

UNITED STATES v. McSORLEY et al.

(Circuit Court of Appeals, Second Circuit. January 9, 1895.)

No. 54.

CUSTOMS DUTIES—MEDALS.

Medals made of copper, washed with silver, commonly used for distribution as prizes to school children, but which have not been awarded as trophies or prizes, are not entitled to free entry, under the tariff act of October 1, 1890, as "medals of gold, silver or copper, such as trophies or prizes."

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

This was an application by the United States for a review of the decision of the board of general appraisers concerning certain merchandise imported by J. A. McSorley & Co. The circuit court affirmed the decision of the board. The United States appeal.

Wallace Macfarlane, U. S. Atty., and Chas. Duane Baker, Asst. U. S. Atty., for the United States.

Hess, Townsend & McClelland, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. The question in this case is whether medals made of copper, washed with silver, suitable for use as tokens, and commonly used for distribution as prizes to Catholic school children, but which have not been awarded as trophies or prizes, are enumerated in the free list of the tariff act of October 1, 1890, and entitled to free entry as "medals of gold, silver or copper, such as trophies or prizes." The board of general appraisers were of opinion that because the importations were suitable for use as prizes they were within the enumerated class; and the circuit court concurred in that opinion. We are constrained to adopt a contrary view. If congress had intended to admit free of duty all medals appropriate for use as prizes, there would have been no reason for employing the qualifying words "such as trophies or prizes." All medals are suitable for use as prizes, according to the lexicographers, and there is no evidence of a commercial meaning different from the ordinary meaning of the word "medal." We think the term of enumeration is to be read as though it were "such medals as are trophies or prizes," and be construed to include only such as belong to that category when imported, because they have been already awarded or won. Until then the medals are not, in an accurate sense, trophies or prizes. Any other construction would deprive the qualifying words of all effect, and is therefore inadmissible. The decision of the circuit court is reversed.

NEW YORK DAILY NEWS v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. January 9, 1895.)

No. 69.

CUSTOMS DUTIES—PERIODICALS.

A pictorial paper, containing current literature, wholly printed in Germany, and circulated as an extra to other publications, and imported to be used as a supplement to a New York paper, is exempt from duty as a periodical, under paragraph 657 of the tariff act of October 1, 1890.

This is an appeal from the decision of the circuit court, Southern district of New York (61 Fed. 647), reversing a decision of the board of general appraisers, which sustained the protest of the importers, and found the merchandise imported to be exempt from duty.

Stephen G. Clarke, for appellant.

Wallace Macfarlane, U. S. Atty., and James T. Vanrensselaer, Asst. U. S. Atty.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. The board of appraisers found that "the merchandise is an eight-page pictorial paper, entitled 'New Yorker Lustige Blatter.' It contains stories, poems, selections of German humor, and other current literature of the day." It is imported to be used as a supplement to the German edition of the New York Sunday News. The collector classified it as "printed matter," under paragraph 423, Tariff Act Oct. 1, 1890, and assessed duty at 25 per cent. The importers protested, claiming that the merchandise was within the description of paragraph 657, and therefore free of duty. Paragraph 657, which is found in the free list, is as follows:

"Newspapers and periodicals; but the term 'periodicals' as herein used shall be understood to embrace only unbound or paper-covered publications, containing current literature of the day, and issued regularly, at stated periods, as weekly, monthly, or quarterly."

The only point in dispute is whether the publication was "issued" as a periodical before it reached the port of entry. The title "Lustige Blatter" means "funny paper." It is the trade mark or name of a paper which has for many years been prepared and published in Munich, appearing weekly. Its circulation is very large, the whole issue comprising about a million copies. It is circulated as an extra to other weekly publications,—some 20 or 30 of them, as the evidence shows,—appearing in Munich, Berlin, and elsewhere. The title or heading of each issue invariably contains the name "Lustige Blatter," but to that name there are added or prefixed other words or symbols, indicative of the particular periodical to which it is an extra or supplement. In every other respect all the copies of each issue are identical. The circuit court held that the copies in question had not been issued as periodicals before importation, but that they were "like patent insides or outsides of newspapers sold partly printed, to be completed for publication"; evidently being of the opinion that the publication reaches here without the title or heading. The evidence, however, indicates that the contrary is the fact; the heading