

Max J. Kohler, Asst. U. S. Atty.  
Albert Comstock, for appellees.

WHEELER, District Judge. Paragraph 216 of the tariff act of 1894 provides for a duty on "oranges, lemons and limes in packages at the rate of eight cents per cubic foot of capacity; in bulk, one dollar and fifty cents per one thousand; and in addition thereto, a duty of thirty per centum ad valorem upon the boxes, or barrels, containing such oranges, lemons, or limes; provided, that the thin wood, so called, comprising the sides, tops and bottoms of orange and lemon boxes of the growth and manufacture of the United States, exported as orange and lemon box shooks, may be reimported in completed form filled with oranges and lemons by the payment of duty at one-half the rate imposed on similar boxes of entirely foreign growth and manufacture." The board of appraisers found, "as a matter of incontroverted fact, that all the boxes returned on the invoices by the local appraiser as being 'thin wood American manufacture' are orange or lemon boxes, with thin wood composing the sides, tops, and bottoms, of the growth and manufacture of the United States, which were exported as orange or lemon box shooks, and were reimported in completed form, filled with either oranges or lemons"; and sustained the protest against duty at full rate on similar boxes of entirely foreign growth and manufacture, and assessed the duty at one-half rate, according to the proviso of that section.

The government claims the full duty, because regulations of the treasury department were not followed to prove the fact of American growth and manufacture; but this duty is fixed expressly by the statute as to all such shooks, without any reference to regulations. This statute could not be changed so as to apply to these shooks, which are particularly provided for, without infringing upon the very statute itself. *Morrill v. Jones*, 106 U. S. 466, 1 Sup. Ct. 423.

Decision affirmed.

---

DE LUZE v. UNITED STATES.

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

No. 2,297.

CUSTOMS DUTIES—CLASSIFICATION—CHAMPAGNE BOTTLES.

Champagne bottles, containing champagne, dutiable under paragraph 243 of the act of 1894, were not separately dutiable under paragraph 88, but were free of duty.

This was an appeal by De Luze from a decision of the board of general appraisers in respect to the classification of champagne bottles imported filled.

W. Wickham Smith, for plaintiff.  
James T. Van Rensselaer, Asst. U. S. Atty.

WHEELER, District Judge. The tariff act of 1894 provided for a duty on—

"243. Champagne, and all other sparkling wines in bottles, containing each not more than one quart, and more than one pint, eight dollars per dozen," etc.

And on—

"88. Green and colored molded or pressed and flint or lime glass bottles, holding more than one pint, and demijohns and carboys, covered or uncovered, whether filled or unfilled, and whether their contents be dutiable or free, and other molded or pressed green and colored and flint or lime bottle glassware not specially provided for in this act, three-fourths of one cent per pound," etc.

The plaintiff imported champagne in bottles, which is stipulated to have been correctly assessed under paragraph 243, and that the bottles have been correctly assessed under paragraph 88, unless they were free, as protested. The tariff act of 1870 provided a duty of three cents for each bottle in which wines, brandy, and other spirituous liquors were imported. *De Bary v. Arthur*, 93 U. S. 420. That provision was continued in the tariff act of 1883, and dropped from the tariff act of 1890 without any new provision in its place. Laying a duty on champagne in bottles by the dozen would seem to preclude the application of any general duty on the champagne bottles, and the dropping of that specific provision for a duty on bottles seems to imply that thereafter no duty on champagne bottles was to be assessed. Decision of general appraisers reversed.

---

SEHLBACH et al. v. UNITED STATES.

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

CUSTOMS DUTIES—CLASSIFICATION—ALIZARINE BLUE.

Alizarine blue, of a new form, not known at the time of the passage of the act of 1890, was nevertheless dutiable as such, under paragraph 478, and not as a coal-tar color, under paragraph 18.

This was an appeal by Sehlbach & Co. from a decision of the board of general appraisers as to the classification for duty of certain imported merchandise.

Edward Hartley, for plaintiffs.

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

WHEELER, District Judge. This is an alizarine blue. It was assessed as a coal-tar color, under paragraph 18 of the tariff act of 1890, against a protest that it should be assessed under paragraph 478, which provides specially for "alizarine blue." The proof shows that this particular form of alizarine blue was not known in commerce at the time of the passage of that tariff act, but it is of the same class of colors, although made in a different way. It well falls within the same description. *Pickhardt v. Merritt*, 132 U. S. 252, 10 Sup. Ct. 80. Decision reversed.