

## WHITE et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. February 20, 1896.)

## 1. CUSTOMS DUTIES—APPEAL FROM BOARD OF APPRAISERS—CONFLICTING EVIDENCE.

A decision by the board of general appraisers of a question of fact involved in great conflict of testimony, which is affirmed by the circuit court upon a like conflict of testimony, should not be disturbed by the circuit court of appeals.

## 2. SAME—MANUFACTURES OF JUTE AND FLAX—BURLAPS.

Articles woven of flax, and of jute and flax, less than 60 inches wide, used chiefly for stiffening collars and fronts of coats and other garments, and as bands in trowsers, etc., the goods being known commercially as "canvas," "paddings," "ducks," "coatings," etc., were dutiable as manufactures of flax, under paragraph 371 of the act of 1890, and as manufactures of jute and flax, under paragraph 374, and not as burlaps over 60 inches wide, under paragraph 364. 65 Fed. 788, affirmed.

This is an appeal from a decision of the circuit court for the Southern district of New York affirming a decision of the board of general appraisers sustaining the collector's classification of certain merchandise as manufactures of flax, or of which flax is a component material, under paragraph 371 of the tariff act of October 1, 1890. The importers claim that the articles in question are paddings or canvas from 18 to 24 inches in width, and used chiefly in the clothing trade. A description of the goods, together with a statement of the evidence, will be found in the report of the decision of the circuit court. See 65 Fed. 788.

Stephen G. Clark, for appellants.

James T. Van Rensselaer, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The board of general appraisers had before it a number of importations of jute fabrics, claimed by the importers to be burlaps, and after taking a great deal of testimony as to the character, manufacture, and uses of the goods, and as to the meaning in commerce of the words "burlaps," "canvas," and "paddings," delivered a long and carefully considered decision. In that decision they held that the articles before them, represented by some 30 different samples, were burlaps, and dutiable as such under the act of 1890. An appeal being taken, that decision of the board of general appraisers was affirmed by the circuit court in the Southern district of New York (In Re White, 53 Fed. 787), the court holding that there being conflicting evidence before the board as to whether the articles were commercially burlaps or not, its decision on such evidence would not be disturbed. Subsequently, the goods now before the court, represented by four samples, came before the board upon appeal from the collector; the importers claiming that they, too, should be classified as burlaps. The board held that they were not burlaps, and referred for a statement of the facts involved to their earlier decision, returning in this case the evidence taken in the former one. Except for the fact that the

articles in this case are composed wholly or in part of flax, and are not, perhaps, quite as coarse, the fabric containing more threads to the square inch, there is no difference apparent between the respective importations.

The appellants contend that the board was in error in its finding, apparently on the assumption that it differentiated these importations from the earlier ones because of their material, and refers to the statute (paragraph 364) which provides for duty on "burlaps, not exceeding sixty inches in width, of flax, jute or hemp, or of which flax, jute or hemp, or either of them, shall be the component material of chief value," as sufficient authority for the proposition that burlaps may be made of flax, jute, or hemp. This is a sound argument, but it does not apply, for there is nothing to show that the board decided this case against the importers on any theory that burlaps could only be made of jute. Indeed, a reference to the board's decision in the earlier case shows conclusively that they recognized the fact that there were burlaps of flax and hemp, as well as of jute. The relative coarseness or fineness of the weave is, as all the evidence shows, an important element in determining whether or no an article is burlaps. There was great conflict in the testimony before the board as to what degree of coarseness was essential to constitute burlaps, and, upon that conflicting testimony, the board held that these articles were not burlaps. A similar conflict exists in the testimony taken in the circuit court, and its conclusions ought not to be disturbed. The decision of the circuit court is affirmed.

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#### KLEEBERG v. UNITED STATES.

(Circuit Court, S. D. New York. February 20, 1896.)

No. 2,185.

#### CUSTOMS DUTIES—CLASSIFICATION—INSERTING.

"Insertions" or "inserting," of silk, are dutiable at 45 per cent. ad valorem, under paragraph 302 of the act of 1894, as "manufactures of silk, or of which silk is the component material of chief value, \* \* \* not specially provided for in this act"; and not as "articles made wholly or in part of lace," under paragraph 301, which imposes a duty of 50 per cent. ad valorem.

This was an appeal by P. Kleeborg from a decision of the board of general appraisers overruling his protest and sustaining the classification of the collector of the merchandise in question, as "silk laces," under paragraph 301 of the act of 1894.

