

the words "of rubber," I am of the opinion that the articles in suit are fairly within the enumeration of paragraph 454. Being enumerated, they are not within the operation of the similitude clause. For that reason, I shall direct a verdict for the defendant. Exception to the plaintiff.

MORRIS v. ROBERTSON.

(Circuit Court, S. D. New York. November 26, 1888.)

CUSTOMS DUTIES—EXCESS OF APPRAISEMENT OVER ENTRY VALUE—PENALTY.

Although the articles composing an invoice may be dissimilar and known by different trade names, still, if they belong to the same class, and are grouped together in the tariff acts as dutiable under their class name at the same rate, and are valued in the entry only at a lump sum for the entire importation, the penalty imposed by section 2900 of the Revised Statutes is not incurred unless the appraisement of the importation as a whole exceeds by 10 per cent. or more the value declared on the entry. *Schmeider v. Barney*, 6 Fed. Rep. 150, distinguished.

(Syllabus by the Court.)

At Law. Action to recover back customs duties.

In July, 1882, the plaintiff made an importation into the port of New York, as part of which there was a "packed package" containing nine lots of precious stones, which were described upon the invoice as follows: (1) 125 k. common cat's-eyes, lot star stones, 2 lots fancy stones, 1 King topaz, 6 King topazes; (2) lot matrix opals; (3) 6 Labrador heads; (4) 4 lots wood cat's-eyes; (5) 1 ruby; (6) 110 k. spinels; (7) 113 $\frac{1}{4}$ k. spinels; (8) 51 k. sapphire and Siam rubies; (9) 20 $\frac{1}{4}$ k. sapphires. These goods were classified for duty by the defendant as collector of customs at 10 per cent. *ad valorem* as "precious stones," under the paragraph beginning with those words in Schedule M of section 2504 of the Revised Statutes. The correctness of this classification was not questioned. A reappraisement was ordered by the collector, on which it was found that three of the above nine lots were undervalued more than 10 per cent.; lot 1 being undervalued 14 per cent., and lots 6 and 7 each 20 per cent. The aggregate undervaluation of all the lots taken as a whole was but 8 and 2-10 per cent. On the three lots found to be undervalued more than 10 per cent. the defendant, as collector, assessed an additional duty of 20 per cent., acting under authority of section 2900 of the Revised Statutes, whereas the plaintiff, protesting, claimed that this additional duty was not properly assessed, for the reason that the aggregate undervaluation of the invoice did not amount to 10 per cent. The value, as declared upon the entry, was a lump sum, being the aggregate value as it appears upon the invoice; and, as compared with this lump sum, the undervaluation as above stated was but 8 and 2-10 per cent. The testimony was uncontradicted that, whereas all the items mentioned in the invoice were placed commercially in the class of pre-

cious stones, still that they were known in trade and commerce in this country each by its specific trade name, as it appears upon the invoice; that they were of different colors and appearances, and varied much in price.

Stephen G. Clarke and Charles Curie, for plaintiff.

Stephen A. Walker, U. S. Atty., and Macgrane Coze, Asst. U. S. Atty., cited Schneider v. Barney, 6 Fed. Rep. 150.

LACOMBE, J., (*orally, after stating the facts as above.*) Whether or not the penalty provided for in section 2900, Rev. St., is to be exacted from an importer is to be determined by a comparison of the value declared in the entry with the value found upon appraisement. Although articles may be dissimilar, and known by different trade names, still, if they belong to the same class, and are grouped together in the tariff acts as dutiable under their class name at the same rate, and are valued in the entry only at a lump sum for the entire importation, the penalty is not incurred unless the appraisement of the importation as a whole exceeds by 10 per cent. or more the value so declared on the entry. The case decided by Judge SHIPMAN, and referred to on the argument (*Schneider v. Barney, 6 Fed. Rep. 150,*) does not apply to the case at bar, because in that case the different varieties were apparently separately valued upon the amended entry, so that comparison of the declared value of each variety with the appraiser's report was practicable. Verdict must be directed for the plaintiff.

UNITED STATES *v.* TAYLOR.

(*District Court, E. D. Michigan. December 31, 1888.*)

POST-OFFICE—EMBEZZLEMENT OF LETTER.

An employe of the post-office department can only be convicted of embezzling such letters as are, at the time, a proper subject of deposit in the mail; and where a postmaster received \$15 in paper money and \$3 in silver, which were handed to him in his office, with a request that he send it in a registered letter, and he took the money, put it in an envelope, which he addressed, wrote a letter to accompany the remittance, delivered to the sender the usual receipt for a registered letter, received the fee for registration, and said it would be all right; but there was no evidence that the silver money had been exchanged for paper, or that the letter was ever stamped or sealed, or put in the special envelope used for registered letters.—it was held that his conviction for embezzling a "letter" should be set aside.

(*Syllabus by the Court.*)

On Motion for New Trial. Indictment for embezzlement of a letter. Defendant, who was postmaster at Reese, a small office in Tuscola county, was convicted of the embezzlement of a letter, and the stealing of its contents, under the following circumstances: The sender of the letter brought the defendant \$15 in paper money and \$3 in silver, and