

This was an appeal by B. P. Ducas 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 the importer.
J. T. Van Rensselaer, Asst. U. S. Atty.

COXE, District Judge (orally). The appellant imported certain merchandise, upon which the collector assessed duty under paragraph 76 of the tariff act of 1890. The importer protested insisting that it should be admitted free of duty under paragraph 749 of the free list, which provides for "verdigris or subacetate of copper." The importer admits that the merchandise in question is not subacetate of copper. The district attorney concedes on the other hand that the article is verdigris under a broad definition of that term. Therefore, there is no question of fact for the court to pass upon, and the question is simply one of law as to the proper construction of paragraph 749. Was it the intention of congress to limit verdigris to that particular variety known as subacetate of copper? The principal contention upon the part of the United States which impresses itself upon the court is that in prior tariff acts duty was levied upon the merchandise in question under the name of acetate of copper. This language is entirely omitted from the act in question; and although there is reason for saying that congress intended that the duty formerly levied under that phraseology should still be levied under the language selected by the collector as "chemical compounds and salts," still, there is the equally plausible contention that it was the intention of congress in view of the greater knowledge upon the subject at the time of the passage of the act of 1890, to place all of the merchandise known as verdigris upon the free list. Although the question is narrow, interesting and not free from doubt, still the existence of the doubt inclines the court to resolve it in favor of the importer, for the reason that the property of the importer should not be taken from him upon a doubtful construction of the law. The decision of the board of general appraisers is therefore reversed.

UNITED STATES *v.* ZURICALDY et al.

(Circuit Court, S. D. New York. February 10, 1896.)

No. 1,403.

CUSTOMS DUTIES—VALUATION BY CONSUL—CONCLUSIVENESS.

The unauthorized act of a United States consul in adding to the invoiced value of goods the amount of ocean freights is not conclusive upon the importer, and he is entitled to have the valuation corrected, even though the appraiser has in a pro forma manner approved the invoice by marking it "correct." *Robertson v. Bradbury*, 10 Sup. Ct. 158, 132 U. S. 491, applied.

Appeal on behalf of the United States from a decision of the board of general appraisers which reversed the action of the collector in assessing duty upon the merchandise in question.

Henry D. Sedgwick, Jr., Asst. U. S. Atty.
Robert Weil, for importers.

COXE, District Judge (orally). The only question involved in this appeal is whether or not the action of the United States consul at Malaga, Spain, is final and conclusive as to the invoiced value of the goods. There is no dispute, as I understand the facts, that the consul at that point added to the value of the goods the amount of ocean freights, which was stated on the invoice presented to him in English money. The importers protested against his action at the time and continue to do so. The difficulty arising at this port is due entirely to the fact that the consul increased the value of the goods by this amount. I understand it to be conceded upon all sides that his action in this regard was unauthorized. The evidence before the board of general appraisers and all the evidence in the case shows that the true invoiced value of the goods was increased by the addition of the ocean freights thereon. This being so, the case of *Robertson v. Bradbury*, 132 U. S. 491, 10 Sup. Ct. 158, is controlling of the present issue. The court holds that the action of the consul is not conclusive, and it is still open for the importers to show that the consul has acted in a wholly illegal and arbitrary manner. The case is also authority for the proposition that the importer may recover even though the appraiser approves the invoice in a pro forma manner by marking it "correct." Notwithstanding this, the importer may show that there has been included in the value an item which under no theory of law the consul was authorized to include. The decision of the board of general appraisers is correct and should be affirmed.

EICHLER v. UNITED STATES.

(Circuit Court, S. D. New York. February 7, 1896.)

No. 1,723.

CUSTOMS DUTIES—CLASSIFICATION—PERIODICALS.

German novels translated into English, printed at stated intervals, and imported in pamphlet form, cannot be classed as "periodicals," under paragraph 657 of the act of 1890, where there is nothing to show whether they were written in the present time or many years ago. Such publications are dutiable, under paragraph 423, as books, etc.

Appeal by the importer from a decision of the board of general appraisers which sustained the classification of the collector upon the merchandise in question.

Stephen G. Clarke, for plaintiff.
J. T. Van Rensselaer, Asst. U. S. Atty.

COXE, District Judge (orally). The simple question involved is whether or not the importations are "periodicals," under paragraph