

## SMITH et al. v. UNITED STATES.

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

No. 2,357.

## CUSTOMS DUTIES—CLASSIFICATION—CROCUS.

Crocus, which is a color, but is most largely used as a polishing powder, was dutiable as a color, under paragraph 61 of the act of 1890, under the words, "all other paints and colors, whether dry or mixed," and not under paragraph 133 and section 5, as dross residuum from burnt pyrites, or as a nonenumerated article under section 4.

This was an appeal by Smith & Co. from a decision of the board of general appraisers as to the classification for duty of certain imported merchandise. The importation was described by the board of general appraisers as follows:

"The merchandise is crocus. It was assessed for duty as a color at 25 per cent., under paragraph 61, Act Oct. 1890, and is claimed to be dutiable either at 75 cents per ton, under paragraph 133 and section 5, as dross or residuum from burnt pyrites, or at 20 per cent., as a nonenumerated article, under section 4. It appears from the testimony that the residuum from burnt pyrites is valued at about 6 or 7 to 16 shillings a ton. By the application of labor, and at an expense of 20 or 30 shillings a ton, this residuum is converted into crocus, a new article, having a distinctive name, character, and use. It also appears from the evidence introduced by the importer that crocus is used to the extent of about 80 per cent. as a polishing powder and 20 per cent. as a color."

The board further said:

"Both claims are made under the clauses for nonenumerated articles. If it were necessary to apply the similitude clause, it would seem that crocus should be classified as a color, rather than as the residuum of burnt pyrites. But, as it is suitable for use, and is largely used, as a color, there is no necessity to apply the similitude clause. We find: (1) The article is a polishing product; (2) it is a color. As colors are enumerated, we overrule the claim that the merchandise is dutiable under section 4 or section 5."

Everit Brown, for appellants.

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

WHEELER, District Judge. This article—crocus—is found to be, and in fact is, a color, although it is much more largely used as a polishing powder. Paragraph 61 of the act of 1890, which comes after several paragraphs as to colors, lays a duty on "all other paints and colors, whether dry or mixed," etc., without reference to being any otherwise provided for; and this article is not by name otherwise provided for. This duty is therefore directly applied to this article, without regard to its other uses. Decision affirmed.

## FLEMING CEMENT &amp; BRICK CO. v. UNITED STATES.

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

No. 2,320.

## CUSTOMS DUTIES—CLASSIFICATION—BRICK.

Magnesic brick, which are not fire brick, were dutiable as brick, under paragraph 76 of the act of 1894, and not as "magnesic fire brick," under paragraph 77.

This was an appeal by the Fleming Cement & Brick Company from a decision of the board of general appraisers in regard to the classification for duty of certain brick imported by them.

Stephen G. Clarke, for appellant.

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

WHEELER, District Judge. The tariff act of 1894 provides for a duty on "(77) magnesian fire brick." These are magnesian brick, but are not fire brick, and so are not magnesian fire brick, and are not assessable according to the protest under this paragraph. Decision affirmed.

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PARK et al. v. UNITED STATES.

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

No. 2,595.

CUSTOMS DUTIES—CLASSIFICATION—FRUIT JUICE.

Strawberry and raspberry fruit juice, containing no alcohol, was dutiable, under paragraph 247 of the act of 1894, as "other fruit juices, not specially provided for," containing 18 per cent. or less of alcohol.

This was an appeal by Park & Tilford from a decision of the board of general appraisers in respect to the classification for duty of certain merchandise imported by them.

Edward Hartley, for appellants.

Henry D. Sedgwick, Jr., Asst. U. S. Atty.

WHEELER, District Judge. This is strawberry and raspberry fruit juice, containing no alcohol. It was assessed, under paragraph 247 of the act of 1894, which provides for—

"Cherry juice and prune juice, or prune wine, and other fruit juices not specially provided for in this act, containing eighteen per centum, or less, of alcohol, fifty cents per gallon."

This is claimed not to come under this description, because it contains no alcohol, but that it is a nonenumerated manufactured article. No alcohol at all is less than 18 per centum of alcohol, and makes this article come within the division provided for in that paragraph. It is a fruit juice. It contains less than 18 per centum of alcohol. Decision affirmed.

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JACOT et al. v. UNITED STATES.

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

No. 2,476.

CUSTOMS DUTIES—RELIQUIDATION.

Certain goods were imported in 1893, and the duties were liquidated and paid. One case of goods of the same invoice went to a bonded warehouse, and was withdrawn for consumption, under the act of 1894, and the duties on that case were reassessed at a reduced rate, under the latter act. The