of the United States that no change should be made in the form of the existing stipulation. It will be changed hereafter if found desirable.

The instructions to the marshal in the circular letters above referred to, and the consequent demands made upon proctors for deposits of money, or for additional bonds, has already worked injuriously in the greatly increased proportion of suits in which exemption from costs is secured under the act of July 20, 1892, providing for relief on filing an affidavit of inability (2 Supp. Rev. St. c. 209, p. 41). This act provides that "such applicant shall not be required to prepay fees or costs, or give security therefor; that the officers of court shall serve all process and perform all duties * * * as in other cases;" and finally, that "the United States shall not be liable for any of the costs thus incurred." If, in that class of cases such expenses as above referred to could now be charged against the United States, this express provision would be nullified. Under the previous practice the marshal did not incur any of these outside expenses, except at the charge of the parties, though he rendered all official services gratuitously.

For the above reasons I must decline the application of the marshal to order further security to be given or deposit made; and the circumstances being sufficient to warrant an order to sell the tug, an order to that effect may be entered.

UNITED STATES v. JAFFRAY et al.

(Circuit Court of Appeals, Second Circuit. January 13, 1897.)

TARIFF ACT 1890—VELVET RIBBONS—DUTY.

Velvet ribbons are dutiable as "manufactures of silk," under paragraph 414, Act 1890, and not as "velvets, plushes," etc., under paragraph 411.

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

Wallace Macfarlane, U. S. Atty., and Jas. T. Van Rensselaer, Asst. U. S. Atty.

Chas. Curie, David Ives Mackie, and W. Wickham Smith, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. Upon the evidence in the record, we are of the opinion that the importations in controversy—velvet ribbons—are not "velvets, plushes, or other pile fabrics," within the meaning of paragraph 411 of the tariff act of October 1, 1890. Velvet ribbons are without a selvedge, and, according to the commercial understanding which prevailed at the date of the passage of the act, were excluded, for that reason, from the category of the paragraph. They were therefore dutiable under paragraph 414, as "manufactures of silk, or of which silk is the component material of chief value, not specially provided for in this act." The adjudication of the circuit court is therefore affirmed.

N. K. FAIRBANK CO. v. R. W. BELL MANUF'G CO.

(Circuit Court of Appeals, Second Circuit. December 8, 1896.)

1. UNFAIR COMPETITION IN TRADE—SIMULATION OF PACKAGES.
In applying the test recognized by the authorities, namely, the likelihood of deception of an "ordinary purchaser exercising ordinary care," regard must be had to the class of persons who purchase the particular article for consumption, and to the circumstances ordinarily attending their purchase.

2. SAME—DECEPTION OF CONSUMER.
In determining whether packages are so dressed up as to be calculated to deceive purchasers, equity regards the consumer as well as the middleman, for it is to him, more than to the jobber or wholesale purchaser, that the various indicia of origin appeal; and the courts will not tolerate a deception devised to delude the consuming purchaser by simulating some well-known and popular style of package.

3. SAME—INTENT TO SIMULATE.
Even though the court is satisfied that a new form of package was devised by defendant, with an intent to simulate complainant's package, the continued use of such package will not be enjoined unless the similarity is of a character to convey a false impression to the public mind, and to mislead and deceive the ordinary purchaser.

4. SAME—INFERENCE FROM CHANGES PRODUCING SIMILITUDE.
Complainant, having begun to manufacture soap powder having a new ingredient giving it a yellow color, devised a new, distinctive, and attractive package of a yellow color, bearing the words "Gold Dust" and "Washing Powder," together with the maker's name, and with numerous indicia and directions upon the various panels. After complainant had sold soap powders in this form for two or three years, and expended large sums in advertising it, defendant company, which had been selling washing powders in small, red packages, also began manufacturing a yellow washing powder, which it styled "Buffalo Powder." This powder it put up in packages of the same size as complainant's, using a yellow wrapper of the same shade, and making numerous changes in its indicia, all of which constituted an approach to those used by complainant, though avoiding exact similarity. *Held* that, notwithstanding the fact that the word "Buffalo," together with defendant's name, on the packages, was distinctive, the changes were manifestly made with an intent to simulate complainant's packages, and to enable retail dealers to pass them off for complainant's; and, it appearing that this, in fact, was often done, that an injunction should issue. 71 Fed. 295, reversed.

5. SAME—FORM OF INJUNCTION.
Where defendant's packages resembled complainant's in numerous particulars besides those of size, color, and form, *held*, that an injunction should be granted restraining the sale of that particular form of package, or any other form which should, by reason of the collocation of size, shape, color, lettering, spacing, and ornamentation, present a general appearance as closely resembling complainant's packages as the one complained of; but that a clause should be added to the effect that the injunction should not be construed as preventing the sale of packages of the size, weight, shape, or color of complainant's package, provided that they were so differentiated in general appearance as not to be calculated to deceive the ordinary purchaser.

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

This is an appeal from a final decree of the circuit court of the Northern district of New York dismissing the bill of complaint. The suit was brought by the complainant, an Illinois corporation, against the defendant, a New York corporation, to restrain unfair competition in business. The subject of complaint is the use by defendant in its business of what is alleged to be a fraudulent form of package.