

terials, and similar in shape, known as wafers, which were used for sacramental purposes. That there were other articles made from the same materials, and in thin sheets, known to confectioners and bakers as wafers, and used by confectioners to prevent sticky candies from adhering to each other, or to anything with which they might come in contact, and by bakers as a foundation on which cakes and macaroons were placed and baked; and that there were still other articles known as wafers, and used in sealing letters and other documents. That these medicinal wafers, these sacramental wafers, these confectioners' and bakers' wafers, and these sealing wafers were all in fact unmedicated, though neither variety of these wafers was known to trade and commerce as "wafers unmedicated" or "unmedicated wafers." That the term "wafers unmedicated" or "unmedicated wafers" was not a trade or commercial term; and that there were articles containing medicines or supposed medicines, and used for medicinal purposes, that were known to druggists as "medicated wafers," such as cough wafers, bronchial wafers, worm wafers, and other wafers.

Comstock & Brown, (Albert Comstock, of counsel,) for importer.

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

LACOMBE, Circuit Judge, (orally.) These articles are in fact unmedicated. That is not disputed. They are known in commerce as "wafers." That also, I understand, is not disputed. Not only are they known as "wafers," but they are wafers, within the dictionary meaning of the term. That has no new meaning either. It is a meaning of the word evidently centuries old. They are therefore within the express phraseology of paragraph 750, and, though it may seem strange that congress should make this particular food product free, it is not for the court to substitute its own guesses as to what the intention of congress may be, when the language which they have used is so plain upon its face as this phrase is. I shall therefore reverse the decision of the board of appraisers, and direct the classification under paragraph 750, free.

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VOM CLEFF et al. v. MAGONE, Collector.

(Circuit Court, S. D. New York. July 24, 1893.)

CUSTOMS DUTIES—CONSTRUCTION OF STATUTES—MEANING OF PHRASE—PROVINCE OF COURT AND JURY

In the construction of tariff laws the ordinary meaning of a phrase in common speech is a question of law for the court; the commercial meaning is a question of fact for the jury.

At Law. Action by Robert Vom Cleff and others against Daniel Magone, collector of the port of New York, to recover duties paid under protest. Verdict was given for defendant. New trial ordered.

Comstock & Brown, for plaintiff.

James S. Van Rensselaer, Asst. U. S. Atty., for defendant.

LACOMBE, Circuit Judge. I have reached the conclusion that there should be a new trial of this case. The jury were correctly

instructed as to their duty in weighing the testimony touching the commercial meaning, if any, of the phrase "steel strips," and there was sufficient evidence as to that to sustain a verdict against the plaintiff. Unfortunately, however, the charge was so framed as to warrant the inference that they might also determine what is the ordinary meaning of the phrase in common speech. Such meaning, however, is a question of law, and is for the court. It is impossible to tell whether the jury found for the defendant because they were satisfied that the phrase had a trade meaning which excluded goods like these, or because they thought that the words "steel strips," as used in common speech, did not include them. If the plaintiff be sound in the contention that his importation is within the dictionary meaning of the words used, he probably could not avail of his exception upon appeal from the verdict as it stands, as the appellate court would be warranted in assuming that the jury decided against him as to the trade meaning.

Verdict is set aside, and new trial ordered.

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WILSON et al. v. UNITED STATES, (two cases.)

(Circuit Court of Appeals, Seventh Circuit. May 17, 1893.)

Nos. 16 and 81.

CUSTOMS DUTIES—CLASSIFICATION—HEMSTITCHED HANDKERCHIEFS.

Hemmed or hemstiched handkerchiefs, which are not also embroidered, are dutiable under paragraph 349 of the tariff act of 1890, as "handkerchiefs—composed of cotton or other vegetable fiber," and not under paragraph 373, as "hemstitched and embroidered handkerchiefs." *Rice v. U. S.*, 53 Fed. Rep. 910, followed.

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

P. L. Shuman, for importers.

Thos. E. Milchrist, for the United States.

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

PER CURIAM. These cases were submitted together. The question presented is of the proper rate of duty, under the act of October 1, 1890, upon handkerchiefs composed of linen, which were hemstitched but not embroidered. The duty was assessed by the collector at the rate of 60 per cent. ad valorem under paragraph 373 of the act. The duty was paid under protest, the importers claiming in their certificate of dissatisfaction, in the first case, that the proper duty was 35 per cent. ad valorem, as required by paragraph 371, upon "manufactures of flax not otherwise provided for, containing over 100 threads to the square inch," or, if that was not so, then 50 per cent. ad valorem, under paragraph 349, which prescribes that duty upon "handkerchiefs—composed of cotton or other vegetable fiber." No reference to this