

ered figures. The case of Field's Appeal, 50 Fed. 908, affirmed by the circuit court of appeals (4 C. C. A. 371, 54 Fed. 367), seems to be controlling upon the facts herein shown. It is true, the local appraiser states that the goods are unlike those passed upon by the court in said case; but in the absence of any evidence that such difference would remove them from the classification there adopted, and in view of the finding of the board of general appraisers that the article is drapery net, and of the discussion by the court in said case as to articles apparently of the same general character, and of its decision thereon, and of the acquiescence of the treasury department therein, I think the article should have been assessed at 50 per cent. ad valorem, under paragraph 414 of the act of 1890, as manufactures of silk, or of which silk is the component material of chief value, not specially provided for. The decision of the board of general appraisers is affirmed.

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UNITED STATES v. SCHWARTZ.

(Circuit Court, S. D. New York. May 22, 1896.)

No. 2,248.

CUSTOMS DUTIES—CLASSIFICATION—TOYS.

Hollow papier-maché rabbits for holding candy, not shown to be universally known in commerce as "toys," but which are chiefly used for the amusement of children, are dutiable as toys, under paragraph 321 of the act of 1894, and not as manufactures of papier-maché, under paragraph 353.

This was an application by the United States for a review of a decision of the board of general appraisers reversing the action of the collector in classifying for duty certain merchandise.

Henry D. Sedgwick, Asst. U. S. Atty.

Albert Comstock (of Comstock & Brown), for importer.

TOWNSEND, District Judge. The article in question is a rabbit, made of papier-maché, with a removable head, and capable of holding candy. The collector assessed it for duty as a manufacture of papier-maché, under paragraph 353 of the act of 1894. The importer protested, claiming that the article was dutiable as a toy, under paragraph 321 of said act, and the board of general appraisers sustained the protest.

The evidence for the importer fails to show that these articles are universally commercially designated as "toys"; but the evidence also shows that articles of this character are recognized as belonging to the class known as "toys." The distinction is that, while the importer has failed to prove commercial classification as toys, yet all the witnesses practically agree that these articles are used generally and chiefly for the amusement of children. In that

event I think the article is a "toy," within the decisions in *Zeh v. Cadwalader*, 42 Fed. 525, affirmed 151 U. S. 171, 14 Sup. Ct. 288; *Wanamaker v. Cooper*, 69 Fed. 465; and *Maddock v. Magone*, 152 U. S. 368, 14 Sup. Ct. 588. The decision of the board of general appraisers is affirmed.

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DE LONG et al. v. UNITED STATES.

(Circuit Court of Appeals, First Circuit. September 16, 1896.)

No. 163.

CUSTOMS DUTIES—CONSTRUCTION OF LAWS—FRESH FISH.

In the tariff act of August, 1894, the free list (paragraph 481) enumerates, "Fish, frozen or packed in ice fresh." The schedule relating to dutiable fish enumerates (paragraph 210), "Herrings, pickled, frozen, or salted, and salt-water fish frozen or packed in ice, one-half of one cent per pound." *Held* that, under the rule of construction requiring each part of a law to be made effective if possible, the paragraph in the free list must be held as generic, and paragraph 210 as exceptional or specific; consequently salt water fish, fresh and packed in ice, are dutiable under paragraph 210. 70 Fed. 775, affirmed.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a petition by Edward R. De Long and Joseph Bennett, doing business as De Long & Seaman, for a review of the decision of the board of general appraisers affirming the action of the collector of the port of Boston in assessing duties on certain fresh mackerel packed in ice, imported by them. The circuit court affirmed the action of the board of appraisers (70 Fed. 775), and the petitioners have appealed.

The findings of fact by the board of general appraisers were as follows:

We find: (1) That Messrs. De Long & Seaman imported into the port of Boston, October 5, 1894, certain fish, upon which duty was assessed at one-half cent per pound under paragraph 210, Act Aug. 28, 1894, as salt-water fish packed in ice, and which the importers claim are entitled to free entry, under the provisions of paragraph 481 of said act, as fish, frozen or packed in ice fresh. (2) That said fish were fresh mackerel, packed in ice, and were salt-water fish. It is matter of common knowledge that many tons of fresh fish caught in the fresh waters of British America are annually imported into the United States frozen or packed in ice. The provisions of paragraph 481 permit the free entry of the same, while paragraph 210 covers salt-water fish imported in like condition; and it is our opinion that both paragraphs are effective and applicable to the respective species of fish, and that such was the intent of congress, and the correct construction of the whole act.

In the circuit court it was agreed by the parties that, in addition to the findings of fact by the board of appraisers and the other facts in the record, the following propositions of fact may be taken as true:

(1) Only fresh fish are ever frozen or packed in ice. (2) No fish are either frozen or packed in ice except when they are fresh. (3) Both freezing and packing are processes of which the purpose is to preserve the fish; freezing being employed in winter, and packing in ice in summer. (4) The foregoing