

I shall therefore direct a verdict for the defendant, and the reasons which control me in coming to that conclusion are:

1. The testimony of the plaintiff that the metal which is present in this combination is essential to the article; that both the paper and the metal are essential to the product.

2. The relative values of the two articles, irrespective of their use.

Even if it be conceded that all the labor of putting the articles together is to be counted with the paper, instead of being divided between the metal and the paper, then the cost of the wire, plus the cost of the labor in cutting the wire, (and which is a part of the cost of the wire,) is over 14 per cent. of the value of the product as the article stands completed; it is over 15 per cent. the value of the paper and the wire together; and, as compared with the value of the paper alone, it is  $21\frac{1}{2}$  per cent. of the value of the paper. In view of those relative proportions in which the metal and the paper enter into the article, and of the testimony of the witness that both are equally essential to the product, under the rule laid down in the *Album Case* a verdict is directed for the defendant.

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ULLMANN v. HEDDEN.

(Circuit Court, S. D. New York. February 18, 1889.)

1. CUSTOMS DUTIES—STATUTES—CONSTRUCTION.

The word "cloth" in the provision for "cotton cloth" in Schedule I of the tariff act of March 3, 1883, is used in its popular and common acceptance, and not in a commercial sense. Following *Maillard v. Lawrence*, 16 How. 251; *Greenleaf v. Goodrich*, 101 U. S. 278.

2. SAME—PROPERTY SUBJECT TO.

A woven fabric made of cotton is dutiable under a provision in the tariff act for "cotton cloth," notwithstanding it is not known among merchants and dealers as "cotton cloth."

3. SAME.

Embroidery canvas (called in trade "Penelope") made of cotton, and containing less than 100 threads to the square inch, is dutiable at  $4\frac{1}{2}$  cents per square yard, under the provision in Schedule I of the tariff act of March 3, 1883, for "all cotton cloth, colored, not exceeding 100 threads to the square inch," and not at 35 per centum *ad valorem*, under the provision in the same act and schedule for "all manufactures of cotton not specially enumerated or provided for."

4. SAME.

Cotton canvas, embroidered with worsted, valued at over 80 cents per pound, is properly dutiable at 35 cents per pound and 40 per centum *ad valorem*, under the provision in Schedule K of the tariff act of March 3, 1883, for "all manufactures of every description composed wholly or in part of worsted, not specially enumerated or provided for," and not at 35 per centum *ad valorem*, under the provision in Schedule I of the same act, for "all manufactures of cotton not specially enumerated or provided for." *Kohlsaat v. Murphy*, 96 U. S. 153, distinguished.

At Law. On motion for direction of verdict.

This was an action to recover duties alleged to have been exacted in excess of the lawful rate upon certain cotton canvas, (known in trade as "Penelope,") and upon the same article when embroidered with worsted in sizes and patterns suitable for slippers, shoe-bags, and traveling-bags. The canvas was an open cotton fabric, colored, and containing less than 100 threads to the square inch. Upon the non-embroidered canvas the collector had exacted a duty of 4½ cents per square yard, under the provision in Schedule I of the tariff act of March 3, 1883, for "cotton cloth, colored, not exceeding 100 threads to the square inch." Upon the embroidered canvas the collector had exacted duty at the rate of 35 cents per pound and 40 per centum *ad valorem*, under the provision in Schedule K of the same act, for "all manufactures of every description composed wholly or in part of worsted, not specially enumerated or provided for, valued at over 80 cents per pound." The importer claimed that all the articles were properly dutiable at 35 per centum *ad valorem*, under the provision in Schedule I of the same act for "all manufactures of cotton not specially enumerated or provided for." Evidence was introduced on behalf of plaintiff to the effect that "cotton canvas" was not known in trade and commerce at the time of the passage of the existing tariff act as "cotton cloth." Defendant's counsel read in evidence the following definitions from Webster's Dictionary: "Cloth: A woven fabric, of fibrous material, used for garments or other purposes." "Canvas: A clear, unbleached cloth, wove regularly in little squares, used for working tapestry with the needle."

