

and lemons. The question presented arises under paragraph 216 of the tariff act of 1894, which provides a duty on oranges and lemons, and in addition thereto a duty of 30 per cent. upon the boxes or barrels containing them, "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 or 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 collector assessed the importation in suit for duty at 30 per cent., because proof as to American origin and exportation as shooks had not been made in the manner prescribed in treasury circular No 155, of July 15, 1895. The importer contended that the boxes were in fact of American growth and manufacture, and had been exported as shooks.

D. Frank Lloyd, for the United States.

Albert Comstock, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The appellant contends that the record discloses no proof that the articles were of American growth, and none that they had been exported as shooks. The board of appraisers report that such growth and exportation were "uncontroverted facts," and it is quite apparent that the point now contended for was not raised before the board. In view of that circumstance, and of the letter from the treasury department to the collector, directing an appeal of this cause solely to secure a ruling as to the effect of the circular of July 15, 1895, it may be assumed that whatever defect there may have been in the proof presented to the board was waived by the government, and is not now available to the appellant. We concur with the circuit court and the board of appraisers that boxes which are in fact of American growth and manufacture, and which were exported as shooks, cannot be required to pay the higher rate of duty merely because the importers have not made proof of those facts in some particular mode prescribed by the secretary of the treasury. It seems unnecessary to add anything to the careful and exhaustive opinion filed by the board of general appraisers. Decision affirmed.

KLIPSTEIN et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 18, 1899.)

No. 2,572.

CUSTOMS DUTIES—CLASSIFICATION—COAL-TAR DYES.

Where the weight of the evidence is that the product in question is a coal-tar color or dye, a finding by the board of general appraisers that it is dutiable as such, and not as an alizarin color, will be sustained, though the fact that it is used with a mordant may raise a doubt whether it is not properly an alizarin.

This was an application by Klipstein & Co. for a review of the decision of the board of general appraisers in respect to the classification for duty of certain colors or dyes imported by them.

Edward Hartley, for appellants.

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

WHEELER, District Judge. By paragraph 14 of the act of 1894, coal-tar colors or dyes, by whatever name known, are dutiable at 25 per cent.; and, by paragraph 368, alizarin, and alizarin colors or dyes, natural or artificial, are free. This merchandise appears to have been entered for duty as an alizarin color, and to have been returned by the appraiser as a coal-tar color. Duties were assessed upon it according to the return, notwithstanding a protest that it was free under paragraph 368. On appeal, one of the importers testified that he was told it was an alizarin color, but on cross-examination he said in fact it was a color or dye, although used with a mordant, and was a product of coal tar; that it takes the place of gallocyanine, which is defined as a coal-tar color, and is a faster product. On this evidence, the board could well find that it was a coal-tar color or dye, although that it is used with a mordant might raise a doubt whether it was not an alizarin. There has been, however, further evidence taken, upon which the finding is changed. Decision reversed.

UNITED STATES v. STERN et al.

(Circuit Court, S. D. New York. January 19, 1899.)

No. 2,739.

CUSTOMS DUTIES—CLASSIFICATION—FLAX PLUSH.

Flax plush is dutiable as a "pile fabric of which flax is the component material of chief value," under paragraph 342 of the act of 1897, and not as plush or pile fabric "of cotton or other vegetable fiber," under paragraph 315; the former paragraph being more specific than the latter.

This was an application by the United States for the review of the decision of the board of general appraisers in respect to the classification for duty of certain merchandise imported by Stern Bros.

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

W. Wickham Smith, for appellees.

WHEELER, District Judge. Paragraph 315 of the act of 1897 provides for a duty on "plushes, velvets, velveteens, corduroys and all pile fabrics * * * composed of cotton or other vegetable fiber," and paragraph 342 for a different duty on "all pile fabrics of which flax is the component material of chief value." The merchandise is flax plush, and plush is a pile fabric, and flax vegetable. It would fall under paragraph 315, as a plush of vegetable fiber, but for the provision in 342 for a particular kind of vegetable fiber in such fabrics. This is more specific. Decision of board reversed.