

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.

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-

v.72f.no.1—4

pretation which has so often been placed thereon by this court and by the circuit court of appeals, that there is here no room for construction. The case of *Tiffany v. U. S.*, 66 Fed. 729, to which the attention of the court is called, was decided by the judge who is now sitting. In that case the effort was to place on the free list an antique opal, known as the "Hope Opal," and there was evidence tending to show that it was the intention of the importer to add it to a collection, but it came here alone in one invoice. The court held that:

"If an importer assembles a collection of antiques, which, under the decisions of the courts, must certainly contain more than two articles, and intends to import the collection into this country, the mere fact that through mistake the articles forming the collection are imported in different steamers or at different times is not material. But there must be a collection of which the importation is a part."

In other words, it is the collection that must be imported. The collector must deal with facts, not intentions. Concededly there was no collection of these articles in Europe. The fact that imported antiques are assembled in this country is not material.

The decision of the board is affirmed.

STACHELBERG et al. v. UNITED STATES.

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

No. 1,722.

CUSTOMS DUTIES—CLASSIFICATION—TOBACCO.

If a bale of tobacco contained any portion suitable for cigar wrappers, the whole bale was dutiable, under paragraph 242 of the act of 1890, as "suitable for cigar wrappers," and the court had no discretion to determine whether there was an appreciable percentage of such tobacco in the bale.

Appeal by Stachelberg & Co., importers, from a decision of the board of general appraisers which sustained the classification by the collector of certain tobacco in bales.

Charles P. McClelland, for appellants.

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

COXE, District Judge (orally). The appellant imported four bales of filler tobacco, which was assessed by the collector as leaf tobacco "suitable for cigar wrappers" under paragraph 242 of the act of 1890. The importers protested insisting that it should have been classified under paragraph 243 of the same act. There is no dispute that three of the bales contained a percentage of leaf tobacco suitable for cigar wrappers, the percentage differing in the different bales. The proviso of paragraph 242 provides "that if any portion of any tobacco imported in any bale * * * shall be suitable for cigar-wrappers, the entire quantity of tobacco contained in such bale * * * shall be dutiable" under that paragraph. It is hard to conceive of stronger or more unambiguous language. It is so clear that there is no room

for construction. It is practically prohibitory in its terms. The importers contend that the court is permitted to consider the question whether or not the percentage is appreciable or otherwise. I do not think that question can be considered under the language quoted. Therefore, as to three of the bales the decision of the board is affirmed. As to bale 5,677 several of the witnesses testify that it contained no wrapper tobacco. As the board did not pass upon the question of fact involved with reference to this bale, but based its decision upon the ground that the merchandise had gone out of the possession of the government, I think the question is still open in this court. The weight of evidence is that the importer's contention as to this bale is correct. As to bale 5,677 the decision of the board is reversed.

UNITED STATES v. BENJAMIN et al.

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

No. 1,726.

CUSTOMS DUTIES—VALUATION—CLERICAL MISTAKE IN INVOICE.

The board of general appraisers has jurisdiction to correct a mistake in the appraisement, arising from a clerical error in invoicing the goods as worth so many marks instead of so many pennings.

Appeal on behalf of the United States from a decision of the board of general appraisers which reversed the action of the collector in relation to certain merchandise imported by Benjamin & Casperly.

Henry D. Sedgwick, Jr., Asst. U. S. Atty.
Robert Weil, for importers.

COXE, District Judge (orally). We start in this cause with the undisputed fact that there was a clear clerical mistake in the invoice of the goods, which, though in fact worth so many pennings, were invoiced as worth so many marks. This being true, the court is naturally inclined to give the importers relief, if possible. As soon as the mistake was discovered the importers protested against the illegal exaction of duty. The protest, with all the proceedings, was returned by the collector to the board of general appraisers. They find as facts that there was a clear clerical mistake in the valuation of the goods, and that the appraising officer, had he made a careful and intelligent examination would have discovered the mistake on the face of the invoice. The board then correct the mistake, find the true market value of the goods, and sustain the protest. I am inclined to think that the board had jurisdiction and that their finding is correct. I cannot believe that it was the intention of congress to require an importer whose property is thus taken to go through the complicated and inconsequential proceedings which have been suggested here, especially when some of them concededly would not furnish the relief sought for or lead to any practical result. A mistake so plain demands a simple remedy.

The decision of the board of general appraisers is affirmed