The paragraph above referred to is part of Schedule L—"Silks and Silk Goods"—and, so far as it relates to the present controversy, is as follows: "Laces and articles made wholly or in part of lace \* \* \* composed of silk, or of which silk is the component material of chief value, and beaded silk goods, not specially provided for in this act, fifty per centum ad valorem." The importer protested insisting that the imported articles should have been classified under paragraph 302, which provides for "all manufactures of silk, or of which silk is the component material of chief value, \* \* \* not specially pro-

vided for in this act, forty-five per centum ad valorem." The assistant appraiser on the 26th of October, 1894, reported that the merchandise in question "consists of silk insertings similar to those covered by G. A. decision No. 2,723 and should have been returned at 45% ad valorem under Par. 302, N. T., in harmony therewith." Subsequently the deputy collector addressed to the appraiser the following question: "Are not the silk insertings referred to herein in fact articles made wholly or in part of silk lace?" To which the assistant appraiser answered: "Yes; they are articles made wholly or in part of silk lace." The board found as follows: "We find as matter of fact, from the report and return of the appraiser, and other papers in the case, that the goods in question consist of silk and cotton laces or articles made wholly or in part of lace." The dictionary definitions applicable are as follows: Webster (Internat. Dict.): "Lace. A fabric of fine threads of linen, silk, cotton, etc., often ornamented with figures; a delicate tissue of threads much worn as an ornament of dress." "Insertion or Inserting. That which is set in or inserted, especially a narrow strip of embroidered lace, muslin, or cambric." Stormonth: "Lace. A fine kind of net work texture or trimming." "Insertion or Inserting. A kind of lace trimming." Century: "Lace. A fabric of fine threads of linen, silk, or cotton, whether twisted or plaited together or worked like embroidery, or made by a combination of these processes, or by machinery." "Insertion or Inserting. A band of lace or other ornamental material inserted in a plain fabric for decorative purposes. Such bands are often made with both edges alike and with a certain amount of plain stuff on either side, to allow them to be sewed on strongly." No testimony was presented by the importer to the board. Eight witnesses have been examined in this court, and their testimony has been returned by the referee together with the testimony in the case of Lahey & Duncan, which is stipulated into the present record. It is probable that, if this testimony had been before the board, they would have reached a different conclusion, for the reason that in two subsequent cases they found with the importer on this issue, and this class of merchandise is now being passed at 45 per centum.

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

COXE, District Judge (after stating the facts). The testimony taken in this court establishes the following facts: The articles in question are made at Nottingham, England, on a lace machine and are woven into a wide web with a draw thread between each piece; when the web is removed from the machine, dressed and dyed, the draw thread is pulled out leaving the articles in controversy. They are used as trimmings, and are known commercially as "insertings" or "insertions." So far there is no dispute. There is a difference of opinion as to whether they are lace or not, but the testimony of those most competent to speak on the subject—importers and large dealers—is to the effect that the term "lace" has a well-known commercial meaning and that "inserting" is not lace. "Lace," according to these witnesses, is an article having one scalloped edge and one straight edge; inserting has two straight edges and is thus commercially distinguished from lace. This designation differs from the dictionary definitions of lace, the latter clearly including the articles in controversy. But in tariff law the commercial meaning must take precedence.

Indeed, the proposition that these insertings are not laces was not seriously disputed at the argument, the principal contention being that they are "articles made wholly or in part of lace." The difficulty with this theory is clearly stated by the board in an opinion

filed about a fortnight after the decision of the case in hand. They say:

"We detect no force in the contention that insertings are articles 'made wholly or in part of lace.' It is not necessary to inquire what constitutes lace; that question has been passed upon by the courts. It is sufficient to observe that lace is a completed article or fabric made of threads, and that 'inserting' is also a completed article made of threads. As insertings are made of threads they are not 'articles made wholly or in part of lace,' because lace is not thread but a fabric composed of thread."

It is not perceived how the force of this reasoning can be avoided. Starting with the proposition that inserting is not lace, how can it be maintained that it is made of lace? How can a lace article be made without lace? If the mind be once clearly imbued with the idea that in tariff nomenclature "inserting" and "lace" are two totally distinct fabrics, it will follow as a necessary conclusion that lace articles can no more be made of insertings than of burlaps. The fact that lace would have been produced had the process of manufacture stopped at an earlier stage is not material. It did not stop there; it continued until inserting was produced. In order to make lace articles one must have lace to start with.

The decision of the board of general appraisers is reversed.

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#### WOOD et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. February 18, 1896.)

1. CUSTOMS DUTIES—VALUATION OF FOREIGN COIN—AUTHORITY OF SECRETARY OF TREASURY.

The statutes directing the secretary of the treasury to proclaim the values of foreign coin as expressed in the money of account of the United States (Rev. St. § 3564; 26 Stat. 624) do not require the secretary to take the valuation of such foreign coin as established by proclamation at the date of the entry, rather than at the date of exportation, in the estimate of the values of imported merchandise. And the secretary's proclamation of July 1, 1891, and the corresponding regulations of 1892, changing the time from the former to the latter date, are valid. Rev. St. §§ 251, 2803. *Heinemann v. Arthur's Ex'rs*, 7 Sup. Ct. 446, 120 U. S. 82, distinguished.

2. SAME—JURISDICTION OF BOARD OF GENERAL APPRAISERS.

The board of general appraisers has jurisdiction to review the action of the collector in regard to the date at which the value of foreign coin is to be estimated in determining dutiable value. *U. S. v. Klingleberg*, 14 Sup. Ct. 790, 153 U. S. 93, distinguished.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Everit Brown, for appellants.

Wallace Macfarlane, U. S. Dist. Atty.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. The facts in the case are undisputed. Wood & Payson exported from Russia 513 bales of Donskoi wool, of the third class, upon which the proper rate of duty under the tariff act of October 1, 1890, was 32 per cent. ad valorem. The other facts are succinctly stated by the board of general appraisers as follows: