

ROSENSTEIN et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 4, 1896.)

No. 1,075.

CUSTOMS DUTIES—CLASSIFICATION—PICKLED HERRING.

Herrings put up in kegs in a preparation of vinegar and spices, to which are added small quantities of vegetables, such as onions and carrots, were dutiable as "pickled herrings," under paragraph 294 of the act of 1890, and were not subject to duty under paragraph 295.

This was an appeal by Rosenstein Bros. from a decision of the board of general appraisers sustaining the action of the collector of the port of New York in respect to the classification for duty of certain imported merchandise.

Albert Comstock, for importers.

Henry C. Platt, Asst. U. S. Atty.

COXE, District Judge (orally). The importers in this case imported a quantity of fish put up in kegs, which the collector assessed for duty under paragraph 295 of the tariff act of 1890. The importers protested insisting that the importations are "pickled herrings" under the preceding paragraph. The sole question before the court is one of fact. It is whether or not the articles in controversy are pickled herrings. I think there is a failure to show any trade meaning for these words. I do not understand that there is a unanimity of testimony, or, in fact, any testimony of which the court can predicate a finding that the words "pickled herrings," at the time of the passage of the act, had any special trade meaning. They must, therefore, be considered in their ordinary dictionary meaning. It is undisputed that the fish in question belong to the genus known as herrings. That they are herrings is established beyond doubt. They are put up in a preparation of vinegar and spices. Some vegetables, such as onions and carrots, are also added to the mixture. Unquestionably the fish are pickled, and the only question is whether or not the addition of the vegetables in small quantities changes their character. I do not think that it does. The importations come clearly within the definition of paragraph 294 as pickled herrings. The fact that they have been sold in the markets of this country as Russian sardines does not in my judgment have the slightest bearing upon their tariff classification. Russian sardines are not mentioned in the act. The decision of the board of general appraisers is reversed.

WERTHEIMER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 6, 1896.)

No. 1,727.

CUSTOMS DUTIES—CLASSIFICATION—GLOVES.

Under paragraph 458 of the act of 1890, all gloves which are not men's gloves are to be classed together, as ladies' or children's gloves.

This was an appeal by Wertheimer & Co. from a decision of the board of general appraisers with respect to the classification for duty of certain imported gloves.

David L. Mackie, for plaintiffs.

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

WHEELER, District Judge. The question here is whether these are "men's," or "ladies and children's," gloves, under paragraph 458 of the tariff act of 1890. There is no distinction between boys' and girls' gloves, but all not men's are classed with ladies' and children's. Much testimony has been taken in this court that was not before the appraisers. Upon all the evidence, these seem not to be men's gloves, but ladies' or children's. They should therefore be classified as such. Judgment reversed.

GODWIN et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 6, 1896.)

No. 1,892.

CUSTOMS DUTIES—CLASSIFICATION.

Paintings in oil upon panels of papier maché, to go into the frames of a false door, were not dutiable as manufactures of wood, under paragraph 230 of the act of 1890, but as "paintings in oil," under paragraph 465.

This was an appeal by Godwin & Sons from a decision of the board of general appraisers in respect to the classification for duty of certain merchandise imported by the appellants.

Stephen G. Clarke, for plaintiffs.

H. C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. These were paintings in oil upon panels of papier maché to go into the frame of a false door, a part of the same invoice, but assessed separately, for a part of the interior decorations of a house. They were considered to be wood panels, and assessed as manufactures of wood, under paragraph 230 of the tariff act of 1890, against a protest that they should be assessed at a lower rate as "paintings in oil," under paragraph 465. The testimony taken since shows clearly that they are not manufactures of wood, and that the false door frame was to be, in that form, their frame. Together they would not be a door, but only paintings in a frame imitating a door. Oil paintings must be done upon something becoming a part of them, and that may as well be papier maché as anything. These, as they were assessed, were simply paintings in oil, exactly provided for in paragraph 465. That they were intended for, and were to become, parts of an imitation of a door, would not make them any the less so, as was said of ivory keys which were to become parts of pianos, in *Robertson v. Gerdan*, 132 U. S. 454, 10 Sup. Ct. 119. Judgment reversed.