63D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 765.

REFUNDS OF CUSTOMS DUTIES.

LETTER

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

DETAILED STATEMENT OF THE REFUNDS OF CUSTOMS DUTIES FOR THE FISCAL YEAR ENDED JUNE 30, 1913.

FEBRUARY 25, 1914.—Referred to the Committee on Ways and Means and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, February 21, 1914.

SIR: I have the honor to transmit herewith, for the information of Congress, a detailed statement of the refunds of customs duties, etc., for the fiscal year ended June 30, 1913, as required by section 28, subsection 23, of the tariff act of August 5, 1909.

Respectfully,

CHARLES S. HAMLIN,
Acting Secretary.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

Statement of customs refunds made by the Treasury Department during the fiscal year ended June 30, 1913.

[Report required by sec. 28, subsec. 23, act Aug. 5, 1909.]

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1912.					
July 11	American Express Co	Leather-bound books	$6.75	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
11	do	Artistic antiquities	52.85	do	Do.
12	Allison, W. H., Co	Firecrackers	21.60	Clerical error	Do.
16	Albrecht & Sons	Herring	30.66	Error in classification	Do.
16	American Express Co	Jute card waste	132.60	Exhibit 3, appendix	Do.
23	do	Preserved milk	12.15	Error in classification	Do.
23	do	Fish in tins	1.25	Short shipped	Do.
24	Ackerman, A. K., Co	Cocoa	4.90	Clerical error	Do.
24	Auffmordt & Co	Cottons	124.70	Court judgment	Do.
Aug. 2	American Shipping Co	Ale	21.02	Exhibit 5, appendix	Do.
2	American Sugar Refining Co	Sugar	132.85	Court judgment	Do.
3	Austin Nichols & Co	Coverings	28.80	do	Do.
Sept. 25	Albrecht & Meister Co	Booklets	700.07	Exhibit 1, appendix	Do.
26	American Express Co	Foxberries	16.70	Error in quantity	Do.
Nov. 19	Ash Bros	Merchandise commissions	53.30	Exhibit 2, appendix	Do.
20	Arnold, D. H., & Co	do	90.30	do	Do.
21	do	do	69.40	do	Do.
Dec. 3	Ash Bros	do	90.50	do	Do.
5	do	do	93.55	do	Do.
5	Arnold & Co	do	61.20	do	Do.
6	Andresen, Alfred, & Co	Iron forgings	10.50	Error in classification	Do.
10	American Smelting & Refining Co	Type metal	4.30	Error in quantity	Do.
10	Ash Bros	Merchandise commissions	146.45	Exhibit 2, appendix	Do.
12	do	do	161.56	do	Do.
13	Arnold, D. H., & Co	do	31.60	do	Do.
13	do	do	58.30	do	Do.
13	Abramson, I., & Co	do	30.00	do	Do.
18	American Express Co	Olive oil	3.80	Error in quantity	Do.
19	Abramson, I., & Co	Merchandise commissions	142.40	Exhibit 2, appendix	Do.
19	Ash Bros	do	17.60	do	Do.
19	Arnold, D. H., & Co	do	1,534.90	do	Do.
19	do	do	754.85	do	Do.
20	do	do	2,831.86	do	Do.
24	Ash Bros	do	50.75	do	Do.
26	Arnold, D. H., & Co	do	1,238.15	do	Do.
30	do	do	245.95	do	Do.
1913.					
Jan. 6	do	do	1,452.70	do	Do.
9	do	do	347.12	do	Do.
10	do	do	94.15	do	Do.
10	Ash Bros	do	7.00	do	Do.
13	Abramson, I., & Co	do	56.74	do	Do.

