

"Par. 133. Green and colored glass bottles, vials, demijohns, and carboys, pickle or preserve jars, and other plain, moulded, or pressed green and colored bottle-glass, not cut, engraved, or painted, and not specially enumerated or provided for in this act, one cent per pound; if filled, and not otherwise in this act provided for, said articles shall pay thirty per centum ad valorem in addition to the duty on the contents.

"Par. 134. Flint and lime glass bottles and vials, and other plain, moulded, or pressed flint or lime glassware, not specially enumerated or provided for in this act, forty per centum ad valorem; if filled, and not otherwise in this act provided for, said articles shall pay, exclusive of contents, forty per centum ad valorem in addition to the duty on the contents."

"Par. 136. All glass bottles and decanters, and other like vessels of glass, shall, if filled, pay the same rates of duty, in addition to any duty chargeable on the contents, as if not filled, except as in this act otherwise specially provided for."

Comparison of these paragraphs with paragraph 88 of the act of 1894 will show quite clearly how the provisions as to filled bottles have been modified. The decision of the circuit court is affirmed.

KOECHL v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. December 7, 1898.)

No. 3.

1. CUSTOMS DUTIES—CLASSIFICATION—MEDICAL PREPARATIONS.

An importation of antipyrine which falls within the terms of both paragraph 19 of the tariff law of 1890 as a product of coal-tar, not a color or dye, and of paragraph 74 as a medicinal preparation of which alcohol is a component part, or in the preparation of which alcohol is used, is dutiable under paragraph 74, as being more specific.¹

2. SAME—CONSTRUCTION OF STATUTE.

Paragraph 74 of the tariff law of 1890, which covers "all medicinal preparations * * * of which alcohol is a component part or in the preparation of which alcohol is used, not specially provided for," includes all such preparations in the manufacture of which alcohol is used in any way, though it may be broken up to form other ingredients.

3. SAME—PROTESTS ON ALTERNATIVE GROUNDS—ESTOPPEL.

An importer may protest against a classification on alternative grounds, where the proper classification is doubtful, and the fact that his protest is sustained on one of the grounds does not estop him from appealing on the ground that the other states the correct classification.

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

This is an appeal by the importer from a decision of the circuit court sustaining a decision of the board of general appraisers which sustained the action of the collector in classifying for duty certain imported merchandise.

Edward Hartley, for appellant.

J. T. Van Rensselaer, for the United States.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

¹ For interpretation of commercial and trade terms in tariff laws, see note to *Dennison Mfg. Co. v. U. S.*, 18 C. C. A. 545.

PER CURIAM. The question on this appeal is whether certain importations of antipyrine should have been classified for duty under paragraph 19 of the tariff act of October 1, 1890, or under paragraph 74 of that act. Paragraph 19 reads as follows: "All preparations of coal tar, not colors or dyes, not especially provided for in this act, twenty per cent. ad valorem." Paragraph 74 reads as follows: "All medicinal preparations, including medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not especially provided for in this act, fifty cents per pound." The case is one for the application of the familiar rule of tariff law that where a dutiable article falls within the terms of two enumerations, one of which is the more general and the other the more specific, the specific, and not the general, controls, and prescribes the duty. If one of the foregoing paragraphs had enumerated "all preparations of coal tar," and the other "all medicinal preparations," the question would be one of more difficulty than it now seems to be. But paragraph 19 enumerates an entire class of articles with the two exceptions of colors and dyes; while paragraph 74 enumerates a single variety of a class,—those medicinal preparations only in the preparation of which alcohol is used. The enumeration by class being general, and that by species being more definite, and the importations in question being exactly described by paragraph 74, that paragraph fixes the duty.

