

having been fully complied with, and they having been returned by the appraiser as the product of this country, they should have been allowed to come in free. Decision reversed.

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BECK v. UNITED STATES.

(Circuit Court, S. D. New York. December 9, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—THOROUGHBRED HORSES.

In order that a horse of pure breed, imported specially for breeding purposes, should be entitled to free entry, under paragraph 482 of the act of 1890, it was requisite that proofs of pedigree and identity, as prescribed by the second proviso to that paragraph, should be furnished to the customs officers; and, if this were not done, it was proper to assess the appropriate duty, and such assessment could not thereafter be disturbed by the court on proofs of pedigree, etc., produced before it.

This was an appeal by Leopold Beck from a decision of the board of general appraisers as to the classification for duty of a horse imported by him.

Walter Large, for plaintiff.

Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. Paragraph 482 of the tariff act of 1890 provides:

"Any animal imported specially for breeding purposes shall be admitted free: provided, that no such animal shall be admitted free unless pure bred of a recognized breed, and duly registered in the book of record established for that breed: and provided further, that certificate of such record and of the pedigree of such animal shall be produced and submitted to the customs officer, duly authenticated by the proper custodian of such book of record, together with the affidavit of the owner, agent or importer, that such animal is the identical animal described in said certificate of record and pedigree."

One horse is claimed to be free under that paragraph. The owner did not, however, at any time when the matter was before the customs officers, produce the proof required by the second provision of that statute. The horse could not be free without that proof. The assessment of duty was, therefore, correct when made. Some proof has since been taken in this court, but that does not show that the assessment was not correct when made. This court, sitting on appeal, is not a customs officer, to whom the evidence must, by the expressed provision of the statute, be submitted; and can only decide whether the proper proof was produced before the customs officers, as the law required. It was not, and the decision of the board was correct. Decision affirmed.

## HERMANN et al. v. UNITED STATES.

(Circuit Court, S. D. New York. December 9, 1897.)

## 1. CUSTOMS DUTIES—CONCLUSIVENESS OF APPRAISEMENT.

While an appraisement is final and not reviewable by the courts, yet the alleged inclusion of something not properly a part of market value, and not dutiable at all, may be challenged by protest, and re-examined by the courts on appeal. *Oberteuffer v. Robertson*, 6 Sup. Ct. 462, 116 U. S. 499, followed.

## 2. SAME—COMMISSIONS.

Commissions, constituting part of the expense of obtaining goods, cannot be added in ascertaining market value.

This was an appeal by Hermann, Sternbach & Co. from a decision of the board of general appraisers in respect to the assessment of duties on certain merchandise.

Stephen G. Clarke, for plaintiffs.

Max J. Kohler, Asst. U. S. Atty.

**WHEELER**, District Judge. The plaintiffs protest that commissions have been added to market value, and that duties have been assessed upon them as such. Question is made whether this court has, by appeal, any jurisdiction of this matter. That the appraisement of the goods is final and conclusive, and cannot be re-examined here, seems to be quite plain: but that the claimed inclusion of something not properly a part of market value, and not dutiable at all, may be challenged by a protest and re-examined here on appeal, seems equally conclusive. *Oberteuffer v. Robertson*, 116 U. S. 499, 6 Sup. Ct. 462. That the actual value of the goods themselves in the wholesale markets of the country from whence imported is the dutiable value, without reference to the cost, or expenses of purchasing or obtaining them there, seems also to be well settled by that case.

The question here is whether commissions, as such, as a part of the expense of obtaining the goods, have been added to, or made an element of, that, in arriving at the amount on which the duties have been assessed. Commissions were specified in the invoices. The testimony of those concerned in making the invoices has been somewhat considered, not for the purpose of any reappraisement, but to ascertain whether the commissions were, in fact, omitted. They do not appear to have been entered as a part of the market value of the goods themselves, but as an element in the cost of the purchase. They were omitted by the appraiser, and in part restored by direction of the board on each of two of the invoices to "add to entered value amount improperly deducted as commission, 2½%," and were included by similar directions, or by computations upon them in others.

The opinion of the board, by Wilkinson, general appraiser, says:

"The protest is against the assessment of duty by the collector on the valuation of certain worsted goods as found by a board of general appraisers. The appellants assert that duty was assessed upon 'a portion of the nondutiable commission,' and claim that only the value of the goods, as entered, is subject to duty. The importers appealed from the valuation of the local appraiser