

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.

This was an appeal by Stern, Leerberger & Stern from a decision of the board of general appraisers, sustaining the refusal of the collector of the port of New York to entertain the protest of the importers against a reliquidation of duties. The importations were made at various dates in 1891 and 1892. Protests were made against the collector's liquidaion of duties on these importations, and, pursuant to specific decisions of the board of general appraisers, reliquidations were made, in all the cases, on January 11, 1894. A protest against such reliquidation was filed by the importers on January 20, 1894, which the collector refused to entertain, because filed too late, claiming that a reliquidation, pursuant to a decision of the general appraisers, does not extend the time for lodging a protest.

Stephen G. Clarke, for plaintiffs.

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

WHEELER, District Judge. These importers appear to have got such a decision upon an appeal to the board of general appraisers that they did not apply to the circuit court for a review, but left it for transmission to the collector. Upon reliquidation this second appeal has been taken. If this appeal includes anything not covered by the former appeal, it is, as to that, altogether too late. If not, it was ended by the disposition made of that, which the statute makes absolutely conclusive. 26 Stat. 137, 138, § 14. The case of Robertson v. Downing, 127 U. S. 607, 8 Sup. Ct. 1328, relied upon for the importers, arose under a different statute, and involved no question as to a second appeal from a collector's decision, but only, in this respect, to the time of taking the first. Decision of appraisers affirmed.

UNITED STATES v. PARK et al.

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

No. 1,766.

CUSTOMS DUTIES—DEFICIENCY IN QUANTITY.

A report by the assistant appraiser that, upon examination of certain imported merchandise, he found a deficiency in the quantity called for by the invoice, is proper and sufficient evidence on which to base an allowance for such deficiency in estimating the duties.

This was an appeal by the government from a decision of the board of general appraisers which reversed the decision of the collector of the port of New York, refusing to make an allowance for an alleged deficiency in a quantity of cigars imported by Park & Tilford, and ordered a reliquidation. The vessel's manifest, the bill of lading, invoice, and entry called for "8 cases, 31,000 cigars." The assistant appraiser, who examined the goods, returned on the invoice: "In case No. 3,991 I find 1,100 cigars short, as noted. Case not full; in bad condition." The collector, however, on the