

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

"New Yorker Lustige Blatter," and the cut of the Brooklyn Bridge, which differentiate the copies going to its readers here from those going to Berlin or elsewhere, being printed in Munich with the rest of the paper, which is complete when it reaches here. We are of the opinion that congress did not intend, by the proviso to paragraph 657, to restrict the privilege of free entry to such periodicals only as come here to individual subscribers. One hundred or one thousand or ten thousand copies of such a weekly paper as the Illustrated London News may surely be imported, under the terms of the paragraph, by a single newsdealer, and by him distributed to subscribers of whom the English publishers are wholly ignorant; and in such a case it would seem that the right to free entry would not be lost should the publishers stamp on all such copies the words, "For circulation abroad," or should prefix to the well-known title of their periodicals the words "New York Edition." The Lustige Blatter is, upon the evidence, a periodical issued weekly to its German readers, as an extra to other German papers, and to its readers here as an extra to the Sunday edition of the Daily News, and as such is entitled to free entry. The decision of the circuit court is reversed, and the ruling of the board of appraisers is sustained.

TIFFANY v. UNITED STATES.

(Circuit Court, S. D. New York. January 15, 1895.)

CUSTOMS DUTIES—CLASSIFICATION—BRONZE STATUARY—ACT OF OCTOBER 1, 1890.

Statuary cast from bronze, and touched up by hand, and made expressive after casting, under the supervision of the sculptor, is not "such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal," within the provisions of paragraph 465 of the tariff act of October 1, 1890, and is therefore not dutiable at 15 per cent. ad valorem under said paragraph, but is dutiable as a manufacture of metal, at 45 per cent. ad valorem, under paragraph 215 of said act.

At Law. Appeal by importer under act of June 10, 1890, from decision of board of United States general appraisers.

The imported merchandise consisted of bronze statuary, assessed by the collector for duty at 45 per cent. ad valorem, under paragraph 215, and claimed by the importer to be dutiable at 15 per cent. ad valorem, under paragraph 465, as statuary. It appeared by the testimony that bronze statuary was sometimes wholly made or wrought by hand by beating, but that the statuary in suit was made in a foundry by casting, and afterwards touched up, and the rough edges filed or smoothed off, under the supervision of the sculptor who had originally designed the clay model thereof. It also appeared that the statues in controversy were the first or original copies cast from the clay models of the sculptor, under his personal supervision and direction, and were works of art.

The assistant United States district attorney maintained that no bronze statuary was dutiable at 15 per cent. ad valorem, under the act of 1890, unless "wrought by hand"; that the act of 1890 changed and restricted the prior law in that respect (paragraph 470, Act March 3, 1883), and that only hand-made statuary was entitled to entry at that rate; that the statues of bronze made by "beating" are the only bronze statues wrought by hand; that the articles in suit were made or wrought by casting in molds, and not by hand; that, while the clay models of the statues were wrought by hand,

the clay models were not imported, but the cast statues were, and merchandise paid duty according to its condition when imported.

The importer's counsel contended that as the clay models were wrought by hand, and the cast statues were finished by hand, under the supervision of the artist, they were wrought by hand, within the meaning of paragraph 465.

Wm. B. Coughtry, for importer.

Wallace Macfarlane, U. S. Atty., and Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge (after stating the facts). These are small statues cast from bronze, and touched up and made expressive by the hands of sculptors. The tariff act of 1890 put a lower duty than was assessed on these statues on "such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and is the professional production of a statuary or sculptor only." These are claimed to be such statuary, because they are wrought somewhat by professional hands. But the requirement that they should be wrought from metal by hand is very strict, and these statues are wrought so slightly by hand that they do not now appear to fairly come within it. The decision of the board of United States general appraisers is affirmed.

UNITED STATES v. CUMMINGS et al.

(Circuit Court, S. D. New York. January 2, 1895.)

1. CUSTOMS DUTIES — TARIFF ACT OCT. 1, 1890—WASTE COMPOSED IN PART OF WOOL—CLASSIFICATION.

Waste pieces of cloth, composed in part of rubber, cotton, and wool, held to be dutiable as "waste, composed in part of wool," at 30 per cent., under paragraph 388 of the tariff act of 1890, and not at 10 per cent., as "waste, not specially provided for in this act."

2. SAME.

The fact that the wool therein was not utilized after importation does not affect the classification of the merchandise for duty.

At Law. Appeal by the United States from a decision of the board of United States general appraisers. Board reversed.

The imported merchandise consisted of waste pieces of cloth, left over in the manufacture of waterproof garments, from which, after importation, the rubber could be extracted and utilized. It could also be used in the manufacture of roofing paper. The collector classified it under paragraph 388 (26 Stat. 595). The importers sought a review by the board of general appraisers. The board sustained their protest, reversed the collector, and decided it was dutiable under paragraph 472. The collector, on behalf of the United States, applied for a review by the United States circuit court, under the provisions of section 15 of the act of June 10, 1890.

Wallace Macfarlane, U. S. Atty., and Henry C. Platt, Asst. U. S. Atty.

Jarvis N. Atkinson, for importers.

Cited *Cruikshank v. U. S.*, 8 C. C. A. 171, 174, 59 Fed. 446; *U. S. v. Schoveling*, 146 U. S. 76, 13 Sup. Ct. 24; *Combs v. Erhardt*, 49 Fed. 635; *Worthington v. Robbins*, 139 U. S. 337, 11 Sup. Ct. 581.