

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

657 of the act of 1890. I do not understand that the court is concluded by any prior adjudication. The first decision cited was made under a former act and, therefore, the law was different; the second was made under the present act, but the facts are different. In the second case (*New York Daily News v. U. S.*, 13 C. C. A. 16, 65 Fed. 493) decided by the circuit court of appeals, I think there was no question but that the importations were periodicals containing the current literature of the day. In the present case the burden is upon the importer to satisfy the court that the facts stated in his protest are correct. He must show that his importations are periodicals, and are so within the definition of paragraph 657, that is, that they are "unbound or paper-covered publications," and that they contain the "current literature of the day and are issued regularly at stated periods." The facts are undisputed that these importations are German novels printed at stated periods, in the English language, and sent here in pamphlet form. There is nothing upon the record to show whether the authors are dead or alive, whether they were written at the present time or whether they are a quarter of a century old. It seems to me that the contention of the importer, if carried to its logical conclusion, will enable any person so desiring to avoid the provisions of paragraph 423 of the act as to books by simply putting them in the form of pamphlets. If the stories in this case can be imported as periodicals, so the works of Goethe or Schiller can be split up into pamphlets and sent here at stated periods, and will unquestionably come in under paragraph 657. It was not the intention of congress to give to the word "periodicals" such a definition. By "current literature of the day" is meant substantially what was decided to be current literature in the case before the circuit court of appeals. A construction which enables any book, whether belonging to fiction or science, whether a novel, scientific work, or encyclopedia, to be brought here under paragraph 657, simply because it appears in separate parts published at stated periods, could not have been contemplated. The decision of the board of general appraisers should be affirmed.

ROESSLER & HASSLACHER CHEMICAL CO. v. UNITED STATES.

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

No. 1,577.

CUSTOMS DUTIES—CLASSIFICATION.—ACETANILID.

Acetanilid, which is a "preparation of coal tar, not a color or dye," was dutiable by that description, under paragraph 19 of the act of 1890; and, even though it be conceded to be a medicinal preparation, without any alcoholic element, it was not dutiable under paragraph 75, for the former description is the more specific.

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

Albert Comstock, for plaintiffs.

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

COXE, District Judge (orally). The article imported in this case is acetanilid. The collector levied duty on one importation as a "medicinal preparation, of which alcohol is not a component part," and on another as a "chemical compound or salt," under paragraphs 75 and 76, respectively. The importer protested, insisting that in both instances it should have been classified under paragraph 19, which provides for "all preparations of coal tar, not colors or dyes." It is conceded that the article in question is a coal-tar preparation, not a color or dye. The importer also insists that the evidence establishes the fact that it is not a medicinal preparation. Without passing upon the question of fact thus presented, the court holds as matter of law, conceding the proposition that it is a medicinal preparation, that the paragraph pointed out by the importer is more specific than the collector's paragraph, and, therefore, that the importations should have been admitted as a preparation of coal tar. Numerous decisions of this court uphold this construction. This conclusion leads to a reversal of the decision of the board of general appraisers.

UNITED STATES v. AMSTER.

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

No. 2,122.

CUSTOMS DUTIES—CLASSIFICATION—EMBROIDERIES.

Articles upon which the only embroidery consisted of a single initial letter were not dutiable as "embroideries," etc., under paragraph 373 of the act of 1890. U. S. v. Harden, 15 C. C. A. 358, 68 Fed. 182, 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 importations in question.

J. T. Van Rensselaer, Asst. U. S. Atty.
Benjamin Barker, Jr., for defendant.

COXE, District Judge (orally). The only question involved in this controversy is whether or not the articles imported are embroidered within the provisions of paragraph 373 of the act of 1890. If they are not, it must be conceded that the importer is right in classifying them under paragraph 371 of the same act. The only embroidery upon any of the articles is the initial letter "A." I think the decision in the case of U. S. v. Harden, 15 C. C. A. 358, 68 Fed. 182, is controlling. The court there holds that the embroidery of a single letter is so limited in extent and of such comparative narrowness as not to require that the article so marked should be regarded as an article embroidered. The decision of the board of general appraisers is affirmed.