

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-

ported will fit any of the cases imported. If the collector was right in deciding that these articles are not toys he assessed duty upon them under the proper paragraphs relating to the materials of which they are composed, paragraphs 215 and 221, respectively, of the tariff act of 1890. The importer insists that they should have been classified under paragraph 436 of the same act as "toys."

I understand that it is undisputed that in a former decision of this court harmonicas similar to these were held to be toys. The district attorney insists that the importer is not in a position to raise this question for the reason that he has in his protest called them "musical instruments." The protest is in the alternative form, one clause clearly raising the question which is in dispute here. The testimony taken in this court seems to sustain the contention of the importer that they are toys and have been so known for years. I see no reason why the importer is estopped by his alternative protest, or how the situation is changed because these toys were imported in different cases and under different invoices, there being no dispute that the parts referred to are intended for conjoint use and can be used in no other way.

I think the decision of the board should be reversed.

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DAVIS v. UNITED STATES.

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

No. 2,164.

**CUSTOMS DUTIES—CLASSIFICATION—COLLECTIONS OF ANTIQUES.**

Several different antique articles, never assembled together in Europe, but imported in separate ships, under separate invoices, could not be entered free, under paragraph 524 or the act of 1890 (26 Stat. 604), as a "collection of antiquities," although the importer intended to add them to a collection in this country. *Tiffany v. U. S.*, 66 Fed. 729, followed.

Appeal by the importer 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. B. Ogden, for importer.

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

COXE, District Judge (orally). The articles in controversy in this cause are five in number, and consist of one tapestry and four paintings. These articles were purchased at different times, of different dealers and artists, and were sent to this port in different ships, arriving at different dates, no one of the invoices containing more than one article. It is conceded that they were not assembled together in Europe further than in the mind and intention of the importer. There was no actual assembling together. Although I am in favor of the most liberal interpretation of the paragraphs of the tariff law relating to works of art, it seems to me, having in view the language of the paragraph and the inter-

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