14	Arnold, D. H., & Co	do	357.45	do	Do.
15	Abramson, I., & Co	do	36.40	do	Do.
21	Arnold, D. H., & Co	do	218.55	do	Do.
23	do	do	211.20	do	Do.
29	American Express Co	Lithograph prints	2.45	Error in classification	Do.
29	Allison, W. H., Co	China clay	5.25	Clerical error	Do.
Feb. 3	Andrews, Chas. M	Glassware	6.00	do	Do.
3	Arnold, D. H., & Co	Merchandise commissions	5.60	Exhibit 2, appendix	Do.
11	Alexander, Douglas	Evergreen seedlings	20.07	Error in classification	Do.
11	American Express Co	Scissors	2.25	Error in quantity	Do.
11	do	Decorated china	34.80	Clerical error	Do.
20	Austin, Nichols & Co	Coverings	826.55	Court judgment	Do.
21	do	do	35.00	Short shipped	Do.
24	Anderson Dulin Varnell Co	Matting	35.00	Court judgment	Do.
25	Anderson, B. R., & Co	Linens	1.20	Short shipped	Do.
25	Arnold, D. H., & Co	Merchandise commissions	196.20	Exhibit 2, appendix	Do.
25	Abramson, I., & Co	do	90.40	do	Do.
25	Arnold, D. H., & Co	do	94.95	do	Do.
28	Austin, Nichols & Co	Coverings	106.50	Court judgment	Do.
Mar. 1	American Express Co	Silk apparel	17.40	Personal effects, free	Do.
1	do	Gelatin	193.30	Exhibit 4, appendix	Do.
12	Arnold, D. H., & Co	Merchandise commissions	72.25	Exhibit 2, appendix	Do.
17	do	do	26.65	do	Do.
18	American Express Co	Leather	15.90	Court judgment	Do.
28	do	Shotgun	71.47	do	Do.
Apr. 9	Ash Bros	Merchandise commissions	10.80	Exhibit 2, appendix	Do.
19	American Textile Co	Lace machines	533.25	Court judgment	Do.
19	American Bead Co	Imitation precious stones	101.85	Exhibit 7, appendix	Do.
21	do	do	188.55	do	Do.
30	Arata Bros	Still wine	31.00	Error in classification	Do.
May 12	American Thermo Ware Co	Goggles	13.91	Court judgment	Do.
17	Ackerman, A. K., Co	Bottles	7.46	Error in classification	Do.
22	American Spectacle Co	Hand bags	39.40	Court judgment	Do.
June 6	American Express Co	Lace machines	344.70	do	Do.
6	do	Embroidery cotton	77.81	Error in classification	Do.
6	Ami Vignier (Inc.)	Bottles	3.84	Nonimportation	Do.
1912.					
July 8	Bowling Green Storage & Van Co	Antiquities	647.85	Court judgment	Do.
10	Belcher & Loomis Hardware Co	Rough leather	107.60	Error in classification	Do.
13	Boys' Home	Rosaries	31.95	do	Do.
23	Booth Fisheries Co	Herring	7.03	do	Do.
24	Balfour, Guthrie & Co	Cylindrical drums	101.40	do	Do.
24	Booth Fisheries Co	Fresh-water fish	25.00	Clerical error	Do.
31	Bresnahan, T., & Son	Wine	1.08	Paid by carrier	Do.
Aug. 16	Baumgarten & Co	Marble vase	156.10	Exhibit 6, appendix	Do.
Sept. 21	Blumenfeld, Locher & Brown Co	Ornaments	2.00	Error in classification	Do.
23	Blackwell, D. A	Cattle	22.00	Short shipped	Do.
23	Burr, C. R., & Co	Evergreen seedlings	25.75	Error in classification	Do.
