

preme court, in *Railroad Co. v. Forsythe* (not yet officially reported) 15 Sup. Ct. 1020, states this rule as follows: That the acts are "to be treated both as a law and a grant, and the intent of congress, when ascertained, is to control in the interpretation of the law"; that the state was the grantee of the government, and in accepting it impliedly undertook to construct the road, and the company which it incorporated for that purpose was made the beneficiary of the grant by the act of the state, and not by the act of congress; that congress dealt only "with the state, relying upon the state as the party to see that the roads were completed, and to use its own judgment as to the manner of securing such construction." The object of these grants by the government is thus stated:

"So far as railroads are concerned, it is the thought, not merely that the general welfare will be subserved by the construction of the road along the line indicated, but, further, that such grant shall not be attended with any pecuniary loss to the United States; for the universal rule is to double the price of even sections within the granted limits."

The demurrer to the complaint is sustained, and the complaint must be dismissed.

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NORDLINGER v. UNITED STATES.

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

No. 262.

CUSTOMS DUTIES—CLASSIFICATION—LEGHORN CITRON.

"Leghorn citron" was not dutiable under paragraph 302 of the act of 1883, as a "comfit, sweetmeat, or fruit preserved in sugar," but was entitled to free entry as a dried fruit.

This was an application by one Nordlinger, an importer, for a review of the decision of the board of general appraisers sustaining the action of the collector of the port of New York in fixing the rate of duty on certain Leghorn citron.

Albert Comstock (of Comstock & Brown), for importer.

James T. Van Rensselaer, Asst. U. S. Atty., for the United States.

TOWNSEND, District Judge (orally). The article in question is Leghorn citron. The importer claims that, under the provision of paragraph 704 of the tariff act of 1883, it is free of duty as a dried fruit not otherwise specially provided for. The collector classified it for duty under paragraph 302 of said act, as a comfit, sweetmeat, or fruit preserved in sugar. The board of general appraisers sustained the action of the collector, and the importer appeals. This citron is in fact a dried fruit, and is commercially classed among the dried fruits. Sugar is used to preserve it, and in that sense it may be said to fall within the classification of "comfits, sweetmeats, or fruits preserved in sugar," etc. The board of general appraisers heard no evidence and made no finding in regard to its commercial designation, but some 20 witnesses have since been examined upon this question. From such consideration as I have been able to give to their evidence, I conclude that this article is not commercially known as a preserve, and that by the practically universal custom of

the trade it is excluded from the class of "comfits, sweetmeats, and fruits preserved in sugar." I do not find competent evidence to the contrary sufficient to affect the validity of this commercial understanding. The decision of the board of general appraisers is therefore reversed.

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WHITE et al. v. UNITED STATES.

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

No. 875.

1. CUSTOMS DUTIES—CLASSIFICATION—JUTE BAGGING.

Jute bagging, which is commercially fit for bagging cotton, is dutiable under paragraph 366 of the act of 1890, and not under paragraph 374, as a manufacture of jute not specially provided for.

2. SAME—"SUITABLE" DEFINED.

The test of the suitability of an article for a certain purpose is not whether it is commonly used therefor, but whether it possesses actual, practical commercial fitness for that purpose.

This was an application by James F. White & Co., importers of certain merchandise, 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.

Stanley, Clarke & Smith, for importers.

Henry C. Platt, Asst. U. S. Atty., for the United States.

TOWNSEND, District Judge (orally). The article in question is jute bagging. The importer claimed it was a "material similar to cotton bagging, and suitable for covering cotton composed of jute," and therefore dutiable under paragraph 366 of the tariff act of 1890. The collector classified the article under paragraph 374 of said act, as a manufacture of jute not otherwise specially provided for. The board of general appraisers, after hearing evidence, found that said articles were not suitable for covering cotton, nor commonly used for that purpose. The bagging is composed of jute, and appears to be a material similar to cotton bagging. The single question is whether it is suitable for covering cotton. The witnesses generally agreed that the article in question had been sold and used for bagging for cotton, and that it was suitable for such purpose. The counsel for the government claims, however, that the finding of the board of general appraisers upon these points should not be disturbed. But it appears from said findings that said board, after defining the word "suitable," held as follows:

"When an article is commonly used for a given purpose, it may be said to be 'suitable' for such purposes; when not so used, it cannot ordinarily be said to be so 'suitable.'"

I think this statement is not altogether accurate, in view of the definition of said term, and the decisions. "Suitable," according to the definitions in Webster and the Century Dictionary, means "fitting," "capable of suiting," or "appropriate." In *Re Townsend*,<sup>1</sup> 56 Fed. 222, the court of appeals holds that "preparations fit for use" means "preparations actually and not theoretically fit for use, and