

KRAFT v. UNITED STATES.

(Circuit Court, S. D. New York. April 20, 1894.)

CUSTOMS DUTIES—CLASSIFICATION—PRINTED TISSUE PAPER.

Tissue paper having certain colors, in stripes and plaids, printed or stamped thereon, and not of one uniform color, held to be dutiable at 8 cents per pound and 15 per cent. ad valorem, under paragraph 419 of the act of October 1, 1890, as "tissue paper, white or colored," and not at 25 per cent. ad valorem, under paragraph 423, as "printed matter, not specially provided for."

Appeal by Importers from Decision of Board of United States General Appraisers. Decision affirmed.

The importations consisted of white tissue paper, printed on one side with colored stripes and plaids. The collector assessed duty thereon under paragraph 419 of the act of October 1, 1890. The importers duly protested, claiming same to be dutiable as "printed matter," under paragraph 423 of said act. The board of United States general appraisers sustained the collector's classification. The contention of the importers was that "colored" tissue papers were commercially confined to those dyed in a vat, and that the articles in suit were not known in trade and commerce as "colored," but as "printed tissues," "striped tissues," and "plaid tissues," and were "printed matter."

Stephen Greeley Clarke, for importers.

Henry C. Platt, U. S. Atty., for the United States.

TOWNSEND, District Judge (orally). This is an appeal from the decision of the board of general appraisers classifying certain paper as "tissue paper" under the provisions of Schedule M, par. 419, of the tariff act of 1890. Certain colors and patterns have been printed or stamped on the paper in question. The importer claims that it should be classified as "printed matter," under paragraph 423 of said act. The decision of the board of appraisers is affirmed, because the method by which the paper was colored does not affect its character as "colored tissue paper," and, furthermore, because the article does not fall within the class of "books, etchings, maps, charts, and all printed matter," embraced within the provisions of paragraph 423.

PARK et al. v. UNITED STATES.

(Circuit Court, S. D. New York. May 3, 1894.)

CUSTOMS DUTIES—ACT OF OCTOBER 1, 1890—TRUFFLES.

Truffles held to be dutiable at 45 per cent. ad valorem, under paragraph 287 of the tariff act of October 1, 1890, within the clause, "Vegetables of all kinds, prepared or preserved, including pickles and sauces of all kinds, not specially provided for," and not at 40 per cent. ad valorem, under paragraph 271, as assimilating to "mushrooms, prepared or preserved in tins, jars, bottles or otherwise."

Appeal from Decision of Board of United States General Appraisers. Board.

Park & Tilford, in 1891, imported truffles in bottles. Duty was assessed thereon by the collector of customs at New York at 45 per cent. ad valorem, under paragraph 287 of the act of October 1, 1890.

Importers protested, claiming duty at 40 per cent. ad valorem, under paragraph 271, and that truffles are a species of fungi and assimilate to mushrooms. The board of United States general appraisers sustained the importers' protest, and reversed the decision of the collector. The collector appealed from the decision of the board to the United States circuit court.

Edward Hartley, for importers.
Henry C. Platt, U. S. Atty.

WHEELER, District Judge. These truffles are not mushrooms, in similitude to which it is claimed they should be assessed, but are found to fall, commonly and commercially, within "vegetables of all kinds prepared or preserved, including pickles and sauces of all kinds not specially provided for." They, in some way, vegetate, and are a kind of vegetable. Judgment of the board of appraisers reversed

SMITH, Surveyor of Customs, v. MIHALOVITCHE et al.

(Circuit Court of Appeals, Sixth Circuit. April 3, 1894.)

No. 119.

1. CUSTOMS DUTIES—CLASSIFICATION—GLASS BOTTLES.

Flint-glass bottles, molded, and holding more than one pint, are dutiable at one cent per pound, under paragraph 103 of Act Oct. 1, 1890, and not at 60 per cent., under paragraph 105.

2. APPEAL—MATTER NOT APPARENT ON RECORD.

The provision of paragraph 104 of Act Oct. 1, 1890, that certain glassware shall not pay a less duty than 40 per cent. ad valorem, cannot be applied on appeal where the record does not show that the duty imposed is less than that rate.

In Error to the Circuit Court of the United States for the Western Division of the Southern District of Ohio.

In June, 1891, the defendants in error, Mihalovitch, Fletcher & Co., imported from Germany, through the port of New York, certain flint glassware, claimed by them to be bottle glassware. The merchandise was forwarded in bond to the custom house in Cincinnati, where the acting surveyor of customs assessed it for duty at 60 per cent. ad valorem, under paragraph 105 of the act of October 1, 1890. To this action of the surveyor the importers duly protested, claiming said assessment to be illegal, and insisting that the duty should have been assessed under paragraph 103 of said act, and asking to have \$108.75, so illegally assessed, refunded. The importers appealed from the action of the surveyor at Cincinnati to the board of general appraisers at New York, under the act of June 10, 1890. In October, 1891, that board filed a decision sustaining the protest of the importers, and found the articles imported to be flint-glass bottles, under paragraph 103 of the act above cited, and to be dutiable at one cent per pound. Under the provisions of section 15 of the