24	Belcher & Loomis Hardware Co	Rough leather	40.20	do	Do.
24	Brugbee, W. F	Mill battings	105.89	do	Do.
26	Butler Bros	Toy mirrors	3.60	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1912.					
Sept. 26	Butler Bros.	Cartons	$10.70	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
26	....do	Crepe paper	6.15	Clerical error	Do.
Oct. 24	Bon Marche	Linen sets	36.70	Error in classification	Do.
24	Borgfeldt, Geo., & Co	Willow baskets	147.90	....do	Do.
24	Butler Bros	Toys	10.02	....do	Do.
26	Boys' Home	Rosaries	14.55	....do	Do.
27	....do	....do	24.20	....do	Do.
29	Beach, Henry L	Drawn work	3.00	Clerical error	Do.
29	Borgfeldt, Geo., & Co	Enameled ware	9.60	....do	Do.
30	Beachman, Minnie	Repairs to automobile	21.35	Repairs, free	Do.
Nov. 22	Batten, Neumann & Co	Merchandise commissions	22.90	Exhibit 2, appendix	Do.
23	Barets Importing Co	Champagne	57.60	Casualty	Sec. 2984, R. S.
23	Benedict Warehouse & Transfer Co	....do	48.00	....do	Do.
25	Beckermann & Co	Merchandise commissions	38.85	Exhibit 2, appendix	Sec. 28, subsec. 23, act Aug. 5, 1909.
26	Barreda, C. P	Cattle	52.50	Short shipped	Do.
26	Bausch & Lomb Optical Co	Instruments	9.00	Clerical error	Do.
Dec. 2	Batten, Neumann & Co	Merchandise commissions	2.11	Exhibit 2, appendix	Do.
3	....do	....do	3.85	....do	Do.
5	....do	....do	106.25	....do	Do.
5	Bush, Geo. S., & Co	Dried fish	5.00	Error in classification	Do.
6	Beckermann & Co	Merchandise commissions	24.25	Exhibit 2, appendix	Do.
6	Brown, Draper & Co	....do	24.45	....do	Do.
10	Berger Manufacturing Co	Plate spelter	4.36	Error in weight	Do.
11	Batten, Neumann & Co	Merchandise commissions	76.73	Exhibit 2, appendix	Do.
11	Brokaw Bros	....do	15.11	....do	Do.
12	Batten, Neumann & Co	....do	44.15	....do	Do.
13	....do	....do	42.25	....do	Do.
13	Brauer & Louis	....do	11.50	....do	Do.
13	Beckermann & Co	....do	55.50	....do	Do.
14	Batten, Neumann & Co	....do	125.32	....do	Do.
16	Brown, Draper & Co	....do	29.15	....do	Do.
17	Batten, Neumann & Co	....do	157.10	....do	Do.
18	Butler Bros	Cartons	10.85	Error in classification	Do.
18	Brauer & Louis	Merchandise commissions	12.30	Exhibit 2, appendix	Do.
19	Batten, Neumann & Co	....do	57.05	....do	Do.
20	....do	....do	42.35	....do	Do.
21	Bush, Geo. S., & Co. (Inc.)	Toys	7.35	Duty twice paid	Do.
14	Batten, Neumann & Co	Merchandise commissions	42.05	Exhibit 2, appendix	Do.
16	Brown, Draper & Co	....do	20.90	....do	Do.
17	Batten, Neumann & Co	....do	51.00	....do	Do.
19	....do	....do	18.95	....do	Do.
21	....do	....do	12.13	....do	Do.
24	Brown, Draper & Co	....do	72.40	....do	Do.
24	Batten, Neumann & Co	....do	54.25	....do	Do.
26	Brauer & Louis	....do	12.80	....do	Do.

