

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-

ence to it as there. Had he waited till the 8th, and failed to leave it, because the customhouse was so closed, a different question might be presented. Now, the appellant appears to have been in ample time, and entitled to have his appeal considered. Decision reversed.

UNITED STATES v. SCHULZE et al.

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

CUSTOMS DUTIES—CLASSIFICATION—ANTITOXIN.

Antitoxin is dutiable, under paragraph 59 of the tariff act of 1894, as a medicinal preparation not specially provided for, and is not entitled to free entry, under paragraph 664, as vaccine virus.

This was an appeal by the government from a decision of the board of general appraisers, reversing the decision of the collector of the port of New York as to the classification of certain merchandise, imported by Schulze, Berge & Koechl. The merchandise was invoiced as "Blood Serum—Diphtheria Remedy," and it was shown to be an agent for the prevention and cure of diphtheria, produced from the blood of horses by treatment with the diphtheria poison. The collector assessed a duty of 25 per cent. ad valorem, as upon a medicinal preparation. The importers claimed exemption from duty, directly or by similitude, or component of chief value, under paragraphs 367, 404, 470, or 664, Act 1894.

James T. Van Rensselaer, Asst. U. S. Atty.
Comstock & Brown, for defendant.

WHEELER, District Judge. The tariff act of 1894 places a duty, by paragraph 59, on "all medicinal preparations not specially provided for," and by paragraph 664 puts on the free list "vaccine virus." This importation is of antitoxin. It was classified under the former paragraph, and the protest raised the question whether it should be free under the latter. Antitoxin is a different thing from vaccine virus. It comes from a different source, is used for a different although somewhat similar purpose, and operates in a different way. The former seems to cure disease, and the latter introduces a milder form to obviate what would be worse. The latter has such a well-defined meaning, applicable to one thing, that, against a first impression, it does not now seem capable of covering, by any implication, such a different thing as the former. Decision of general appraisers reversed.

STERN et al. v. UNITED STATES.

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

CUSTOMS DUTIES—RELIQUIDATION—APPEAL.

A reliquidation of duties, pursuant to a decision of the board of general appraisers, does not extend the time for taking an appeal from the liquidation, nor give a new right of appeal.