

and cotton under paragraphs 425 and 355 of the act of October 1, 1890, and under paragraphs 388 (Schedule M) and 324 (Schedule D) of the act of March 3, 1883.

Albert Comstock, for importers.

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

COXE, District Judge. The question is whether the imported artificial leaves should be classified as "artificial flowers or parts thereof," or as "manufactures of cotton" and paper. The board found that these leaves were made of colored cotton cloth, metal and wax, cotton being the component material of chief value; that they are suitable for millinery ornaments and are used for branching and making mountings and that they are commercially known, imported, bought and sold as parts of artificial flowers. This finding was upon ex parte testimony, the importers, though invited to do so, gave no testimony before the board. In this court a mass of testimony has been taken which establishes the fact that artificial leaves are imported for three distinct lines of trade and are used by confectioners, decorators and milliners. Only in the millinery trade are leaves known as artificial flowers or parts thereof and not uniformly in that trade. By decorators and confectioners they are known only as leaves. Of course these leaves are not, in fact, flowers, or parts of flowers. Not being artificial flowers in fact, the evidence that they were known as such commercially must be "definite, uniform and general." It is not enough that they were so known in a single trade. *Berbecker v. Robertson*, 152 U. S. 373, 14 Sup. Ct. 590; *Maddock v. Magone*, 152 U. S. 368, 14 Sup. Ct. 588; *Cohn v. Erhardt*, 44 Fed. 747; *Dodge v. Hedden*, 42 Fed. 446. As the testimony here is confined to a single trade and is not entirely definite as to that trade it is obvious that no commercial usage has been established within the rule of the authorities cited. The decision of the board is reversed.

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RILEY et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 6, 1895.)

No. 489.

CUSTOMS DUTIES—CLASSIFICATION—DRESS SHIELDS.

Dress shields, made of cotton and India rubber, India rubber being the component material of chief value, are dutiable as manufactures of India rubber, under Act Oct. 1, 1890, par. 460, and should not be classified under the proviso of paragraph 349 of the same act, which is confined to clothing and wearing apparel of which cotton is the component part of chief value.

This was an application by W. H. Riley & Co., importers of certain dress shields, 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 (of Comstock & Brown), for importers.

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

COXE, District Judge (orally). The importations involved in this controversy are dress shields made of cotton and India rubber, India rubber concededly being the component part of chief value. The collector classified them under paragraph 349 of the tariff act of 1890. The importers protested, insisting that they should have been classified under paragraph 460 of the same act. The simple question is whether or not paragraph 319 is confined in the main clause as well as in the proviso to clothing and wearing apparel of which cotton is the component material of chief value. If it be so confined, it is clear that the collector's classification was wrong. I think that it is so confined. This appears not only from the paragraph itself, but also by a comparison with paragraph 413 of the silk schedule, which contains a proviso in precisely the same language. As the collector was wrong in assessing duty under paragraph 349, it is clear that the importers are right in insisting that their importations are dutiable under paragraph 460 as manufactures of India rubber. The decision of the board of general appraisers as to "Item 230" is reversed; in all other respects it is affirmed.

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BURR et al. v. UNITED STATES.

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

No. 2,100.

CUSTOMS DUTIES—RATE OF DUTY—NEW TARIFF LAW—REPEAL.

Where duties were liquidated on the day after the new tariff law (Act Aug. 27, 1894) went into effect, upon goods imported or withdrawn while the old law was in force, *held* that the rate of duty should be that prescribed by the new law, and not the higher rate imposed by the old; and that the right of the government to such higher rate was not saved by the provision of the new law (section 72) that the repeals therein made should not affect "any act done, or any right accrued."

This was an application by Burr & Hardwick for a review of the decision of the board of general appraisers in respect to the rate of duty to be imposed upon certain goods.

Curie, Smith & Mackie, for Burr & Hardwick.

Wallace MacFarlane, for the United States.

WHEELER, District Judge. The tariff act of 1894 became a law on August 27th. It began with the provision, "That on and after the first day of August, eighteen hundred and ninety-four, unless otherwise specially provided for in this act there shall be levied, collected, and paid upon all articles imported from foreign countries or withdrawn for consumption, and mentioned in the schedules herein contained, the rates of duty which are, by the schedules and paragraphs respectively prescribed." These goods were imported, or withdrawn, on August 8th; the duties were liquidated on August 28th, at the rates prescribed in the former act, against the claim of the importers that the latter act should govern. This liquidation is the actual assessment of the duties (Davies v. Miller, 130 U. S. 284, 9 Sup. Ct. 560; Merritt v. Cameron, 137 U. S.