

## STRAUSS et al. v. UNITED STATES.

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

No. 2,154.

## CUSTOMS DUTIES—CLASSIFICATION—TOYS.

Paragraph 436 of the act of 1890, and paragraph 321 of the act of 1894, in relation to toys, are identical in terms, except that the latter act imposes a duty of 25 per cent., instead of 35 per cent., and also provides that "this paragraph shall not take effect until January 1st, 1895." *Held*, that it was the manifest intent that the old paragraph should continue in force until the new one went into effect, and hence toys were dutiable thereunder until January 1, 1895.

Appeal by the importers from a decision of the board of general appraisers which sustained the action of the collector in assessing duty upon the merchandise in suit.

Everit Brown, for plaintiffs.

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

COXE, District Judge (orally). The subject of controversy in this case is toys, manufactured of paper. Toys, *eo nomine*, have been known in various tariff acts since 1842. Paragraph 436 of the act of 1890 and paragraph 321 of the act of 1894 are in identical terms, except that the latter imposes a duty of 25 per cent. instead of 35 per cent. and also contains at its end the following language: "This paragraph shall not take effect until January first, 1895." The toys in question were imported upon the 18th of September, 1894. The contention of the importer is that in the interim toys, not being specially designated in the act of 1894, must be assessed under various paragraphs of the act having relation to the materials of which they are constructed. It seems very clear that it was the intention of congress that toys should, until January 1, 1895, pay the duty provided for in the act of 1890; until the new duty was imposed the old duty should prevail. This is a consistent and reasonable construction and the other construction which would throw them into a large number of general classes imposing different rates of duty is an unreasonable one. The decision of the board of general appraisers is affirmed.

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 UNITED STATES v. SCHEFER et al.

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

No. 1,347.

## CUSTOMS DUTIES—SUFFICIENCY OF PROTEST—WAIVER BY COLLECTOR.

The act of the collector in stating, in his return to the board of appraisers, that the requirements of the law have been complied with by the importers, does not operate as a waiver of objections upon the ground of an insufficient protest. The protest being a statutory necessity, it is beyond the power of the collector to waive it.

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.

Max J. Kohler, Asst. U. S. Atty.  
W. Wickham Smith, for defendants.

COXE, District Judge (orally). The question in this cause arises upon the sufficiency of the protest. It is conceded upon the part of the importers that the protest is insufficient, under section 14 of the customs administrative act of June 10, 1890. They contend, however, that the collector is estopped from raising this question, for the reason that in making his return to the board he stated that the requirements of the law had been complied with by the importers. If any proposition of tariff law is clearly established, it is that a valid and timely protest is a condition precedent to a recovery of duties by the importer. I am inclined to think that this is a condition which neither the collector nor any other officer of the United States has power to waive. The protest here is unquestionably insufficient under the section referred to; and although it may, I think, be conceded that the course of the collector was misleading and perhaps unfair to the board of general appraisers, still, when the question is presented to the court, it must be determined upon the well-known rules of law applicable thereto. The contention of the importers if sustained would lead to the proposition that duties can be recovered without any protest at all, provided the collector makes a misleading return to the board by stating that the requirements of the law have in this regard been complied with. If such doctrine is accepted he will have the power to waive protest when he sees fit. I do not so understand the law. A protest is a statutory necessity. As no protest distinctly and specifically setting forth the objections of the importers was served, I fail to see how recovery can be had. The decision of the board of general appraisers is reversed solely upon the ground that no valid protest was served upon the collector.

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ABEGG et al. v. UNITED STATES.

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

No. 1,942.

CUSTOMS DUTIES—PROTEST BY AGENT.

A protest filed by apparent strangers to the goods, without any intimation that the act was done for the person who swore in the invoice that he was the owner, is ineffectual; nor will the fact that the owner is connected with one of the departments of the establishment of the persons making the protest authorize the inference that they were agents of the goods, within the meaning of the fourteenth section of the customs administrative act.

Appeal by the importers from a decision of the board of general appraisers which sustained the action of the collector in assessing duty upon the importations in question.

D. I. Mackie, for plaintiffs.  
J. T. Van Rensselaer, Asst. U. S. Atty.

COXE, District Judge (orally). The merchandise in controversy was imported by one William Robertson, who swore in the invoice