

eral appraisers sustaining the decision of the collector of the port of New York as to the rate of duty on such merchandise.

W. B. Coughtry, for importer.

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

COXE, District Judge (orally). I am inclined to reverse the decision of the board of general appraisers in this cause. As to the first articles imported the question is whether or not the bamboo of which they are composed is wood. It seems to me that the weight of evidence is clearly to the effect that it is not wood. The extracts read from the various dictionaries and encyclopedias by the counsel for the importers, indicate that bamboo is a species of grass, and I think the testimony is to the same effect. In the testimony offered by the collector the nearest approach to contradicting the proposition that bamboo is a species of grass, is the opinion of one witness that in the process of time the character of the grass is changed to wood, but that to my mind is not a very satisfactory or conclusive view of the matter. It also appears that articles of bamboo are sometimes kept in stock with wooden articles, and sold by dealers in wooden ware, but that does not make it wood. If it were sold by a tinsmith with tin articles it would hardly be contended that this fact would make it tin.

As to the other branch of the case, it is undisputed that these large umbrellas are not used in the way in which ordinary umbrellas are used. They are not suitable for that purpose and are never so used. Their sole use is for the decoration of houses, halls and large buildings. This being so, it would be illogical to classify them with the ordinary cloth umbrellas which are used to protect individuals from the sun and rain. As the board of appraisers with this same evidence before it has in another case reached the conclusion that these importations should be classified as the importer now contends, I shall follow their second and more mature conclusion. The decision of the board is reversed.

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MOVIUS et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 18, 1895.)

CUSTOMS DUTIES—CLASSIFICATION—"LANOLINE."

"Lanoline" being a manufactured article made from wool grease by an elaborate process through which the potash salts contained in the crude wool grease have been entirely removed; the volatile fatty acids partially removed; the removal of the potash salts having destroyed any combination that had existed between them and the fats, the fats having been thereby changed in condition; the resulting "lanoline" being chiefly cholesterine and similar fats, fatty acids and varying percentages of water, an article patented as to its processes of manufacture and trade name and being widely advertised as possessing therapeutic and medicinal qualities, is properly dutiable as a "medicinal proprietary preparation" at 25 per cent. ad valorem under paragraph 75 of the tariff act of October 1, 1890, and not as "wool grease" at one-half of one cent per pound under

paragraph 316 of the act, as claimed in the importers' protest. The classification of the merchandise for duty by the collector of customs as "rendered oil" at 25 per cent. ad valorem under paragraph 76 of the same tariff act was therefore affirmed.

This was an application by J. Movius & Son, importers of certain merchandise known as "Lanoline," 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.

Albert Comstock, for importers.

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

COXE, District Judge. The collector classified the merchandise in question under paragraph 76 of the act of 1890, which provides for "rendered oils" and "expressed oils." The importers protested, insisting that it should have been classified under paragraph 316 of the same act as "wool-grease." The board in an elaborate and carefully prepared opinion, after discussing the various questions involved, reached the following conclusions:

"The substance known as 'Lanoline' is:

"(1) A preparation composed of pure wool-fat and water.

"(2) It is not the wool-grease of commerce and is not an oil, but is commercially known as 'Lanoline.'

"(3) It is a preparation and composition recommended by the manufacturers to the public as a proprietary article.

"(4) It is a preparation and composition prepared according to a private and patented formula or process.

"(5) It is a patented composition or preparation.

"(6) It is a proprietary preparation recommended to the public as a remedy for diseases or affections affecting the human or animal body.

"(7) It is a medicinal proprietary preparation, in the preparation of which alcohol is not used, and of which alcohol is not a component part.

"(8) It is offered for sale by the manufacturers and protestants put up in tins, labeled with notice thereon that the same is patented.

"(9) The manufacturers have duly registered as their trade-mark the word 'Lanoline' in the United States patent office, and they affixed the trade-mark to each package of lanoline imported by the protestants.

"(10) The protestants entered such merchandise by their written entry as 'Lanoline, expressed oil.'"

The board decided that the merchandise should have been classified under paragraph 75 of the same act as a "medicinal proprietary preparation," but that it was not "wool-grease" in fact or commercially. The question, then, is, should "Lanoline" be subject to duty as wool-grease? If not, the decision of the board should be affirmed.

A number of witnesses have been examined in this court, but their testimony does not change materially the case as presented to the board. The conclusions reached by the board are substantially correct, most of them being sustained by the new evidence. Wool-grease is of a brown color and a viscous consistency. It is extracted from wool washings, and consists of cholesterine and other fats and volatile fatty acids. It contains from 15 to 30 per cent. of potash. It emits a rank, disagreeable odor, it resembles molasses and tar mixed together, it is imported in returned petroleum barrels, it is worth

from 2½ to 3 cents a pound and its chief use is for stuffing leather. "Lanoline," on the contrary, is an expensive, highly finished product produced from wool-grease by an elaborate patented process of elimination and purification, by means of which many of the impurities and all of the potash of the crude wool-grease are removed. "Lanoline" is white in color, is imported in small, carefully prepared packages and is used principally in therapeutics. It is not wool-grease, chemically, commercially, or in common parlance. One of the ingredients of wool-grease has disappeared entirely and the others are found in a changed and purified state. "Lanoline" is made from wool-grease just as vaseline is made from petroleum or cheese is made from milk, but it was never known as wool-grease in commerce and no business man would have thought of sending "Lanoline" to fill an order for wool-grease. The impression derived from the entire record is very strong that the term "wool-grease" would convey to the mind of every business man familiar with the subject an idea of the crude, raw material above described, and it is thought that congress so used it in the tariff act of 1890. It cannot be that a refined, expensive product like "Lanoline" should come in under a provision which was manifestly intended to apply to a crude, cheap product differing from "Lanoline" in almost every essential feature. The decision of the board is affirmed.

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TIFFANY v. UNITED STATES.

(Circuit Court, S. D. New York. February 5, 1895.)

No. 898.

CUSTOMS DUTIES—ACT OF OCTOBER 1, 1890—PAINTED FANS.

Fans, composed of silk and bone, upon which are executed artistic paintings in water colors, of high value and merit, and which are displayed as ornaments and not used as fans ordinarily are, *held* not to be dutiable as manufactures of silk at 50 per cent. ad valorem under paragraph 414, but at 15 per cent. under paragraph 465 of the act of October 1, 1890 as "paintings in oil or water colors."

Appeal by importer from decision of board of general appraisers affirming the action of the collector in assessing duty on certain painted fans. Reversed.

William B. Coughtry, for importer.

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

COXE, District Judge (orally). The importations in controversy consist of paintings upon fans made of silk and other materials. The collector assessed them under paragraph 414 of the tariff act of 1890 as manufactures of which silk is the material of chief value. His action was sustained by the board of general appraisers. The importer protested, insisting that the importations are "paintings" within the provisions of paragraph 465 of the same act. "Fans" are not mentioned *eo nomine* in the act, except in paragraph 564