

tary of the treasury" in the future, and prior regulations would not apply. None had been made under this paragraph at the time of these importations, and therefore none applicable were then in force. The failure to make them would not cut off nor suspend the right, but would leave none to be complied with. *U. S. v. Mercadante*, 18 C. C. A. 431, 72 Fed. 46, and *Dominici v. U. S.*, 72 Fed. 46.

Decision of appraisers reversed in two former cases, and affirmed in the latter.

MORRISON et al. v. UNITED STATES.

WOLFF et al. v. SAME.

(Circuit Court, S. D. New York. December 9, 1896.)

1. CUSTOMS DUTIES—CLASSIFICATION—GLASS BEADS.

Glass beads, strung, and glass ornaments, similar to beads, but without holes for stringing, are dutiable as manufactures of glass, under paragraph 108 of the tariff act of 1890, and not under paragraph 445, as glass beads, loose, unthreaded or unstrung.

2. SAME—IMITATIONS OF PEARLS.

Imitations of pearls, consisting of hollow glass beads with wax inserted, giving an appearance like pearls, strung, and not capable of being set, are dutiable as manufactures of glass, under paragraph 108 of the tariff act of 1890, and not under paragraph 454, as "imitations of precious stones, composed of paste or glass, not set."

These were appeals by Morrison & Son and Wolff & Co. from a decision of the board of general appraisers, sustaining the classification, by the collector of the port of New York, of certain glass ornaments imported by the appellants.

Comstock & Brown, for plaintiffs.

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

WHEELER, District Judge. The tariff act of 1890, by paragraph 108, provides for a duty of 60 per cent. on "thin blown glass * * * and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for"; by paragraph 445 for a duty of 10 per cent. on "glass beads, loose, unthreaded or unstrung"; and by paragraph 454 for a duty of 10 per cent. on "imitations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set." There is no mention of beads strung. These importations are of variegated glass beads, strung; similar glass ornaments without holes for stringing; black glass beads, sometimes called "nail heads," unstrung; and hollow glass beads, with wax inserted, giving an appearance like pearl, strung. They have all been classified as manufactures of glass, under paragraph 108, against protests referring to paragraphs 445 and 454. The classification of the black glass beads unstrung is, upon the evidence, conceded to be erroneous. Beads unstrung are impliedly beads capable of being strung; and the ornaments without holes for stringing are not such. The variegated beads strung are manufactures of glass, and, as they were not specially provided for,

were properly classified. The wax beads, although they may be imitations of pearls, as precious stones, are not composed of glass or paste, but glass and wax, and the wax is what, if anything, constitutes the imitation. And imitations of precious stones, unset, are impliedly imitations capable of being set, which these beads are not. Decision of general appraisers reversed as to black glass beads, and affirmed as to the residue.

FRANKENBURG v. UNITED STATES.

(Circuit Court, S. D. New York. December 5, 1896.)

No. 1,264.

CUSTOMS DUTIES—NOTICE OF PROTEST.

When the practice at the customhouse permits the giving of notice of a protest by leaving it in a certain office, and such a notice is left in the proper place, after business hours, on the last day but one for giving notice, the last day being a holiday, on which the customhouse is closed by special order, though not by law, and the notice remains in the office during such last day, it is in time, and entitled to consideration.

This was an appeal by H. E. Frankenburg from a decision of the board of general appraisers sustaining the refusal of the collector of the port of New York to entertain a protest against the liquidation of duties on certain merchandise, imported by the appellant, on the ground that notice of such protest was given too late.

Stephen G. Clarke, for plaintiff.

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

WHEELER, District Judge. The statute requires an appellant to "give notice in writing to the collector," within 10 days. 26 Stat. 137, § 14. By understanding and practice, this notice is not given to the collector in person, but is left with a clerk or on his desk, where it will be found by him, in a room of the customhouse. In this case the duties were liquidated on October 29th. On November 7th, after business hours and departure of the clerk, a notice was left on his desk. On the 8th, which was election day, the customhouse was, at the request of the collector, closed for all but special purposes, not concerning this, by direction of the secretary of the treasury, and this clerk was not there. On the 9th he found the notice there, in the proper place, and stamped it as received then. The appeal was rejected, because this was thought to be too late. As the collector consented to take notice in that way, notice given in that way would, if in time, be sufficient. The 8th was in time, and the notice was there. That was not a legal holiday, on which the customhouse would, as on Sunday, be closed for this purpose, and so not a day on which people would be bound to take any notice that it would be so closed. This closing was, in effect, as if the collector had closed the customhouse, or this clerk had stayed away, for any purpose of his own. The appellant had no occasion to go there on the 8th to leave the notice, for it was already there; and he had a right to act with refer-