

## DENNISON MANUF'G CO. v. UNITED STATES.

(Circuit Court, S. D. New York. March 14, 1895.)

## CUSTOMS DUTIES—CLASSIFICATION—CREPE OR CREPE TISSUE.

Merchandise imported and invoiced as "crepe" or "crepe tissue," which, according to the finding of the board of general appraisers, sustained by the evidence, "is made in a tissue-paper mill, invoiced, advertised, and sold as tissue," and "is tissue paper," is dutiable under Act Oct. 1, 1890, paragraph 419, which covers "all tissue paper \* \* \* made up in any form," and cannot be placed under paragraph 422, referring to "all other paper not specially provided for."

This was an application by the Dennison Manufacturing Company, importer of certain merchandise invoiced as "crepe" or "crepe tissue," 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.

The collector assessed the importations under paragraph 419 of the act of 1890, as "tissue paper." The importer insisted that they should have been classified either under paragraph 422, as "other paper not specially provided for in this act," or under paragraph 425, as "manufactures of paper."

C. H. MacDonald, for importer.

James T. Van Rensselaer, Asst. U. S. Atty., for collector.

COXE, District Judge. The board found that the merchandise in question invoiced as "crepe" or "crepe tissue," "is made in a tissue-paper mill, is invoiced as tissue, advertised as tissue, and sold as tissue" and "is tissue paper." Additional testimony was taken in this court, but it is cumulative in character and does not materially change the issue. There is evidence to sustain the findings of the board, and, even if it be conceded that the preponderance of testimony is the other way, still the court would not be warranted in reversing their judgment. It will be observed that the language of paragraph 419 is very broad. "All tissue paper \* \* \* made up in any form." It covers tissue paper of all varieties. The process by which the imported paper is made is not known, but it is proved that similar paper is made in this country by passing tissue paper through a machine which crimps or crinkles it. One of the witnesses for the importer gave the following common-sense definition: "Tissue paper is a thin paper; that is all there is to tissue paper; a thin paper." There is testimony to the effect that the imported merchandise is in fact tissue paper, that it was commercially known as crepe tissue paper and was so designated in the trade, even by the importing company itself. It is not against the evidence to find that in a smoothed-out condition it is a kind of heavy-weight tissue paper. Subject this paper to a crimping process and it becomes crimped tissue paper. It is crinkled, to be sure, but it is tissue paper still, and consequently is specially provided for under paragraph 419. The change thus produced might suffice to place the paper under a more specific paragraph, if one existed, but it is not sufficient to take it

out of the paragraph providing for "all tissue paper" and place it under the paragraph providing broadly for "all other paper." The board has found that the imported merchandise is tissue paper, several witnesses have testified that it was known to the trade as crepe tissue paper and the importer has time and time again called it crepe tissue paper. In view of these facts the court is inclined to think that the collector has selected the proper paragraph, and, in any view, the court does not feel justified in interfering with the decision of the board. Affirmed.

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TIFFANY v. UNITED STATES.

(Circuit Court, S. D. New York. January 31, 1895.)

No. 722.

CUSTOMS DUTIES—CLASSIFICATION—ANTIQUÉ OPAL—ACT OF OCTOBER 1, 1890.

A single antique opal produced at a period prior to 1700 is not entitled to free entry under paragraph 524 as a "collection of antiquities," but is dutiable at 50 per cent. ad valorem as jewelry, under paragraph 452 of the act of October 1, 1890, notwithstanding it was imported with other articles, whose production prior to 1700 had not been satisfactorily established by evidence.

The importation in question was a gem of great value and antiquity known as the "Hope Opal." The importer insisted that it was entitled to enter duty free under paragraph 524 of the free list of the tariff of 1890. The collector's action in assessing duty was sustained by the board of general appraisers. The importer appealed. Affirmed.

William B. Coughtry, for importer.

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

COXE, District Judge (orally). The section of the free list which is invoked by the importer, refers with great clearness, not to single articles which have been part of foreign collections or to single articles which are intended to be added to collections in this country, but it refers to collections of antiquities. The collection must be imported. If an importer assembles a collection of antiques, which, under the decisions of the courts, must certainly contain more than two articles, and intends to import the collection into this country, the mere fact that through mistake the articles forming the collection are imported in different steamers or at different times is not material. But there must be a collection of which the importation is a part. It seems to be conceded from the proof here that the importation in question came here alone, and there is no evidence of which the court can take cognizance that it was part of a collection of antiques assembled in London and imported to this country and reassembled. In order to reach such a conclusion I would have to substitute conjecture for proof, and surmise that "Babylonian cylinders," whatever they may be, are antiquities with-

in the definition of the statute. There is no proof to warrant the court in saying that the opal in question was part of a collection of antiques produced before the year 1700. This being so, it is an importation of a single article, and no court has gone to the extent of holding that one article constitutes a collection. The decision of the board sustaining the action of the collector in assessing duty under paragraph 452 must be affirmed.

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UNITED STATES v. RICHARDS et al.

(Circuit Court, S. D. New York. January 31, 1895.)

No. 1,877.

CUSTOMS DUTIES—COVERINGS OF IMPORTATIONS—ADDITIONAL DUTY.

Wooden cases with cardboard partitions, in which opal glass bottles were packed and imported, being usual packages for such bottles, are not subject to additional duty as "unusual coverings," or as designed for any other use than the bona fide transportation of said bottles to the United States, within Act June 10, 1890, § 19.

This was an application by the United States for a review of the decision of the board of general appraisers reversing the decision of the collector of the port of New York as to the rate of duty on certain merchandise imported by C. B. Richards & Co.

The importations in question were opal glass bottles, packed in wooden cases with cardboard partitions. The collector imposed an ad valorem duty upon the bottles and the cases, and also an additional duty upon the cases, under section 19 of the act of June 10, 1890, upon the ground that they were unusual packages. The board of general appraisers decided that the additional duty was improperly imposed. The collector appealed. Affirmed.

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

Everit Brown (of Comstock & Brown), for importers.

COXE, District Judge (orally). The articles imported were opal glass bottles. They were imported in wooden cases having cardboard partitions. The only question for the court to determine is whether or not the packages in which they were imported were unusual and designed for use other than in the bona fide transportation of the bottles to the United States. The trend of judicial decision upon this question is to the effect that the additional duty cannot be levied unless it appears that it was the intention of the importer to introduce into the United States some article under the guise of a covering which is designed by him for use other than as a covering after the importation is completed. If the covering is suitable, proper and not out of the ordinary, it should not be subjected to the additional duty. The court cannot say that this importer intended—to put it plainly—to commit a fraud upon the revenue or to introduce here the wooden cases for use other than as bona fide packages for his bottles. Of course bottles of this character require a package of some kind. To