

## 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.

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 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,

as I understand it, the circuit court of appeals either reversed the decision of the circuit court or dismissed the appeal on the ground that upon the record before them there was no evidence to sustain the finding that "the fact of identity has been made to appear and is not disputed." If this be true, it seems to me that the decision of the circuit court upon the question in controversy should be followed here. The court decides two propositions, first, that there is no regulation of the secretary of the treasury applicable to shooks; and secondly, that it sufficiently appeared from the report of the appraiser, and from the return of the board of general appraisers also, that the shooks were of American manufacture, and therefore entitled to free entry and that the proof required by the regulation, even if the regulation were applicable to shooks, was only an additional safeguard and not conclusive. In this cause there is a finding of the local appraiser and also of the board of general appraisers that in fact these articles are shooks of American manufacture, and the board base their decision sustaining the action of the collector solely upon the ground that the importers have not complied with the regulation of the secretary of the treasury. Under the decision alluded to which holds first, that there was no such regulation, and secondly, that if there were it was not necessary to comply with it in the present circumstances, I am of the opinion that the decision of the board must be reversed.

There were before the court upon this hearing the original invoices and entries and accompanying papers, to wit, by the steamer "Balcarses Brook," May 28, 1891; "Caledonia," March 28, 1891; the "Australia," May 12, 1891; and the "Scotia," May 23, 1891. The court takes judicial notice of No. 10,291 of the Synopses of Treasury Decisions, and of articles 373, 374, 375, 376, 377 and 378, and articles 381, 382, 383 and 384 of the General Regulations of 1884, as amended by the Department Circular No. 85 of September 28, 1890, referred to in said decisions. The attention of the court is also called to the decision of the circuit court of appeals in the case of U. S. v. China & Japan Trading Co., 71 Fed. 864. The court is of the opinion that that ruling is inapplicable to the present case.

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STEMMLER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 11, 1896.)

No. 2,187.

CUSTOMS DUTIES—CLASSIFICATION—"SUGAR WAFERS."

Sweetened biscuit know as "sugar wafers" are dutiable as nonenumerated articles, under section 3 of the act of 1894 (28 Stat. 547). They cannot be entered free, under paragraph 667, as "wafers, unmedicated, and not edible," for this description provides for only one kind of wafers, namely, those which are unmedicated and nonedible.

Appeal by F. W. Stemmler & Co., importers, from a decision of the board of general appraisers which sustained the classification of the collector in assessing duty upon the merchandise in question.

Albert Comstock, for importers.  
Henry C. Platt, Asst. U. S. Atty.

COXE, District Judge (orally). The importations consist of sweetened biscuits, known as "sugar wafers." The collector assessed them under section 3 of the act of 1894 (28 Stat. 547), which provides for nonenumerated articles. The importer insists that they should have been admitted free of duty, under paragraph 667 of the same act. The question depends upon the construction of paragraph 667, which provides for "wafers, unmedicated, and not edible." It seems to me, in view of the language itself and of the circumstances under which the corresponding paragraph of the act of 1890 was amended, that the paragraph was intended to provide for "unmedicated and nonedible wafers." The importers insist that it should be construed as if there were a paragraph for unmedicated wafers and also a paragraph for nonedible wafers. It is a familiar rule that in the construction of statutes punctuation should not be considered. The construction adopted by the board, especially in view of the decision of the court admitting these wafers free under the act of 1890, is the natural one. I think it but fair to presume that congress legislated with reference to that decision. The decision of the board of general appraisers is affirmed.

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BLUMENTHAL v. UNITED STATES.

(Circuit Court, S. D. New York. February 12, 1896.)

No. 1,591.

1. CUSTOMS DUTIES—CLASSIFICATION—HARMONICAS.

Harmonicas made of wood and metal, and harmonica cases of celluloid, imported on the same vessel, but in different boxes and under different invoices, *held* to have been dutiable as "toys" under paragraph 436 of the act of 1890, and not under paragraphs 215 and 221, respectively, according to the materials of which they were composed.

2. SAME—PROTEST—ESTOPPEL.

Calling certain articles "musical instruments" in an alternative clause of a protest does not estop the importer from claiming that they are dutiable as "toys," as asserted in another clause of his protest.

Appeal by the importer from a decision of the board of general appraisers which affirmed the action of the collector in assessing duty upon certain merchandise.

Stephen G. Clarke, for importer.  
Henry C. Platt, Asst. U. S. Atty.

COXE, District Judge (orally). The importations are harmonicas, consisting of two parts, one made of wood and metal which may be called the harmonica proper, and the other a celluloid case to cover the same. These articles were imported by one importer and upon the same vessel. They were, however, in different boxes and covered by different invoices. The evidence is that the cases have no use except for harmonica covers, and that any harmonica of the size im-