

97, and the United States appeals. It is admitted that these articles are composed of carbon, and that they are designed for no use other than electric lighting, and that the ordinary length of such articles when in actual use is not more than 12 or 14 inches. These carbons are 36 inches in length, and, in order to be used in electric lights, they have to be either cut or broken up into various lengths. Counsel for the United States contends that while these are not carbons for electric lighting, because of their said length, and are not capable of use until they are broken up and in some instances cored and sharpened, yet that the appraiser can mentally subdivide them into three carbons, each 12 inches long, and assess duty accordingly. Acting upon this theory, the collector assessed duty at \$2.70 per 100. Each carbon is a distinct article, made in a single piece, without any indication or designation of separation which would enable any one to determine the dividing line. In fact, the dividing line is an indefinite one, according to the necessities of the individual user. It may be true, as contended by counsel for the United States, that in this way the object of the law may be defeated by the importer, but that is not a question with which this court is concerned. In view of the unambiguous language of the provision, the remedy for such alleged evasions is not to be found in judicial legislation. The articles are not dutiable, as contended by the importer, and found by the board of appraisers, as "carbons not specifically provided for," because they are specifically provided for under paragraph 98, as "carbons for electric lighting," at 90 cents per 100. The decision of the board of general appraisers is therefore reversed.

UNITED STATES v. MERCK & CO.

(Circuit Court, S. D. New York. January 23, 1899.)

No. 2,322.

1. CUSTOMS DUTIES—CONSTRUCTION OF TARIFF ACTS.

Where, by amendment in the senate, an article, which was placed on the free list in the bill passed by the house, was also placed in the dutiable list, and remained in both places as the act was finally passed, *hdd*, that the case was one of patent ambiguity arising on the face of the act, which ambiguity must be resolved in favor of the importer, and the goods admitted free.

2. EPSOM SALTS.

Sulphate of magnesia, or Epsom salts, which, by the act of 1894, were placed both upon the dutiable and the free list (paragraphs 24 and 542), are to be admitted free, as the ambiguity must be resolved in favor of the importer.

This was an application by the United States for a review of a decision of the board of general appraisers in respect to the classification for duty of certain merchandise imported at the port of New York by Merck & Co.

James T. Van Rensselaer, Asst. U. S. Atty.
Albert Comstock, for appellees.

WHEELER, District Judge. "Magnesia, sulphate of, or Epsom salts," is declared dutiable at one-fifth of one cent per pound by paragraph 24, and free by paragraph 542, of the act of 1894. This protest raises the question of its dutiability. The caption of the free list says that "on and after August 1, 1894, unless otherwise provided for in this act, the following articles, when imported, shall be exempt from duty." This article is said to be otherwise provided for in the dutiable list, and so to be taken out of the free list. But the caption to the dutiable list says that "on and after August 1, 1894, unless otherwise specially provided for in this act, there shall be levied, collected and paid upon all articles imported from foreign countries or withdrawn for consumption, and mentioned in the schedules herein contained, the rates of duty which are by the schedules and paragraphs respectively prescribed, namely." The act, as to some parts of the schedules, provided different times for going into effect; and this provision in the caption of the dutiable list evidently refers to time, and not to articles imported. But for that, this provision in the caption of the free list might be thought applicable to articles, instead of to time. They stand in the same relation to date of the act, however, and differ only as to the word "specially," in the former provision, and appear to refer to the same matter, and that is time. So, as the law stands, it appears to provide in one place that this article should be dutiable, and in another that it should be free. By the law before, it was dutiable at the same rate. The bill originated in the house, of course; and, when it went to the senate, this article was in the free, and not in the dutiable, list. The senate, in proposals of amendment, put it in the dutiable list, as it had been in the prior law, but did not propose to strike it from the free list; and the house concurred in the senate's proposal of amendments. This is said to show that the legislative intention was to have this article in the dutiable list. But the senate amendments left it also in the free list, and the house concurred in the amendments as they operated on the house bill, without proposing to strike this article from the free list. This indicates equally well an intention to leave it in the free list. Both houses passed the bill with it in the free list, and both concurred in an amendment putting it in the dutiable list also; so the bill passed both houses with it in both places, and the whole bill became a law with both paragraphs in it, August 28th, for want of return to the house by the president. There is a patent ambiguity arising on the face of the act as to this article. It is made as clearly free as dutiable, and the doubt is to be solved in favor of the importer. *Twine Co. v. Worthington*, 141 U. S. 468, 12 Sup. Ct. 55. Decision affirmed.

UNITED STATES v. MERCK & CO.

MERCK & CO. v. UNITED STATES.

(Circuit Court, S. D. New York. January 21, 1899.)

Nos. 1,973 and 1,979.

CUSTOMS DUTIES—ADDITIONS TO INVOICE VALUE—PENAL DUTIES.

Section 7 of the customs administrative act of 1890 permits the importer to make such additions, in the entry, to the invoice value, as, in his opinion, may raise the same to the actual market value. *Held*, that an addition so made, though marked upon the invoice itself, becomes a part of the entered value, and that the collector cannot ignore such addition, and then assess a penal duty which would not otherwise have accrued.

These were applications by the government and by the importers, respectively, for a review of the decision of the board of general appraisers in respect to the imposition of certain penal duties upon goods imported at the port of New York.

James T. Van Rensselaer, Asst. U. S. Atty.
Albert Comstock, for Merck & Co.

WHEELER, District Judge. Section 7 of the administrative act (26 Stat. 134) provided that the importer may "make such addition in the entry to the cost or value given in the invoice, or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry as, in his opinion, may raise the same to the actual market value"; that all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly-certified invoice shall be alike applicable to goods entered by a pro forma invoice, or statement in form of an invoice, and that the duty should not "be assessed upon an amount less than the invoice or entered value." These importers made such an addition upon the invoice produced with the entry, which was disregarded, and a penal duty assessed that would not have accrued if it had been regarded. The board sustained the protest. The invoice seems to be the foundation of information of value; and this does not seem to be confined to the original consular invoice, for the provisions extend to pro forma invoices and statements. This statement of addition was upon the invoice when it was produced with the entry, and so was a part of the invoice value, to which, by the statute, all additional duties, penalties, or forfeitures were alike applicable, and below which, as distinguished from entered value, the collector could not go. It was to be regarded upward as well as downward, in liquidating the entry, and was an addition to make market value "in the entry" as a whole, although not written into the paper technically called the "entry." Decision in 1,973 affirmed, in 1,979 reversed.