28	Brown, Draper & Co	do	64.90	do	Do.
28	Brandt, S., & Bro	do	12.00	do	Do.
31	Brauer & Louis	do	16.70	do	Do.
31	do	do	83.45	do	Do.
31	Batten, Neumann & Co	do	23.85	do	Do.
1913.					
Jan. 3	Burnham, Stoepel & Co	Manufactures of cotton	2.25	Clerical error	Do.
3	Braun, F. W	Manufactures of glass	26.75	Error in classification	Do.
7	Booth Fisheries Co	Fresh waterfish	118.00	do	Do.
7	Borgfeldt, Geo., & Co	Pocketknives	131.40	Exported	Do.
14	do	Toys	5.25	Duty twice paid	Do.
14	Batten, Neumann & Co	Merchandise commissions	10.00	Exhibit 2, appendix	Do.
15	Bausch & Lomb Optical Co	Glass bottles	2.60	Clerical error	Do.
15	Beckermann & Co	Merchandise commissions	337.70	Exhibit 2, appendix	Do.
16	do	do	61.30	do	Do.
16	Bauer, C. J	do	104.71	do	Do.
17	Bullocks	Lamb gloves	40.00	Error in classification	Do.
25	Batten, Neumann & Co	Merchandise commissions	30.35	Exhibit 2, appendix	Do.
27	Borgfeldt, Geo., & Co	do	13.50	do	Do.
29	do	Toy watches	130.00	Error in classification	Do.
29	Batten, Neumann & Co	Merchandise commissions	23.45	Exhibit 2, appendix	Do.
29	do	do	3.50	do	Do.
29	do	do	6.75	do	Do.
29	Beckermann & Co	do	79.50	do	Do.
29	Brown, Draper & Co	do	14.85	do	Do.
29	Batten, Neumann & Co	do	29.55	do	Do.
29	Brown, Draper & Co	do	114.05	do	Do.
29	Batten, Neumann & Co	do	7.75	do	Do.
29	Brauer & Louis	do	26.00	do	Do.
29	Beckermann & Co	do	37.95	do	Do.
29	Brauer & Louis	do	91.15	do	Do.
29	Brown, Draper & Co	do	3.30	do	Do.
29	Brauer & Louis	do	295.60	do	Do.
Feb. 3	Batten, Neumann & Co	do	33.30	do	Do.
3	Bauer, G. J	do	35.60	do	Do.
4	Beach, Henry S	Drawn work	3.00	Clerical error	Do.
5	Brauer & Louis	Merchandise commissions	79.60	Exhibit 2, appendix	Do.
6	Batten, Neumann & Co	do	11.65	do	Do.
7	do	do	30.25	do	Do.
11	Burlington Venetian Blind Co	Cotton tape	650.25	Error in classification	Do.
11	Butler Bros	Pocketknives	98.80	do	Do.
13	Borgfeldt, Geo., & Co	Carving knives	5.83	Clerical error	Do.
13	Bush, Geo. S., & Co. (Inc.)	Metal tubing	25.20	do	Do.
13	do	Willow baskets	28.00	Error in classification	Do.
13	do	Booklets	39.75	do	Do.
13	Brown, Draper & Co	Merchandise commissions	33.00	Exhibit 2, appendix	Do.
13	Brauer & Louis	do	25.30	do	Do.
18	Bausch & Lomb Optical Co	Glassware	973.40	Error in classification	Do.
18	Borgfeldt, Geo., & Co	Swords	4.90	Clerical error	Do.
18	Butler Bros	Needles	31.95	Error in classification	Do.
20	Beckermann & Co	Merchandise commissions	50.05	Exhibit 2, appendix	Do.
24	Brauer & Louis	do	19.05	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Feb. 25	Beckermann & Co	Merchandise commissions	$26.95	Exhibit 2, appendix	Sec. 28, subsec. 23, act Aug. 5, 1909.
28	do	do	173.75	do	Do.
Mar. 1	Barreda, C. P	Cattle	22.75	Error in classification	Do.
3	Becker Leather Goods Co	Gloves	32.27	Error in quantity	Do.
10	Buss & Wanner	Manufactured metals	8.15	Exhibit 2, appendix	Do.
17	Batten, Neumann & Co	Merchandise commissions	3.60	do	Do.
17	Bawo & Dotter	Earthenware	2.20	Clerical error	Do.
20	Bischoff, H., & Co	Merchandise commissions	26.60	Exhibit 2, appendix	Do.
21	Bartley Bros. & Hall	Leather	2.55	do	Do.
26	Borgfeldt, Geo., & Co	Willow cradles	2.20	Error in classification	Do.
29	Belknap Hardware & Manufacturing Co.	Shears	15.00	Clerical error	Do.
31	Brauer & Louis	Merchandise commissions	18.10	Exhibit 2, appendix	Do.
Apr. 4	Burke, F. D., & Co	Windowphanies	1,015.15	Exhibit 8, appendix	Do.
7	Bolte & Bros	do	20.00	do	Do.
10	Buehne Steel Wool Co	Steel wool	246.05	Court judgment	Do.
10	Breitman, Joe	Beaver hair	5.40	Error in classification	Do.
11	Borgfeldt, Geo., & Co	Baskets of wood	21.00	do	Do.
11	Barreda, A. P	Cattle	3.75	Short shipped	Do.
11	Bush., Geo. S., & Co	Willow baskets	19.10	Error in classification	Do.
18	Bartley Bros. & Hall	Mineral substances	6.90	Court judgment	Do.
21	Babische Co	Books	239.50	Exhibit 9, appendix	Do.
24	Blackwell, D. A	Cattle	11.63	Short shipped	Do.
24	Buhne, H. H., Co	Coal	4.05	do	Do.
25	Baxter, Northrup Co	Manufactures of wood	2.90	Clerical error	Do.
25	Beckermann & Co	Merchandise commissions	14.30	Exhibit 2, appendix	Do.
May 8	Boggs & Buhl	Cotton laces	112.60	Error in classification	Do.
13	Borgfeldt, Geo., & Co	Metal belts	96.15	Court judgment	Do.
14	Barreda, A. P	Cattle	3.75	Short shipped	Do.
14	Blackwell, D. A	do	30.00	do	Do.
16	Bloomingdale Bros	Handbags	5.10	Court judgment	Do.
17	Bayer & Pretzfelder	do	1.30	do	Do.
17	Barreda, M., y Cia	Cattle	7.50	Short shipped	Do.
June 17	do	do	7.50	do	Do.
17	Billingsly, W	do	.55	Error in classification	Do.
20	Burlington Venetian Blind Co	Cotton tape	211.80	do	Do.
20	Borgfeldt Propfe Co	Bottles	6.97	Nonimportation	Do
1912.					
July 10	Central Warehouse Co	Straw braids	83.70	Error in classification	Do.
17	Conkey, John A., & Co	Bottles	2.40	Court judgment	Do.
24	Continental Rubber Co	Rubber waste	31.30	Error in classification	Do.
Aug. 21	Cohn & Rosenberger	Jewelry	21.00	Court judgment	Do.
21	Cummings, W. C	Beer	181.84	Exhibit 5, appendix	Do.

