

asserted here in favor of the bankrupt to excuse him from producing the books of account kept in the business which he was conducting when his voluntary petition was filed to invoke the benefits, and submit to the requirements, of the bankruptcy law. He thereby elected to place all his property (aside from exemptions), including these books of account, which contain apparently the only evidence of credits outstanding, at the disposition of this court. If he were otherwise privileged to withhold the books, his petition operates both as a waiver and as a transfer of the right of custody, and the books cannot now be withheld or withdrawn upon the assertion that they may contain criminating evidence or matter. If within the knowledge or control of the petitioner, the books must be disclosed and produced. Ruling upon the facts is postponed for the hearing of further testimony.

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UNITED STATES v. BREWER et al.

(Circuit Court of Appeals, Second Circuit. January 30, 1899.)

No. 52.

CUSTOMS DUTIES—REIMPORTATION OF AMERICAN-MADE BAGS—IDENTIFICATION—TREASURY REGULATIONS.

Under paragraph 493 of the tariff act of October 1, 1890, which permits the free reimportation of certain articles of American manufacture, including bags which have been exported filled with American products, or exported empty and returned filled with foreign products, but requires proof of identity to be "made under general regulations to be prescribed by the secretary of the treasury," the provision as to the manner of proof is of the essence of the exemption; and, the secretary having promulgated such general regulations, reasonable in their requirements, an importer cannot ignore them, and obtain the exemption by substituting other evidence satisfactory to the customs officers. Bags claimed to have been exported filled from another port, but of which fact no certificate of the collector is furnished, as required by article 331 of the treasury regulations, are properly dutiable.

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

This cause comes here upon appeal from a decision and judgment of the circuit court, Southern district of New York, which affirmed the decision of the board of United States general appraisers, which had reversed the decision of the collector in regard to the classification for duty of certain empty bags.

D. Frank Lloyd, Asst. U. S. Atty.  
Stephen G. Clarke, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. The importers do not object to the rate of duty if the bags are dutiable, but contend that they are entitled to free entry, under paragraph 493 of the tariff act of October 1, 1890. That paragraph provides that, among the articles exempt from duty, there shall be included "bags \* \* \* of American manufacture

\* \* \* exported filled with American products or exported empty and returned filled with foreign products; \* \* \* but proof of the identity of such articles shall be made under general regulations to be prescribed by the secretary of the treasury." Construing this paragraph in *U. S. v. Dominici*, 24 C. C. A. 116, 78 Fed. 334, this court held that "this express provision as to proof is \* \* \* of the essence of the exemption from duty which paragraph 393 accords." In compliance with the provisions of paragraph 493, the secretary of the treasury prescribed general regulations for making proof of identity. One of such regulations reads as follows:

"Art. 331. If returned to the port of original exportation, the fact of regular clearance for a foreign destination must be shown by the records of the customs, except in regard to exports to Canada, and by the declaration of the person making the entry. But when the reimportation is made into a port other than that of original exportation, there shall be required, in addition to the declaration, a certificate from the collector and a naval officer, if any, of the port where the exportation was made, showing the fact of exportation from that port."

On April 6, 1893, the appellees imported by the *Bovic*, from Liverpool, 50,000 empty bags. They claimed that all of these were of American manufacture, and stated on their entry that the bags had been exported from San Francisco filled with American products, as follows: Twenty thousand bags by the *Dovenby*, August 16, 1892; 10,000 bags by the *Earls court*, July 8, 1892; and 20,000 bags by the *Glaucus*, December 21, 1891. They also presented a certificate to the like effect, of the foreign shipper, attested by a United States consul, as provided in article 336 of the regulations. Certificates from the collector of the port of San Francisco, whence it is claimed the bags were exported, covered 20,000 bags by the *Dovenby*, and 10,000 by the *Earls court*, but showed that only 7,880 bags had been exported by the *Glaucus*. On the difference between this amount and 20,000—viz. 12,120 bags—the collector at New York exacted duty. Upon being informed of the discrepancy of certificates as to the *Glaucus*, the importers secured an additional certificate from the foreign shipper, duly attested, setting forth that the 12,120 bags were exported from San Francisco by the *Cara*, December 28, 1896. The board of appraisers found, as the evidence shows, that the statement in the first foreign shipper's certificate, "20,000 by *Glaucus*," was a clerical error; and, being satisfied by proof sufficient to convince their minds that all the bags were in fact of American manufacture, reversed the decision of the collector. The circuit court reached the same conclusion.

This cause is within the ruling in *U. S. v. Dominici*, supra. The paragraph of the tariff act is the same; the regulations of the secretary of the treasury have been duly made and promulgated; there has been no attempt to defeat the provisions of the act by prescribing unreasonable regulations, or such as it is impossible to comply with,—indeed, the particular one in controversy (article 331, supra) seems to provide the most natural and effective method for determining the identity of the articles claimed to have been "exported empty, or exported filled with American products." Therefore, since no certificate from San Francisco of exportation of the 12,120 bags by the *Cara* was ever laid before the collector (and, indeed, no effort to obtain

such certificate was made by the importer), the proof of identity which the statute provided for was never made, and the bags in question were not entitled to free entry. The decision of the circuit court is reversed.

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UNITED STATES v. BREWER et al.

(Circuit Court of Appeals, Second Circuit. January 30, 1899.)

No. 53.

1. CUSTOMS DUTIES—REIMPORTATION—METHOD OF IDENTIFICATION.

Where bags of American manufacture, on being exported to be returned, were marked for identification as required by article 336 of the treasury regulations, but on their attempted reimportation an examination of sample packages disclosed but 8 per cent. having the same marks, they were not entitled to free entry under paragraph 493 of the tariff act of October 1, 1890, on other proof that they were of American manufacture.

2. SAME—CLASSIFICATION—DUTY OF IMPORTER TO SEPARATE FREE FROM DUTIABLE GOODS.

It is the duty of an importer to make affirmative proof of a state of facts relieving his merchandise from duty to which it would otherwise be subject, and to segregate from the same class of goods such portions as are claimed to be free. He cannot require the officers to separate free from dutiable goods indiscriminately mingled, and in such case duty should be assessed on all.

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

This cause comes here upon appeal from a decision of the circuit court, Southern district of New York, reversing a decision of the board of general appraisers which had affirmed a decision of the collector of the port of New York touching the classification of certain merchandise for customs duties.

D. Frank Lloyd, Asst. U. S. Atty.

Stephen G. Clarke, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The articles imported were 50,000 flour bags, which the appellees contend were duty free under paragraph 493 of the tariff act of October 1, 1890, as "bags of American manufacture." The provisions of the statute and treasury regulations will be found recited in our opinion in *U. S. v. Brewer* (filed to-day) 92 Fed. 341. The various documents required by the treasury regulations were presented to the collector. It appears from the findings of the board of general appraisers that:

"To establish the identity required by law a list of brands was furnished by the importer, with the number of bags bearing each brand exported by four several vessels, to wit: By the *Durham City*, 19,315; by the *Boston City*, 12,524; by the *Charlotte*, 18,100; and by the *Ariadne*, 61.—thus accurately accounting for the whole importation of 50,000 bags." "But when the contents of one bale came to be examined, the bale was found to contain only thirteen brands which were included in the invoice list, and 152 brands which were nowhere on the invoice list. In other words, there was prima facie identification of 8 per cent. of the contents of this bale, and conclusive disproof of the identity of 92 per cent. thereof."