Our attention has been called to the case of *U. S. v. Battle & Co. Chemists Corp.*, 4 C. C. A. 249, 54 Fed. 141, where paragraph 74 was somewhat considered by the court. In that case it was doubtful whether the importation was a medicinal preparation; and, if it was a medicinal preparation, it was prepared with or without the use of alcohol, according to the process preferred by the manufacturer. As it was also a "chemical compound," within the enumeration of paragraph 76 of the act, the court concluded it to be dutiable under that provision. So far as the opinion intimates that paragraph 74 does not apply to medicinal preparations in which alcohol is not used as an ingredient without being broken up, we are unable to concur. Alcohol so used might not be a component part of the preparation; but paragraph 74 includes, not only medicinal preparations of which alcohol is a component part, but also those in the preparation of which it is used, and, as it seems to us, *ex industria* covers all medicinal preparations in the manufacture of which alcohol is used in any way.

In the present case the importers protested against the classification for duty adopted by the collector upon the ground that the article was dutiable under paragraph 74 of the act, or alternatively under paragraph 19. It is insisted for the government that, the importer having prevailed upon the ground that it should have been classified under paragraph 19, he cannot now be heard to insist upon the other ground of protest. There is no merit in this contention. Protests upon alternative grounds are proper, and in many cases the question as to which one of several tariff provisions should control in the classification of an importation is so doubtful that the importer is fully justified in leaving it to the courts. It would impose upon the importer a great hardship to compel him to decide this question himself, when he

is entitled to the benefit of one of several enumerations, but the particular one is to be ascertained by judicial construction. These conclusions lead to a reversal of the decision of the circuit court and of the board of general appraisers.

DINGELSTEDT et al. v. UNITED STATES. UNITED STATES v. DINGELSTEDT et al. SAME v. REISINGER.

(Circuit Court of Appeals, Second Circuit. December 7, 1898.)

Nos. 19, 36, 37.

1. CUSTOMS DUTIES — CONSTRUCTION OF STATUTE — LIMITATION OF GENERAL TERMS.

The phrase, "all articles composed * * * of mineral substances," as used in paragraph 86 of the tariff act of 1894, which is a part of Schedule B, relating to "Earths, Earthenware, and Glassware," and fixes the duty on articles not specially provided for, must be construed, by reason of the collocation of the paragraph in a restricted sense, as applying only to articles composed of mineral substances similar to those enumerated in that schedule.¹

2. SAME—CLASSIFICATION—ARC-LIGHT CARBONS.

Carbon points for arc lights, composed chiefly of lampblack, natural graphite, and carbon products resulting from the distillation of coal, coke, or petroleum and coal tar, in varying proportions, the lampblack being produced by the combustion of either mineral or vegetable substances, are dutiable, under section 3 of the tariff law of 1894, as manufactured articles not provided for, and not under paragraph 86, as articles composed of mineral substances not specially provided for, nor can they be classified under paragraph 443, in the free list, as preparations of coal tar.

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

These causes come here upon cross appeals in the first of them, and upon the importer's appeal in the last of them, from decisions of the circuit court, Southern district of New York (the causes were argued together), reversing decisions of the board of general appraisers (87 Fed. 190), which affirmed decisions of the collector of the port of New York touching the classification for duty of certain imported arc-light carbons.

The relevant provisions of the tariff act of 1894 are:

"40. [Paints, colors, and varnishes.] Black, made from bone, ivory, or vegetable, under whatever name known, including bone black and lampblack, dry or ground in oil or water, twenty per centum ad valorem."

"86. All articles composed of earthen or mineral substances, including lava tips for burners, not specially provided for in this act, if decorated in any manner, forty per centum ad valorem; if not decorated, thirty per centum ad valorem."

"443. Coal tar, crude, and all preparations except medicinal coal-tar preparations and products of coal tar, not colors or dyes, not specially provided for in this act [free]."

"Sec. 3. That there shall be levied, collected and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this

¹ For interpretation of commercial and trade terms in tariff laws, see note to *Dennison Mfg. Co. v. U. S.*, 18 C. C. A. 545.