) for protecting the carpet before a fire; (c) for protecting the legs against the cold in riding, as, a railway rug." The testimony in the record that the importations were used both for the coverings of a bed, and for the protection of the person when traveling, coincides with the definitions of the word "rug" in this edition of the dictionary. The leading argument in favor of the collector's classification, and which met the approval of the circuit judge, is that the fact that rugs having been uniformly placed in the tariff acts since 1861, in connection with provisions for carpets and carpeting and articles used on floors, and the principle of *noscitur a sociis*, show the intent of congress to limit the meaning of the term "rug" to articles of a character akin to carpets or mats; but it must be observed that screens, which are not used as a covering, and which are not akin to carpeting, were also included in the same paragraph. Inasmuch as the word "rug" had gradually come to acquire a meaning which included a woollen fabric, either when used for protecting a carpet or for protecting the person, so that the authors of a standard dictionary published in this country in 1875 defined the word accordingly, and the article was in common use under the distinguishing name of "traveling rug," we think the fair inference to be that congress, in 1883, intended to use the word in the meaning which it had previously fully attained.

The judgment of the circuit court is reversed.

## In re SCHEFER et al.

(Circuit Court of Appeals, Second Circuit. February 7, 1893.)

## 1. CUSTOMS DUTIES—CLASSIFICATION—WORSTED SHAWLS EMBROIDERED.

Worsted shawls embroidered with silk, and worth over 40 cents per pound, are dutiable at 44 cents per pound and 50 per cent. ad valorem, as worsted shawls, under paragraph 392, of the act of October 1, 1890, and not at 60 cents per pound and 60 per cent. ad valorem, as embroideries made of worsted, under paragraph 398 and the proviso of paragraph 373 of said act. 49 Fed. Rep. 826, affirmed.

## 2. SAME.

The main object of the proviso of paragraph 373 of the tariff act of October 1, 1890, was to prevent the classification by their specific names of articles embroidered with some material, which classification would render them dutiable at a lower rate than embroideries of that material; but such articles may be dutiable at a greater rate, because a higher duty may be imposed upon articles of that specific description.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Proceeding by Schefer, Schramm & Vogel to review a decision of the board of general appraisers, affirming the decision of the collector of the port of New York in assessing duties upon worsted shawls embroidered with silk, and worth over 40 cents per pound. The circuit court reversed the decision. 49 Fed. Rep. 826. The United States appeal. Affirmed.

James T. Van Rensselaer, Asst. U. S. Atty., for appellant.  
W. Wickham Smith, for appellee.

Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is an appeal from a decree of the circuit court for the southern district of New York, which reversed the decision of the board of United States general appraisers, which affirmed the decision of the collector of the port of New York respecting the classification for duty of certain merchandise imported in April, 1891. The importations were worsted shawls embroidered with silk. Worsted shawls of the value of those in question are dutiable, under paragraph 392 of the act of October 1, 1890, at 44 cents per pound, and, in addition thereto, 50 per cent. ad valorem. The collector imposed a duty of 60 cents per pound and 60 per centum ad valorem, under paragraph 398 of the said act, which placed that duty upon embroideries made of worsted, and under the general proviso contained in paragraph 373 of the same act, which 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."

Silk embroideries are dutiable under the act of 1890 at 60 per cent. ad valorem,—a less rate of duty than that upon worsted shawls. Flax, jute, and cotton embroideries are also dutiable at 60 per