

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

cent. ad valorem. The importers' protest was upon the theory that, as the shawls did not contain worsted embroideries, they were not dutiable under paragraph 398, and, as a less duty was imposed upon silk embroideries than upon worsted shawls, the importations were properly dutiable under paragraph 392. The question depends upon the proper construction of the quoted proviso contained in paragraph 373.

The government contends that embroidered articles shall not pay a less rate of duty than that fixed upon embroideries of any of the materials of which the articles are composed; for example, a worsted shawl, with silk or cotton or jute embroidery, shall not pay less than the rate imposed upon worsted embroideries. This construction is grammatically consistent with the language of the proviso, but is inconsistent with its apparent object. The entire wool and worsted schedule shows that it was the intention of congress to place a very high rate of duties upon articles manufactured from wool or worsted, and this intent is as plainly manifested in the worsted embroidery section as in any other clause. Very plain language is required to make it manifest that the further intent of congress was that a worsted fabric, when embroidered with cotton, should pay the same rate of duty that is imposed upon worsted embroideries. The proviso by no means requires or compels such a construction. The main object of the proviso was to prevent a classification, by their specific names, of articles embroidered with some material, which classification might enable them to be dutiable at a lower rate of duty than is imposed upon embroideries of that material. The proviso therefore prescribes that such articles shall not pay a less rate of duty than is imposed upon embroideries of that material, but they may be dutiable at a greater rate, because a higher duty may be imposed upon articles of that specific description. Thus, an article of wearing apparel, of whatever material composed, which is embroidered with silk, shall not pay a less rate of duty than that imposed upon silk embroideries. The proviso guarded against the importation of embroideries at a lower rate of duty than was imposed upon them, under the claim that the article was not embroidery, but a textile fabric or wearing apparel. The intent was to preserve the rates of duty which the statute imposes upon the embroideries specified therein, but it was not to make articles not embroidered with a material pay the same rate as if they had been embroidered with that material.

It is said by the government that, inasmuch as no duty has been placed upon metal embroideries, this construction prevents this proviso from having an effect upon worsted fabrics ornamented with gold or silver embroidery. We do not perceive that this result furnishes an argument against the construction. The fact that congress has not imposed a duty upon metal embroideries eo nomine suggests no reason that a construction should be given to this proviso which would impose upon a worsted fabric embroidered with metal the duty upon worsted embroidery, unless the statute clearly requires that construction.

The decree of the circuit court is affirmed.

In re GARDINER et al.

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

1. CUSTOMS DUTIES—ACT OCT. 1, 1890, § 50.

Goods arriving in port of entry on October 4, 1890, but not entered until October 6, 1890, pay the duty prescribed by the act of October 1, 1890, and not the duty under the prior act of March 3, 1883.

2. SAME—CONSTRUCTION OF SECTION 50.

The words, "no other duty," in said section, mean "the same duty."

3. SAME.

The date when the new act went into effect for duty purposes was October 6, 1890.

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

Proceeding to review the decision of the board of general appraisers. The importers A. K. Gardiner & Bro. imported 50 bags of glue by the steamer City of Chicago from Liverpool, which vessel arrived in the port of New York, on Saturday, October 4, 1890. The master of the vessel reported her arrival to the collector, and made oath to his manifest in the usual form on that day. The goods were entered for consumption on October 6, 1890. Under the tariff act of 1883, the rate of duty on glue of the kind imported was 20 per cent. ad valorem; under the act of 1890 it was 1½ cents per pound. The collector exacted duty at the latter rate, against which the importers duly protested. The board of United States general appraisers affirmed the decision of the collector, but on appeal to the United States circuit court their decision was reversed, and the goods held to be dutiable under the old act. Appeal was duly taken to this court. Reversed.

Henry C. Platt, Asst. U. S. Atty., for appellant.
Edwin B. Smith, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. The tariff act of 1890 was approved by the president October 1st. It is a long act, containing upwards of 50 sections, not only providing for rates of duty on imported articles, but legislating also as to internal revenue taxes, and as to many details of administration connected with the collection of such duties and taxes. The first section provides as follows:

"On and after the sixth day of October, 1890, unless otherwise specially provided for in this act, there shall be levied, collected, and paid upon all articles imported from foreign countries, and mentioned in the schedules herein contained, the rates of duty which are, by the schedules and paragraphs, respectively prescribed."

Then follows a long enumeration of articles. As to some of these articles it is provided in the same section that the prescribed duty is not to be levied until some other date named therein, e. g. July 1, 1891, (paragraph 143,) October 1, 1897, (paragraph 143,) July 1, 1893, (paragraph 209,) March 1, 1891, (paragraph 219,) April 1, 1891, (paragraph 241,) etc. The second section provides as follows:

"On and after the sixth day of October, 1890, unless otherwise specially provided for in this act, the following articles, when imported, shall be exempt from duty."

