

E. E. Kipling.	
Total indebtedness	\$16,173 62
Present value, when received, of notes accepted in settlement.....	7,743 16
Loss sustained by reason of insolvency	\$ 8,430 46
Deduct loss of the full individual limit named in policy of the American Credit Company.....	7,500 00
Loss covered by policy in suit.....	\$ 930 46
Cottier & Son.	
Total indebtedness	\$15,520 75
Present value, when received, of notes accepted in settlement.....	9,126 21
Loss sustained by reason of insolvency.....	\$ 6,394 54
—Which is not limited by either of the clauses as to individual liability.	
Goldsmith & Son.	
Total indebtedness	\$605 33
Received in settlement 50 per cent. cash.....	302 66
Loss sustained by reason of insolvency.....	\$302 67
—Which is not limited by either of the clauses as to individual liability.	
Recapitulation.	
Sanford & Co.....	\$ 4,500 00
E. E. Kipling.....	930 46
Cottier & Son.....	6,394 54
Goldsmith & Son.....	302 67
	\$12,127 67
Initial loss	\$4,519 57
Policy in American Company to be first exhausted	\$10,000 00
Less amount already credited against Kipling loss.....	7,500 00
	\$2,500 00
	\$7,019 57
	\$5,108 10

This being the amount for which, with interest, verdict was directed in the circuit court, the judgment of that court is affirmed

DICKSON v. UNITED STATES.

(Circuit Court, S. D. New York. June 3, 1895.)

No. 2,150.

1. CUSTOMS DUTIES—PRACTICE—PROTEST.

Upon an importation of ginger ale in bottles, the collector added the value of the bottles to that of the ale, for the purpose of assessing the duty. *Held*, that the question of the propriety of such action was one of classification, not of valuation, and was properly raised by protest, not by notice of dissatisfaction.

2. SAME—GINGER ALE IN BOTTLES.

In assessing duty, under paragraph 248 of the tariff act of 1894, upon ginger ale imported in bottles, the value of the bottles cannot be added to that of the ale.

This was an appeal from the decision of the board of general appraisers affirming the decision of the collector of the port of New York as to the assessment of duty upon certain merchandise imported by one Dickson.

Edward Hartley, for importer.

Jason Hinman, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). In this case the importer entered certain ginger ale in bottles for duty at 20 per cent. ad valorem, under paragraph 248 of the tariff act of 1894. The collector added the value of the bottles to that of the contents, and assessed the duty on the sum of the value of the ginger ale and of the bottles, as thus ascertained, under the provisions of section 19 of the customs administrative act of June 10, 1890. The importer protested, and subsequently appealed from the decision of the board of general appraisers sustaining the action of the collector.

The attorney for the United States first claims that this court has no jurisdiction, inasmuch as this was a mere question of valuation of goods and reappraisal by the collector, in accordance with the provisions of said section 13 of said customs administrative act. As no notice of dissatisfaction was given by the importer, it is claimed that said decision was final. I think the evidence shows that the real question involved herein was not one of valuation, but of classification for duty, and that under the practice and the decisions cited by counsel the proper way to raise and dispose of the question was by protest.

The importer claims that said bottles are free by virtue of the provision in said paragraph 248 of said act of 1894. Said paragraph is as follows: "248. Ginger ale or ginger beer, twenty per centum ad valorem, but no separate or additional duty shall be assessed on the bottles." In *Lelar v. Hartranft*, 33 Fed. 242, it was held that this paragraph exempted bottles containing ginger ale from all duty. The ground of this decision, however, seems to have been that section 7 of said act exempted all usual coverings of imported merchandise from duty. Section 19 of the customs administrative act of June 10, 1890, provides as follows: "That whenever imported merchandise is subject to an ad valorem rate of duty, the duty shall be assessed upon the actual market value or wholesale price of such merchandise, including the value of all coverings of any kind," etc. The history of the legislation on this subject leaves the intent of congress in doubt. The long-continued practice of the treasury department supports the interpretation contended for by the importer. I conclude that the duty assessed in this case upon the bottles was a separate and additional duty. Inasmuch as paragraphs 88 and 90 of the present tariff act provide for special rates of duty on glass bottles, filled or unfilled, whether the duty be ad valorem or otherwise, these ginger-ale bottles would be dutiable thereunder if they were not exempted, in terms, from any separate or additional duty. The decision of the board of general appraisers is reversed.

KENT v. UNITED STATES.

(Circuit Court, S. D. New York. June 2, 1895.)

No. 1,801.

CUSTOMS DUTIES—TARIFF ACTS OF 1883 AND 1890.

The tariff acts of 1883 and 1890 were intended to be exhaustive, and to take the place of all prior legislation, and section 7 of the act of February 8, 1875, was thereby repealed.

This was an appeal from the decision of the board of general appraisers affirming the decision of the collector of the port of New York as to the imposition of duty upon certain merchandise imported by Percy Kent.

S. G. Clarke, for importer.
Jason Hinman, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The articles in question are empty grain bags, made of burlap, of foreign manufacture, having been used in the transportation of American products. The collector assessed the duty thereon at two cents per pound, under paragraph 365 of the act of October 1, 1890, and the board of general appraisers sustained the action of the collector. The importer claims that said bags are entitled to free entry under section 7 of the act of February 8, 1875. The sole question presented is whether said section of said act of 1875 has been repealed.

It appears that, after the passage of the tariff acts of 1883 and 1890, the treasury department admitted such bags free of duty, and continued to do so until August 22, 1893. In view of this fact, counsel for the importer invokes the application of the rule that the contemporaneous construction of a law by the officials charged with its administration is very persuasive evidence as to its proper interpretation, and, in cases of ambiguity or doubt, may be sufficient to turn the scale. An examination of said tariff acts of 1883 and 1890, and a consideration of the decisions thereon, have satisfied me that congress clearly intended said legislation to be exhaustive, and to take the place of all prior legislation. There is therefore no occasion for the application of said rule of interpretation.

The decision of the board of general appraisers is affirmed.

UNITED STATES v. WOODRUFF.

(District Court, D. Kansas. June 1, 1895.)

No. 2,715.

CRIMINAL PROCEDURE—ERRONEOUS SENTENCE—UNDETERMINED ISSUE.

A defendant was convicted, under Rev. St. § 4046, of embezzling moneys received by him as assistant postmaster. By consent of the district attorney, in view of the insolvency of the defendant, a verdict was taken upon the issue of embezzlement alone, without any finding of the amount embezzled; and the court sentenced the defendant to imprisonment only, without rendering judgment, by way of fine, for the amount embezzled.