*Stephen G. Clarke and Charles Curie*, for plaintiff.

*Stephen A. Walker*, U. S. Atty., and *W. Wickham Smith*, Asst. U. S. Atty., for defendant.

LACOMBE, J., (*orally*.) If, as to the goods which are embroidered, there were nothing at all before us except the act of 1883, they would seem to come fairly within the designation therein of a manufacture of some description composed in part of worsted. Paragraph 363. To take them out of that plain designation would require some authority which would speak with no uncertain sound. I have given such examination as I can to this *Kohlsaas Case*, which is not altogether plain on first reading,—a circumstance due to the great number of resolutions and acts which are discussed in it. In that decision, however, it does not seem that the court's attention was at all called to any contrast or distinction between the two sections which are here supposed to be in conflict. The decision, therefore, is not of such a controlling character on the question now raised that it should influence the decision of the court in interpreting the plain language of paragraph 363. As to the other goods—the plain canvas. Under the definitions which have been read from the dictionary, this is a cloth, and, unless usages of trade and commerce are to be accepted as controlling in this particular case, it should be here considered as a cloth. Under the decision of the supreme court in *Maillard v. Lawrence*, 16 How. 251, and *Greenleaf v. Goodrich*, 101 U. S. 278, I do not see that we are authorized to consider the trade

definition of that particular term here. The word is used in connection with other words which seem to indicate that it is used in its ordinary sense; and, if it is used in its ordinary sense, it plainly covers the articles now before us. Verdict directed for defendant.

DRUCKER v. ROBERTSON, Collector of Customs.

(Circuit Court, S. D. New York. December 17, 1888.)

1. CUSTOMS DUTIES—EYELET HOOKS.

Eyelet hooks or lacing studs for shoes are dutiable under the clauses for manufactures of metals in Schedule E, § 2504, Rev. St. U. S., and Schedule C, act March 3, 1883, at 35 per cent. and 45 per cent., respectively.

2. SAME—ELASTIC GORING FOR SHOES.

Elastic goring for shoes composed of silk, cotton, and India rubber is dutiable at 30 per cent. *ad valorem* as an India-rubber fabric, under Schedule N, act March 3, 1883.

3. SAME.

Elastic goring for shoes, composed of worsted, cotton, and India rubber, is dutiable at 30 cents per pound, and 50 per cent. *ad valorem*, under Schedule K, and like goring, made of cotton and rubber, at 35 per cent. *ad valorem*, under Schedule I, of the act of March 3, 1883.

At Law. Action to recover back custom duties.

The plaintiff brought this action to recover back duties alleged to have been exacted in excess of the lawful rate on certain importations made by him in 1883 and 1884. The importations consisted of two classes of goods,—the eyelets with hooks on them, such as are often worn in the uppers of men's shoes, and the elastic goring which is put into the uppers of Congress gaiters. The eyelet hooks were imported, some before, and some after, the taking effect of the act of March 3, 1883, and were classified for duty by the collector at 35 per cent. and 45 per cent. *ad valorem*, respectively, under the "manufacture of metals" classes of the two acts, Schedule E, § 2504, Rev. St. U. S., and Schedule C, act March 3, 1883. The plaintiffs claimed that those imported prior to July 1, 1883, were properly dutiable at 6 cents per 1,000 as "eyelets of every description," or at 30 per cent. *ad valorem* as "buttons," under Schedule M, § 2504, Rev. St. U. S., and that those imported after July 1, 1883, were properly dutiable at 35 per cent. *ad valorem* as "plated or gilt articles," under Schedule C, act March 3, 1883, or at 25 per cent. *ad valorem* as "buttons," under Schedule N of the same act. As to this issue, the testimony was unconflicting that the goods were never known in trade and commerce in this country as "eyelets" or "buttons," but always as "eyelet hooks" or "lacing studs." The gorings in the case were all imported after July 1, 1883, and were of three kinds,—the first composed of silk, cotton, and rubber; the second, of worsted, cotton, and rubber; the third, of cotton and rubber. The first kind was classified for duty at 35 per cent. *ad valorem* under the clause in Schedule N, act March 3,