

place them in a common wooden box, and prevent breakage by placing straw or pasteboard between them, would seem to be a proper and usual manner of packing. Upon the evidence before the board it is quite clear that this importer has for a number of years been importing these bottles in precisely the same way in which the bottles in question were imported. The board of appraisers reached a correct conclusion when they said this was a usual package for these bottles. Other importers may have brought in other bottles, or possibly similar bottles in a different way, but to say that the packages in question are exceptional, unusual, and so out of the ordinary, as to bring them within the provision in question does not seem to be warranted by the proof. The decision of the board is affirmed.

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PARK et al. v. UNITED STATES.

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

No. 1,943.

CUSTOMS DUTIES—ACT OCT. 1, 1890—CALVERT'S MEDICAL SOAP.

Calvert's medical soap, containing 20 per cent. of carbolic acid, and used for curative purposes, *held* not to be dutiable as a "toilet soap," under paragraph 79, but under the last clause of said paragraph, "all other soaps not provided for in this act."

This was an application by Park & Tilford, copartners, and importers of certain merchandise known as "Calvert's Medical Soap," 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.

Edward Hartley, for importers.

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

COXE, District Judge (orally). The importation in this case consists of Calvert's medical soap. It was classified by the collector as "toilet soap" under paragraph 79 of the tariff act of October 1, 1890. The importers protested, insisting that it should have been classified under the last clause of that paragraph, which provides for "all other soaps, not provided for in this act." There was also an alternative protest, which it is unnecessary to consider. A toilet soap is used as a detergent for cleansing purposes only. That this is not such a soap is proved by an overwhelming weight of testimony. A medical soap is one used for remedial purposes. There is no doubt, I think, that this is what it purports to be—a medical soap. If it be a soap, unquestionably it is more specifically provided for under the last clause of paragraph 79 than any other provision of the tariff act. The district attorney advances the proposition that, although the collector might be wrong in his classification, the decision of the board may be sustained for the reason that both importer and collector are wrong, and the importation should have been classified under paragraph 77 of the same act.

What I have already said disposes of that contention. Paragraph 77 relates to "preparations used as applications to the hair, mouth, teeth, or skin, such as cosmetics, dentifrices, pastes, pomades," and so on, referring to that class of articles which properly come within the category of "toilet preparations." This soap is what it is advertised to be, a medical soap, used for curative purposes only, and should have been classified under the last clause of paragraph 79. The decision of the board of general appraisers is reversed.

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MEXICAN ONYX & TRADING CO. v. UNITED STATES.

(Circuit Court, S. D. New York. February 1, 1895.)

No. 1,225.

1. CUSTOMS DUTIES—CLASSIFICATION—"MEXICAN ONYX."

So-called "Mexican onyx," a mineral consisting chiefly of carbonate of lime and certain impurities, principally ferrous oxides, imparting to the material its beautiful and variegated colors, crystalline in structure, and belonging scientifically to the group of calcites, recognized by the leading dictionaries and encyclopedias as belonging to the general class of "marble," used for the same general purposes in ornamental and interior decoration as marble, and being worked and finished by the same processes, is properly dutiable as "marble in block," at 65 cents per cubic foot, under Schedule B, par. 123, of the tariff act of October 1, 1890, and is not free of duty as a "crude mineral," under paragraph 651 of the free list of that tariff act, as claimed in the protest of the importer.

2. SAME—REVIEW OF FINDINGS OF GENERAL APPRAISERS.

Where, upon a conflict of evidence before the board of United States general appraisers, arising chiefly upon the commercial meaning of the term "marble," there is sufficient proof to sustain their findings, such findings will not be disturbed.

3. SAME—RETURN OF PROCEEDINGS BY GENERAL APPRAISERS.

The fact that the return to the circuit court was not signed by the members of the board of general appraisers who took the evidence does not overcome the presumption that the appraisers who heard the case decided it. Special reference upon the merits was made to *Batterson v. Magone*, 48 Fed. 289.

This was an application by the Mexican Onyx & Trading Company, the importer of certain Mexican onyx, 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.

W. Wickham Smith (of Curie, Smith & Mackie), for importer.

Wallace Macfarlane, U. S. Atty., and James T. Van Rensselaer, Asst. U. S. Atty., for collector and the United States.

COXE, District Judge (orally). The importation involved in this controversy is Mexican onyx. The collector classified it under paragraph 123 of the tariff act of October 1, 1890, which provides for "marble of all kinds." The importer protested insisting that it was covered by paragraph 651 of the free list as a "crude mineral." The board of general appraisers after taking proof sustained the classification of the collector. The importer appeals to this court.