22	Cohn & Rosenberger	Jewelry	152.75	Exhibit 10, appendix	Do.
26	Cochran, R. L., Co	Hats	46.30	Exhibit 11, appendix	Do.
30	Caesar, H. A., & Co	Mousseline bands	73.23	Exhibit 12, appendix	Do.
Sept. 24	Chicago, Milwaukee & Puget Sound Ry.	Rice fiber	20.05	Error in classification	Do.
26	Chicago Daily Journal	News print paper	130.20	....do	Do.
Oct. 18	Cooke, R. J. T	Wantage	3,017.42	Exhibit 5, appendix	Do.
29	Corsi Zumsteg & Co	Lacterine	91.72	Court judgment	Do.
Nov. 6	Colagera, G. P	Olives	451.05	....do	Do.
7	....do	....do	1,267.65	....do	Do.
7	Carson, Perie, Scott & Co	Teddy bear muffs	3.39	Error in classification	Do.
19	Cohn, M	Merchandise commissions	18.40	Exhibit 2, appendix	Do.
22	....do	....do	47.20	....do	Do.
Dec. 5	Cheasty, E. C	Fans	17.60	Error in classification	Do.
17	Cusimano, F	Olive oil	191.60	Exhibit 13, appendix	Do.
1913.					
Jan. 7	Cleveland Foundry Co	Cut mica	11.10	Clerical error	Do.
7	Cohn, Rudolph, Import Co	Metal light holders	3.60	Error in classification	Do.
17	Castruccio, Ceasar R	Olive oil	4.80	Short shipped	Do.
30	Cohn & Rosenberger	Rubber, etc	136.50	Court judgment	Do.
Feb. 3	Charpentier, Leon	Drugs	1.25	Paid by carrier	Do.
11	Clauss Shear Co	Scissors	14.35	Clerical error	Do.
Mar. 10	Cleveland Akron Bag Co	Burlaps	25.51	Error in weight	Do.
13	Continental Distributing Co	Spirits	12.16	Error in quantity	Do.
26	Chase, E	Horses	175.00	American animals returned	Do.
Apr. 1	Clevis Co	Shears	377.67	Error in appraisement	Do.
19	Cardoza Lace Co	Lace machines	46.50	Court judgment	Do.
30	Clark, Thos. B	Antique furniture	8.40	Error in classification	Do.
May 8	....do	Manufactured wood	4.20	Clerical error	Do.
14	Chattanooga Brewing Co	Hops	4.91	Error in quantity	Do.
16	Claflin, H. B., Co	Hand bags	90.80	Court judgment	Do.
22	Carbolinium Wood Preserving Co	Tar containers	44.20	Error in classification—free	Do.
22	Central Vermont Ry. Co	Prepared meat	35.00	Clerical error	Do.
June 4	Cornwell, G. G., & Son	Kippered herring	4.98	Error in classification	Do.
17	Cardenas, E. (hijo)	Cattle	4.40	Short shipped	Do.
17	Champion, J. A	....do	4.67	....do	Do.
18	Cordero, V	Gin	85.71	Error in quantity	Do.
26	Croacher, Thos. W	Shingles, etc	48.16	Short shipped	Do.
20	Craig, C. W., & Co	Bottles	5.85	Nonimportation	Do.
1912.					
July 24	Detroit Leather Specialty Co	Leather apron	60.50	Error in classification	Do.
Aug. 1	Delapenha, R. W., & Co	Pasteboard, wrappers, etc	36.40	....do	Do.
16	Didier March Co	Etching	79.60	Court judgment	Do.
Sept. 14	Duluth Superior Milling Co	Wheat	13.00	Clerical error	Do.
23	Dollar, Robert, Co	Oak logs	425.28	Error in classification	Do.
Oct. 26	Dowing, Judae & Co	Feather articles	87.55	....do	Do.
26	Denver Dry Goods Co	Fans	6.60	....do	Do.
Nov. 29	....do	Rosaries	34.40	....do	Do.
Dec. 13	Doblin & Schamberg	Merchandise commissions	9.20	Exhibit 2, appendix	Do.
18	....do	....do	15.80	....do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Jan. 8	Diven, Louis	Muff and boa	$37.50	Personal effects, free	Sec. 28, subsec. 23, act Aug. 5, 1909.
27	Dieckerhoff, Raffloer & Co	Merchandise commissions	98.55	Court judgment	Do.
28	Downing, R. F., & Co	Catgut	185.00	do	Do.
28	Dieckerhoff, Raffloer & Co	Lace pins	21.30	do	Do.
Feb. 3	Denver Fire Clay Co	Scientific apparatus	2.40	Clerical error	Do.
11	Davis, W. S., jr	Sardines in oil	2.40	Short shipped	Do.
11	De Ronde, A., & Co	Coverings	123.70	Court judgment	Do.
11	Doudiet, L. E., & Co	Figs	19.63	Error in weight	Do.
13	Denver Dry Goods Co	Lamb gloves	5.57	Error in classification	Do.
24	Denver Fire Clay Co	Filter papers	7.65	Error in classification and shortage	Do.
Mar. 17	Donatelli, Leo	Wines	100.00	Clerical error	Do.
Apr. 1	Duffy Ice Co	Glassware	245.40	Paid by carrier	Do.
May 8	Deitz, Gould	Chinaware	4.20	Clerical error	Do.
June 13	Davies, H., & Co. (Ltd.)	Herrings	6.60	Error in classification	Do.
13	Denike, E	Crude rosin	676.95	do	Do.
17	Dinn, E. O	Cattle	56.25	do	Do.
21	Doudiet, L. E., & Co	Kippered herring	109.50	do	Do.
28	Davies, Turner & Co	Ladder tapes	26.70	Exhibit 39, appendix	Do.
1912.					
July 11	Ely & Walker Dry Goods Co	Linen	15.70	Error in classification	Do.
12	Eaton, Theo. H., & Son	Metal coverings	49.20	do	Do.
Sept. 24	Emery Bird-Thayer Dry Goods Co	Elastic belting	8.25	do	Do.
24	do	Electric bulbs	43.80	do	Do.
26	Ely & Walker Dry Goods Co	Bleached cottons	10.27	do	Do.
Nov. 22	Einstein, J	Merchandise commissions	1.40	Exhibit 2, appendix	Do.
22	Erlanger Blumgart, N., & Co	do	39.09	do	Do.
25	do	do	407.83	do	Do.
29	do	do	1,061.35	do	Do.
Dec. 2	do	do	100.87	do	Do.
3	do	do	38.57	do	Do.
4	do	do	32.20	do	Do.
5	do	do	81.86	do	Do.
5	Embossing Co	Plastacine	250.20	Error in classification	Do.
7	Erlanger Blumgart, N., & Co	Merchandise commissions	532.51	Exhibit 2, appendix	Do.
9	do	do	774.30	do	Do.
12	do	do	513.67	do	Do.
13	do	do	650.79	do	Do.
14	do	do	60.37	do	Do.
16	Einstein, J	do	66.00	do	Do.
16	Erlanger Blumgart, N., & Co	do	425.48	do	Do.
17	do	do	251.51	do	Do.
19	Einstein, J	do	2.95	do	Do.
19	Erlanger Blumgart & Co	do	375.18	do	Do.

