

would be compelled to if I acquiesced in the position contended for by the attorney for the United States. By the latter clause of the proviso to section 6, the secretary of war is authorized to grant a permit for depositing any of the substances mentioned in section 6 in a place designated by him; not where it will alter the course of the channel of the navigable waters of the United States, but where "navigation will not be obstructed thereby." I think that the excavating and filling, altering and modifying of the course, location, and capacity of the channel, as described in section 7, must have reference to such permanent construction as tends to obstruct navigation, the building of which must have the approval and authorization of the secretary of war. This count charges the defendants with excavating the bank, bottom, shore, side, bed, and channel of the Little Kanawha river, and with filling the side, bed, shore, bank, and channel of the same, and thereby unlawfully altering and modifying the course, location, condition, and capacity of the channel of the river. This constitutes one of the offenses created by the seventh section, and, if there was sufficient clearness of allegation as to the place where the excavation was made, or the filling was done, and the channel was changed, the count would be good, treating that which relates to the substances mentioned in the sixth section as unnecessary detail and as surplusage. But for reasons I have already given in connection with the other counts of this indictment, I must hold this one bad. If the defendants are to be required to answer to the charge of excavating the banks of the river and filling the bed and channel of the same, the place or places where it is alleged they so excavated and filled should be given with more definiteness than that it was done "at the district of West Virginia."

The indictment, and each count thereof, will be quashed.

In re SHATTUCK et al.

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

CUSTOMS DUTIES—CLASSIFICATION—SILK AND COTTON ELASTIC WEBBING.

Elastic webbing composed of India rubber, cotton, and silk, India rubber being the component material of chief value, but cotton being the chief component material as to quantity, *held*, that the merchandise was properly dutiable, as the manufacture of which India rubber is the component material of chief value, at 30 per centum ad valorem, under paragraph 460 of Schedule N of the tariff act of October 1, 1890, and not as "cotton webbing," at 40 per cent. ad valorem, under paragraph 354 of Schedule I of said tariff act, as decided by the board of general appraisers.

At Law. Appeal by the importers from a decision of the board of general appraisers affirming the decision of the collector of the port of New York in the classification for customs duties of certain elastic webbing imported into that port November 18, 1890, and returned by the appraiser as "silk and cotton elastic webbing, silk chief value, 50%," and duty accordingly assessed thereon by the collector at that rate, under the provisions of paragraph 412 of Schedule L of the tariff act of October 1, 1890. The importers duly filed their protest against this classification, claiming that

the component material of chief value was India rubber, and that the merchandise was therefore dutiable at 30 per cent. ad valorem, under Schedule N, par. 460, of said tariff act. After the proceedings came before the board of general appraisers, the different articles were analyzed in the office of the United States appraiser, and those represented by sample "A" were found to consist of India rubber, silk, and cotton, silk being the component material of chief value. In those represented by samples "B" and "C" the component materials were found to be the same, but of different proportions; India rubber in both cases being the material of chief value, but cotton being the component material in chief quantity. The board of general appraisers thereupon found as conclusions of fact:

"(1) That the merchandise is elastic webbing, composed of cotton, silk, and India rubber; (2) that all of the goods are manufactured chiefly of cotton; (3) That in Exhibit A silk is the component material of chief value; (4) that Exhibits B and C have India rubber as the component material of chief value."

The board, in their decision, say:

'Webbing is an especial kind of goods, well known in trade and commerce, for which congress made specific provision in paragraphs 354, 398, and 412, Act Oct. 1, 1890. The two paragraphs with which we have to deal are: 354: 'Cotton, * * * webbing, * * * elastic or nonelastic, 40 per cent. ad valorem;' and 412: 'Webbing, * * * elastic or nonelastic, * * * made of silk, or of which silk is the component material of chief value, fifty per cent. ad valorem;'"

—And decided that in webbing of which silk was the component material of chief value, exclusive of India rubber, the merchandise was provided for as silk elastic webbing, and that the articles, which were cotton elastic webbings, made chiefly of cotton, were properly dutiable under paragraph 354 of said tariff act, in which they formed a portion or group or class of goods sui generis; and that hence the protest of the importers as to those articles was not well taken, and that the action of the collector should therefore stand. On the trial in the circuit court it was argued in behalf of the collector and the government that the merchandise was silk and cotton elastic webbing, as returned by the appraiser and classified by the collector, and was therefore designated eo nomine either in paragraph 412 or paragraph 354, and that there was no evidence taken before the board, and none was taken in the circuit court, to disprove the correctness of this finding of fact by the collector, which, under a well-recognized rule of law, must be presumed correct, as made by sworn officers of the government, until the contrary should be proved by competent evidence; hence the cases in the supreme court, (*Hartranft v. Meyer*, 135 U. S. 237, 10 Sup. Ct. Rep. 751, and others,) which make the classification depend upon the component material of chief value as between two general descriptions, should not apply.

Curie, Smith & Mackie, for importers.

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

LACOMBE, Circuit Judge. As to the silk goods, of course the board's decision is affirmed. There is no dispute in regard to that.

If it appeared here that it was not practicable to make cotton webbing elastic without the presence of India rubber, I should be inclined to affirm the board's decision; but as there is no evidence to that effect, and as in fact there could not very well be such evidence,—as we all know, it is a matter of weave, as well as material, that cotton webbing can be made elastic without the presence of any India rubber in it whatever,—I am of the opinion that the webbing clause (paragraph 354) cannot cover these articles of which India rubber is the component material of chief value. Therefore the decision of the board is reversed, and it is directed that the articles be classified for duty under paragraph 460, as to Exhibits B and C.

UNITED STATES v. FIELD et al.

(Circuit Court of Appeals, Seventh Circuit. February 11, 1893.)

No. 68.

CUSTOMS DUTIES—PROPERTY SUBJECT TO DUTY—SILK VEILS.

Silk goods, which, although made in the manner of laces, and having the substantial characteristics of laces, are not commercially known as "laces," but as "silk nets," "veilings," and "drapery nets," are dutiable under Schedule L, (paragraph 414 of the customs act of 1890,) as a manufacture of silk not otherwise provided for, and not as silk laces. 50 Fed. Rep. 908, affirmed.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Proceeding by Marshall Field & Co. to review a decision of the board of general appraisers. The circuit court reversed the decision, and ordered the collector to reliquidate the duties. 50 Fed. Rep. 908. The government appeals. Affirmed.

Thos. E. Milchrist, U. S. Dist. Atty.

N. W. Bliss, for appellees.

Before GRESHAM and WOODS, Circuit Judges, and BUNN, District Judge.

PER CURIAM. The decree appealed from is affirmed upon the grounds stated in the opinion of the court below, reported in 50 Fed. Rep. 908.

KIDD et al. v. FLAGLER.

(Circuit Court, N. D. New York. March 2, 1893.)

No. 2,583.

L. CUSTOMS DUTIES—REIMPORTED LIQUOR WITHDRAWN FROM BOND.

Where a person has removed liquor from a bonded warehouse to Canada without paying the internal revenue tax, and landed it, and permitted it to remain there for a month, he is entitled to bring it back to the United