

COXE, District Judge (orally). The only question in this cause is whether or not the importation comes within the tariff provision for "articles of wearing apparel of every description." Although it is true that there is, perhaps, a distinction—no two cases being exactly similar—yet it seems to me that the facts here bring this importation within numerous decisions already made by this court. Of course an article of wearing apparel that is worn in connection with a hat necessarily requires the presence of a hat, just as a necktie requires the presence of a collar. A necktie cannot be worn without a collar. A garter implies the presence of a stocking which is held up by it. A shawl which is thrown around the shoulders implies some other garment over which it is placed. I see no important distinction. Suppose these articles of wearing apparel were fastened to other articles of wearing apparel they would not cease to be articles of wearing apparel for that reason. If we could imagine, for example, an apron permanently fastened to the waist of a gown it would not change its character as an article of wearing apparel because of that fact. I do not think the distinction now made, that these veils are not wearing apparel, because fastened to a hat, is well founded. If it were, it would exclude a great many articles that we all concede to be wearing apparel. The finding of the board of appraisers is not contrary to the law or the facts and this court should not disturb that finding. It is conceded that these veils are complete articles of commerce as they come to this port and are used only by females as headgear; whether they are attached to the hat or not does not seem to me to be a controlling circumstance. If they were worn about the head without a hat, in the manner so graphically illustrated by the learned district attorney, there would be no doubt as to their being articles of wearing apparel. The decision of the board of general appraisers is affirmed.

JOHNSON v. UNITED STATES.

(Circuit Court, S. D. New York. February 8, 1895.)

No. 918.

CUSTOMS DUTIES—CLASSIFICATION—PINEAPPLES—CANNED.

Pineapples, peeled, sliced, and placed in cans filled with cold water, and hermetically sealed, their juice permeating the water, are "fruits preserved in their own juices," within Act Oct. 1, 1890, par. 304, and cannot be classified, under paragraph 580, as "fruits, green, ripe, or dried."

This was an application by Joseph S. Johnson, the importer of certain canned pineapples, for a review of the decision of the board of general appraisers, sustaining the decision of the collector of the port of New York, as to the rate of duty on such merchandise.

Stephen G. Clarke, for importer.

Jason Hinman, Asst. U. S. Atty., for collector.

COXE, District Judge (orally). This controversy arises regarding pineapples imported in cans hermetically sealed. The collector

classified them under paragraph 304 of the act of 1890, which provides for "fruits preserved in their own juices." The importer protested insisting that they should have been classified under paragraph 580 of the same act as "fruits, green, ripe, or dried." It appears from the proof that the pineapples were peeled, sliced, placed in cans filled with cold water, and then hermetically sealed. In that condition they were imported. The board of general appraisers have found that the collector's paragraph more specifically describes the importations than the paragraph designated by the importer. Upon the proof presented, no additional proof having been taken in this court, the decision of the board is not so against the weight of evidence as to justify the court in setting it aside. The purport of their decision is that paragraph 304 is more applicable to this fruit than paragraph 580, and my own impression concurs with them on that question. It seems to me that "fruits preserved in their own juices" is clearly a more specific designation than "fruits, green, ripe, or dried, not specially provided for." The proof here is, as I stated, that the pineapple is sliced, peeled, put in cold water, and the juice of the pineapple, to a certain extent at least, permeates the water. As the district attorney says, if this be not fruit preserved in its own juice, it is difficult to see what congress meant by the provision in question. I think that paragraph 580 refers to fruits brought here in the state in which they are picked without being subjected to any preserving process. It is enough to say that the finding of the board of appraisers is sustained by the evidence. The decision of the board is affirmed.

In re STEINER et al.

(Circuit Court, S. D. New York. April 25, 1894.)

No. 592.

CUSTOMS DUTIES—CLASSIFICATION—STRUNG GLASS BEADS.

A finding of the board of general appraisers, supported by the weight of evidence, that glass beads, threaded on strings, were strung beads, dutiable as "manufactures of glass," under Act Oct. 1, 1890, par. 108, and not under paragraph 445, as "glass beads, loose, unthreaded, or unstrung," should be sustained.

This was an application by Steiner, Kohn & Co., importers of certain glass beads threaded upon strings, for a review of the decision of the board of general appraisers sustaining the decision of the collector of the port of New York as to the rate of duty on such merchandise.

Stephen G. Clarke, for importers.

Thomas Greenwood, Asst. Dist. Atty., for collector.

COXE, District Judge (orally). In this case the collector assessed the importations under paragraph 108 of the tariff act of October 1, 1890, as "manufactures of glass." The importers insist that they should have been assessed under paragraph 445 of the

same act, which provides for "glass beads, loose, unthreaded, or unstrung, ten per centum ad valorem." A simple question of fact is thus presented where the burden is upon the importers to prove that the importations consist of unstrung glass beads. This question of fact was tried out before the board of appraisers and they have found that the articles in question are "manufactures of glass," and are not unstrung glass beads. As I recollect the evidence the only testimony before the board was to the effect that these are strung beads; in fact a mere ocular examination of them demonstrates that they are strung beads. As there is no evidence to the contrary the court would hardly be justified in overruling the decision of the board. If it were a disputed question of fact on evenly balanced testimony their decision should stand, but as it is the weight of evidence is clearly on the side of the collector. The decision of the board of appraisers is, therefore, affirmed.

In re BING et al.

(Circuit Court, S. D. New York. April 26, 1894.)

No. 959.

CUSTOMS DUTIES — REVIEW OF BOARD OF APPRAISERS' DECISIONS — WEIGHT OF EVIDENCE.

The court will not disturb the finding of facts of the board of general appraisers as to the nature of goods imported, even if against the weight of evidence, where the board had sufficient evidence to warrant their finding.

This was an application by F. Bing & Co., importers of certain merchandise, for a review of the decision of the board of general appraisers at New York as to the rate of duty on such merchandise.

Albert Comstock, for importers.

W. C. Low, Asst. U. S. Atty., for collector.

COXE, District Judge (orally). The question here is not of law, but of fact. It is whether or not Exhibit A is "spun silk," under paragraph 410 of the act of October 1, 1890. Even if it were also a question as to what the trade name of Exhibit A was at the time of the passage of the last tariff act, it seems to me that the Van Blankensteyn decision (5 C. C. A. 579, 56 Fed. 474), controls both propositions. The board came to their conclusion on the facts presented to them, and I cannot say it is so against the weight of evidence that the court should set it aside. If this case were an appeal from the decision of a referee the court, although it might have reached a different conclusion had the case been tried originally before it, would not, under familiar rules, disturb the report. The question is whether the finding of the board should be set aside as practically against the weight of evidence. I think the board had sufficient evidence to warrant their finding and their decision is, therefore, affirmed.