	20	.....do	.....do	598.14	.....do	Do.
	20	.....do	.....do	222.95	.....do	Do.
	21	.....do	.....do	87.59	.....do	Do.
	21	El Paso Iron & Metal Co	Scrap iron	3.30	Clerical error	Do.
	26	Erlanger Blumgart & Co	Merchandise commissions	342.57	Exhibit 2, appendix	Do.
	28	.....do	.....do	666.62	.....do	Do.
	19	.....do	.....do	423.22	.....do	Do.
	20	.....do	.....do	16.55	.....do	Do.
	27	Einstein, J	.....do	6.50	.....do	Do.
	27	Erlanger, Blumgart & Co	.....do	612.79	.....do	Do.
	28	.....do	.....do	50.85	.....do	Do.
	30	.....do	.....do	1,266.42	.....do	Do.
1913.						
Jan.	2	.....do	.....do	17.00	.....do	Do.
	7	.....do	.....do	116.40	.....do	Do.
	8	.....do	.....do	32.60	.....do	Do.
	9	.....do	.....do	305.70	.....do	Do.
	11	.....do	.....do	27.90	.....do	Do.
	18	.....do	.....do	175.75	.....do	Do.
	18	.....do	.....do	34.45	.....do	Do.
	18	.....do	.....do	864.21	.....do	Do.
	18	Einstein, J	.....do	9.40	.....do	Do.
	6	Erlanger, Blumgart & Co	.....do	787.39	.....do	Do.
	9	.....do	.....do	1,205.40	.....do	Do.
	10	.....do	.....do	1,505.82	.....do	Do.
	14	.....do	.....do	3,800.79	.....do	Do.
	20	.....do	.....do	4,152.89	.....do	Do.
	21	.....do	.....do	31.50	.....do	Do.
	27	.....do	.....do	58.53	.....do	Do.
Feb.	4	.....do	.....do	21.00	.....do	Do.
	4	.....do	.....do	400.81	.....do	Do.
	14	.....do	.....do	1,424.07	.....do	Do.
	17	.....do	.....do	607.90	.....do	Do.
	21	.....do	.....do	158.32	.....do	Do.
	24	.....do	.....do	1,007.51	.....do	Do.
	25	.....do	.....do	63.85	.....do	Do.
	25	Emery-Bird-Thayer Dry Goods Co	Pasteboard coverings	1.36	Error in classification	Do.
	25	.....do	Desk sets	2.75	.....do	Do.
	25	.....do	Hand sewing needles	13.05	.....do	Do.
	25	.....do	Imitation jewelry	14.70	.....do	Do.
Mar.	12	Erlanger, Blumgart & Co	Merchandise commissions	480.11	Exhibit 2, appendix	Do.
	17	.....do	.....do	138.86	.....do	Do.
	19	.....do	.....do	140.60	.....do	Do.
	21	Embossing Co	Plasterine	348.60	Error in classification	Do.
Apr.	1	Erlanger, Blumgart & Co	Merchandise commissions	159.50	Exhibit 2, appendix	Do.
	8	Erlanger Blumgart, N., & Co	.....do	206.10	.....do	Do.
	15	.....do	.....do	103.70	.....do	Do.
	15	Emery Bird Thayer Dry Goods Co	Lamb gloves	7.17	Error in classification	Do.
	24	.....do	Silk velvet	8.86	.....do	Do.
May	8	Embossing Co	Plastacine	158.70	.....do	Do.
June	16	Ernshaw, B. B., & Bro	Kippered herring	112.54	.....do	Do.
	16	Eureka Wholesale Grocery Co	.....do	.60	.....do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1912.					
July 23	Frazzini Prospero Mercantile Co	Cordials	$2.60	Clerical error	Sec. 28, subsec. 23, act Aug. 5, 1909.
23	Fischer, H. F	Rotten grapes	25.00	Exhibit 34, appendix	Do.
Aug. 1	Furuya, M., & Co	Conjack flour	3.80	Error in classification	Do.
19	Freidlander & Co. (Inc.)	Mousseline bands	118.44	Exhibit 14, appendix	Do.
20	Freidenberg, J	Washers	43.01	Exhibit 15, appendix	Do.
Sept. 24	Furuya, M., & Co	Salted plums	10.95	Error in classification	Do.
Oct. 24	do	Worm gut	14.40	do	Do.
29	Freeman, J. J., Co	Beaded bags	6.25	do	Do.
Nov. 18	Freidman, S., & Co	Merchandise commissions	182.11	Exhibit 2, appendix	Do.
20	do	do	146.40	do	Do.
22	Firth Booth & Co	do	76.40	do	Do.
26	do	do	42.80	do	Do.
Dec. 5	Fujita, N	Dried fish	7.80	Error in classification	Do.
5	Fujita, Y	do	15.07	do	Do.
10	Firth Booth & Co	Merchandise commissions	2.00	Exhibit 2, appendix	Do.
11	Freidman, S., & Co	do	94.00	do	Do.
12	Falks Sons, L	do	6.40	do	Do.
13	Freidman, S., & Co	do	241.35	do	Do.
13	Falks Sons, L	do	5.10	do	Do.
13	Fithian, J. H., & Co	do	2.00	do	Do.
14	Falks Sons, L	do	20.25	do	Do.
18	Freidman, S., & Co	do	156.40	do	Do.
19	do	do	8.40	do	Do.
27	Frank & Long	do	121.75	do	Do.
31	Freidman, S., & Co	do	48.80	do	Do.
31	do	do	66.00	do	Do.
31	Firth Booth & Co	do	92.80	do	Do.
31	Freidman, S., & Co	do	106.60	do	Do.
1913.					
Jan. 7	Firth Booth & Co	do	63.80	do	Do.
11	Falk, L., Sons	do	16.90	do	Do.
13	Friedman, S., & Co	do	27.20	do	Do.
13	Firth Booth & Co	do	9.20	do	Do.
13	Frank & Long, J. M	do	187.80	do	Do.
8	do	do	52.15	do	Do.
15	Fritz Bros. Co	Tobacco, stemmed	8.64	Error in weight	Do.
30	Frank & Long, J. M	Merchandise commissions	4.00	Exhibit 2, appendix	Do.
31	Farbenfabriken of Elberfeld Co	Soap	271.25	Exhibit 16, appendix	Do.
Feb. 3	do	Coal-tar dyes	2.40	Shortage	Do.
8	Falk, L., Sons	Merchandise commissions	16.25	Exhibit 2, appendix	Do.
13	Freidman, S., & Co	do	61.20	do	Do.
13	Furuya, M., Co	Crude gut strings	13.50	Error in classification	Do.
14	Firth Booth & Co	Merchandise commissions	15.60	Exhibit 2, appendix	Do.