—And then follows a long enumeration.

The fiftieth section provides as follows:

"On and after the day when this act shall go into effect, all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to no other duty upon the entry or withdrawal thereof than if the same were imported respectively after that day: provided, that any imported merchandise deposited in bond in any public or private bonded warehouse, having been so deposited prior to the first day of October, 1890, may be withdrawn for consumption at any time prior to February 1st, 1891, upon payment of duties at the rates in force prior to the passage of this act."

The contention of the appellee that the so-called "entry of the vessel" and filing of her manifest was an entry within the meaning of this section is unsound. It is an entry of the "goods, wares, and merchandise" that is provided for, and none such had been even commenced by the presentation in the collector's office of the written entry required by section 2785, Rev. St. U. S., prior to October 6, 1890. The circuit court so held, finding the goods to be in the class covered by the first part of section 50, but holding further that the phrase, "shall be subjected to no other duty than if the same were imported after that day," was not intended by congress to require the payment of duty at the higher rate prescribed by the new act for goods imported on and after October 6, 1890. We are unable to concur in this construction, in view of the plain language of the statute. To provide that goods in one category shall pay "no other duty" than goods in another category is but the statement that they shall pay "the same duty," and any different construction does violence to the language in which congress has expressed its intention. It has undoubtedly been held (*Church of Holy Trinity v. U. S.*, 143 U. S. 457, 12 Sup. Ct. Rep. 511) that words may be thus wrenched from their obvious meaning, when a court is satisfied by sufficient evidence that the framers of the act meant, not what they said, but its opposite; but such an extreme application of the doctrine of construction is not to be made, where, as in this case, there is no such evidence.

The respondent, however, seeks to sustain the decision of the circuit court upon another ground. The date named in the fiftieth section, (above quoted,) relative to which the merchandise therein referred to is to be liable to duty, is "the day when this act shall go into effect." Inasmuch as the act was passed October 1, 1890, respondent contends that the section should be so construed as not to cover goods imported subsequent to October 1st. Only in a general sense, however, may the act be said to go into effect on the day of its passage. As to the levying, collecting, and payment of duties upon imported merchandise, it did not go into effect until October 6th, and as to some kinds of merchandise not until even later dates. Inasmuch as the fiftieth section deals exclusively with the levying, collect-

ing, and payment of duties, a natural construction of the language used would determine the precise date expressed by the phrase, "the day when this act shall go into effect," by the going into effect of the act touching the subject-matter with which the section is wholly concerned.

An analysis of the section lends support to this construction. If interpreted as the appellee contends, the act would (by that and other sections) provide for duty as follows: (1) On goods imported and entered prior to October 6th, the old rate; (2) on goods imported and entered after October 6th, the new rate; (3) on goods imported prior to October 1st, but not entered prior to October 6th, the new rate; (4) on goods imported subsequent to October 1st, but prior to October 6th, and not entered prior to October 6th, the old rate. It is difficult to see why merchandise included in the fourth of these categories should be privileged over merchandise included in the third.

The judgment of the circuit court should be reversed, and case remanded to that court, with instructions to affirm the decision of the board of United States general appraisers.

In re GOLDBERG.

(Circuit Court, S. D. New York. January 23, 1893.)

CUSTOMS DUTIES—CLASSIFICATION—"GLASS-HEADED PINS."

Pins of different sizes, having iron or steel shanks from 1½ to 6 inches in length, with more or less ornamental glass heads, some polished and some of a dull black, the articles being commercially known as "lace pins," "hat pins," and "bonnet pins," the glass heads of some of the bonnet pins being in the form of sprays or sprigs, are dutiable as manufactures of glass at 60 per cent. ad valorem, under paragraph 108 of the tariff act of October 1, 1890, and not as "pins, metallic," under paragraph 206 of the same act.

At Law.

This was an appeal by the importer pursuant to the provisions of the so-called "Administrative Act" of June 10, 1890, from the decision of the collector of customs at the port of New York in relation to the classification for duty of certain merchandise imported into said port in August, 1891, and which was assessed for duty by the collector as manufactures of glass at 60 per cent. ad valorem under Schedule B, par. 108, of the tariff act of October 1, 1890, which is as follows:

"108. Thin-blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

The importer protested that the merchandise was "pins," and was dutiable only at 30 per cent. ad valorem, under Schedule C, par. 206, of said tariff act, which is as follows:

"206. Pins, metallic, solid-head, or other, including hairpins, safety pins, and hat, bonnet, shawl, and belt pins, thirty per centum ad valorem."

The case coming before the board of United States general appraisers, pursuant to the statute, evidence was taken in behalf of the importer, from which it appeared that the articles were pins of various sizes having iron or steel shanks, varying in length from 1½ to 6 inches, and all having more or less ornamental heads made of glass, some polished and some of a dull black, and that all of the articles were commercially known as "pins." The board of