

FOPPES et al. v. UNITED STATES.

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

No. 1,732.

CUSTOMS DUTIES—CLASSIFICATION—RATTAN STICKS FOR WHIP HANDLES.

Rattan sticks for whip handles, painted, polished, and nearly completed, were dutiable as "manufactures of wood," under paragraph 230 of the act of 1890, and not as "reeds, wrought or manufactured from rattans or reeds," under paragraph 229. In re Foppes, 56 Fed. 817, followed.

Appeal by Foppes & Partisch, importers, from a decision of the board of general appraisers which sustained the classification of the collector of the merchandise in question.

The merchandise in controversy consisted of rattan sticks for whip handles, which were painted, polished, and nearly completed. They were assessed by the collector for duty at 35 per cent. ad valorem, under paragraph 230 of the act of 1890, as "manufactures of wood" not specially provided for. The importers protested, claiming that the goods were dutiable at 10 per cent. ad valorem as "reeds, wrought or manufactured from rattans or reeds," under paragraph 229. They further claimed that the goods were articles manufactured in whole or in part, not specially provided for, and if not dutiable under paragraph 229, should be assessed at 20 per cent. ad valorem, under section 4 of the act of 1890.

Stephen G. Clarke, for importers.

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

COXE, District Judge (orally). The question here involves the construction of paragraph 229 of the tariff act of 1890. It is admitted that it is not confined to chair reeds, but that it covers other reeds as well. The contention of the importers is that it covers not only commercial reeds, but commercial reeds which have been wrought or manufactured. It seems to me that there is considerable force in this contention, that the language of the paragraph not only covers a crude reed, but a reed which has been manufactured or advanced to a certain extent beyond the crude form provided it be still a reed, in short, a manufactured reed. The precise question is, however, *res judicata* in this court. In the Case of Foppes, reported in 56 Fed. 817, the issue depended between these parties, and, as I read the statement of facts, the dispute related to articles precisely similar to those involved in this controversy. The construction put upon the paragraph is that it refers to chair reeds and other reeds known commercially as reeds, and that whipstocks, fishing rods, and such articles, which have been advanced from the commercial reed, by a process of manufacture, cease to be reeds. That decision is conclusive upon this court. The decision of the board of appraisers is affirmed.

UNITED STATES v. MERCADANTE.

(Circuit Court of Appeals, Second Circuit. December 13, 1894.)

No. 628.

CUSTOMS DUTIES—REIMPORTATION OF AMERICAN MANUFACTURES—"SHOOKS."

This was an appeal by one Mercadante from a decision of the board of general appraisers imposing a duty upon certain barrels which had been manufactured in this country and exported in the form of "shooks." The circuit court, per Wheeler, Circuit Judge, reversed the decision of the appraisers, delivering the following opinion:

"Shooks, when returned as barrels," are free of duty; but proof of identity is to be "made under general regulations to be prescribed by the secretary of the treasury." These are shooks so returned; but that proof of identity has not been made, for no such regulations appear to have been so prescribed. Such proof appears to have been provided for as a further safeguard of identity, but not as exclusive. The fact of identity has been made to appear, and is not disputed. Nothing more could be made to appear by any proof, however prescribed. The failure to prescribe leaves the fact without further requirement to have its effect. Judgment reversed.

From this decision of the circuit court, the United States appeal.

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

Stanley, Clarke & Smith, for respondent.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

Reversed in open court, without opinion.

DOMINICI et al. v. UNITED STATES.

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

No. 627.

1. CUSTOMS DUTIES—REIMPORTED AMERICAN MANUFACTURES—"SHOOKS."

There is no regulation made by the secretary of the treasury in relation to the proof of identity of reimported American goods, which is applicable to barrels exported in the form of "shooks"; and even if there be such a regulation the method prescribed by it is not exclusive, and if the identity appear by other evidence the goods are entitled to free entry.

2. SAME—JUDICIAL NOTICE OF TREASURY DECISIONS AND REGULATIONS.

The court takes judicial notice of the Synopses of Treasury Decisions, and of the General Regulations prescribed by the department.

Appeal by Dominici & Marino, importers, from a decision of the board of general appraisers which sustained the action of the collector in assessing duty upon certain merchandise.

Stephen G. Clarke, for appellants.

Max J. Kohler, Asst. U. S. Atty.

COXE, District Judge (orally). In the case of U. S. v. Mercadante, ubi supra, to which the attention of the court has been directed,