	15	Falks, L., Sons	do	9.60	do	Do.
	17	Firth Booth & Co	do	18.00	do	Do.
	21	Frank & Long, J. M	do	55.80	do	Do.
	24	Fenton, jr., A. W	Metal manufactures	2.70	Exhibit 33, appendix	Do.
	24	Figge Doyle Co	Liquor	6.03	Paid by carrier	Do.
	24	Funsten, R. E., Dried Fruit & Nut Co	Pecans	5.55	do	Do.
	25	Frank & Long, J. M	Merchandise commissions	127.85	Exhibit 2, appendix	Do.
Mar.	25	do	do	56.25	do	Do.
	15	do	do	19.70	do	Do.
	27	do	do	15.20	do	Do.
Apr.	1	Fleitas, S. & T	Tobacco	16.80	Clerical error	Do.
	1	Freidmann Blace Farber Co	Artificial silk	11.12	Error in classification	Do.
	11	Fuju Shoten	Silk cloth	141.38	Error in classification and weight	Do.
	14	Falks, L., Sons	Merchandise commissions	4.35	Exhibit 2, appendix	Do.
	14	Frank & Long, J. M	do	95.80	do	Do.
	30	Furuya, M., & Co	Rice	12.50	Clerical error	Do.
May	22	do	Soy	4.00	do	Do.
June	20	do	Foreign books	4.50	Books in foreign language, free	Do.
	20	Finch Van Slyck & McConville	Manufactures of flax	1,800.00	Clerical error	Do.
	20	Fung Hai & Co	Silk embroidery	.60	Error in classification	Do.
	20	Fook Woh & Co	do	5.70	do	Do.
	20	Fugazi, S. B	Bottles	4.50	Nonimportation	Do.
	20	Fremery & Co., de	do	82.13	do	Do.
	20	Fremery, James de	do	8.51	do	Do.
1912.						
July	9	Godwin's Sons, R. G	Statuary	217.50	Exhibit 18, appendix	Do.
	12	Gimbel Bros	Gun-metal bags, etc	110.00	Error in classification	Do.
	12	Gorman, J. J	Chip braid	153.00	do	Do.
	23	Godellot & Co	Night lights	124.20	Court judgment	Do.
	24	Goldsmith Sons, P	Grain leather	17.62	Error in classification	Do.
	29	Gustaveson, A	Steers	74.80	do	Do.
Aug.	19	Godillot & Co	Lights	84.45	Court judgment	Do.
	20	Guthman, Solomons & Co	Jewelry	17.00	do	Do.
	24	German, Hoffbauer & Helm Co	Gloves	61.30	Exhibit 19, appendix	Do.
Sept.	4	do	do	441.90	do	Do.
	21	Grossman, H	Olive oil	4.73	Error in classification	Do.
	26	German American Products Co	Ichtamon	43.09	do	Do.
	26	Giaque, A. J	Ferrosilicon	8.80	Clerical error	Do.
Oct.	14	Gonsalves & Co. (Ltd.)	Sake	148.95	Leakage	Do.
	19	Galanopulo, C. S	Olives	1,676.40	Court judgment	Do.
	26	Gulf Transit Co	Chicle	6.85	Clerical error	Do.
Nov.	7	Galloway Bros., Bowman Co	Bags	51.20	Error in classification	Do.
	25	Goldstein, M	Merchandise commissions	115.10	Exhibit 2, appendix	Do.
	26	Gladding, H. B., Dry Goods Co	Paper envelopes	5.85	Error in classification	Do.
	26	Globe Elevator Co	Flaxseed	72.21	do	Do.
Dec.	6	General Electric Co	Powdered talc	66.00	do	Do.
	6	Goldstein, M	Merchandise commissions	3.60	Exhibit 2, appendix	Do.
	19	do	do	8.00	do	Do.
	28	Garfinkel, M	do	45.32	do	Do.
	29	Goldstein, M	do	50.40	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Jan. 2	Garfinkel, M.	Merchandise commissions	$19.66	Exhibit 2, appendix	Sec. 28, subsec. 23, act Aug. 5, 1909.
6	do	do	1.83	do	Do.
6	Golstein, M	do	63.60	do	Do.
8	Goddard, J. W., & Sons	do	3,345.51	do	Do.
9	do	do	43.35	do	Do.
10	do	do	92.60	do	Do.
10	Garfinkel, M.	do	17.25	do	Do.
13	Goddard, J. W., & Sons	do	214.95	do	Do.
20	do	do	58.20	do	Do.
21	do	do	35.70	do	Do.
30	do	do	6.80	do	Do.
30	Golden State Wine Co	Brandy	30.91	Short shipped	Do.
Feb. 1	Goddard, J. W., & Sons	Merchandise commissions	43.60	Exhibit 2, appendix	Do.
3	do	do	40.85	do	Do.
10	do	do	28.05	do	Do.
20	do	do	143.10	do	Do.
20	Globe Elevator Co	Flaxseed	21.84	Allowance for impurities	Do.
24	Goldstein, Dr. M. A	Anatomical preparation	4.75	Error in classification	Do.
25	Gustaveson, A	Cattle	187.55	American animals returned	Do.
25	Goldstein, M	Merchandise commissions	8.80	Exhibit 2, appendix	Do.
26	Goddard, J. W., & Sons	do	41.15	do	Do.
28	Goldstein, M	do	39.65	do	Do.
Mar. 5	Glanckoff, O	Manufacturers of metal	4.75	do	Do.
6	Glass, H., & Co	Flax	2.30	do	Do.
10	Germain Hoffbauer & Helm Co	Manufacturers of metals	16.25	do	Do.
12	Goddard, J. W., & Sons	Merchandise commissions	6.10	do	Do.
14	do	do	14.90	do	Do.
14	Glass, H., & Co	Flax	12.70	Court judgment	Do.
17	Griggs, Cooper & Co	Fish	27.30	Clerical error	Do.
21	Germain Hoffbauer & Helm Co	Manufacturers of metal	5.80	Court judgment	Do.
26	Goddard & Sons	Merchandise commissions	2.75	Exhibit 2, appendix	Do.
29	Good & Reese Co	Plants	9.77	Error in classification	Do.
Apr. 2	Goddard, J. W., & Sons	Merchandise commissions	12.80	Exhibit 2, appendix	Do.
8	Germain Hoffbauer & Helm Co	Manufacturers of metal	103.20	Court judgment	Do.
11	Goldsmith's Sons	Grain leather	72.74	Error in classification	Do.
25	Goldsmith, P., Sons	do	51.80	do	Do.
June 2	Grandeman, W., & Son	Herrings	9.20	Exhibit 21, appendix	Do.
21	do	do	29.27	do	Do.
21	Greene & Wood	Laths, etc	37.34	Short shipped	Do.
21	Gonvis & Tjabring	Matches	35.86	Exhibit 22, appendix	Do.
21	Giurlani & Bro	Bottles	18.77	Nonimportation	Do.
21	Granucci Grocery Co	do	7.33	do	Do.
21	Gaskill, V. W	do	5.84	do	Do.

1912.					
10	Hirsch Bros. & Co	Olives	68.85	Clerical error	Do.
July 17	Harris, H., & Co	Rotten grapes	267.50	Exhibit 34, appendix	Do.
23	Hada, K	Dried fish	25.20	Error in classification	Do.
23	Hempstead, O. G., & Son	Jute card waste	285.40	do	Do.
24	Hawley & Letzerich	Brandy	7.02	Clerical error	Do.
24	Heyliger & Raubitsched	Musseline bands	64.04	Exhibit 12, appendix	Do.
Aug. 23	Hawley & Letzerich	Mustard relish	6.80	Clerical error	Do.
Sept. 23	do	Manufactures of metal	13.15	do	Do.
23	do	Sardines	27.60	Error in classification	Do.
23	do	Willow baskets	28.80	do	Do.
23	do	Silex lining	118.30	do	Do.
26	Hagelberg, W	Booklets	8.40	Exhibit 1, appendix	Do.
27	Hauptman, A	Baskets	110.00	Court judgment	Do.
14	Hackfeld & Co. (Ltd.)	Sake	404.02	Leakage	Do.
Oct. 14	Hamanura	Manufactures of paper	4.34	Error in classification	Do.
24	Hawley & Letzerich	Lead pencils	4.55	Clerical error	Do.
24	do	Machine tools	25.50	Error in classification	Do.
30	do	Sugar	160.00	Clerical error	Do.
26	Harrison Bros. & Richardson	Iron drum containers	14.40	Error in classification	Do.
Nov. 26	do	Horse	30.00	American animal returned	Do.
27	Hall Bros	Matting rugs	192.82	Clerical error	Do.
27	Hawley & Letzerich	Decorated earthenware	12.00	Short shipped	Do.
27	do	Gloves	62.47	Error in classification	Do.
29	do	Earthenware	9.75	Clerical error	Do.
13	Hess, D. S., & Co	Merchandise commissions	8.56	Exhibit 2, appendix	Do.
Dec. 13	Hackett, Carhart & Co	do	7.70	do	Do.
17	do	do	8.80	do	Do.
20	Hawley & Letzerich	Toys	2.10	Clerical error	Do.
20	do	Sugar	437.65	do	Do.
31	Hahlo Co	Merchandise commissions	68.00	Exhibit 2, appendix	Do.
1913.					
Jan. 3	Halle Bros. Co	Gloves	4.00	Error in classification	Do.
7	Hawley & Letzerich	Machine tools	35.85	do	Do.
7	Hahlo Co	Merchandise commissions	23.75	Exhibit 2, appendix	Do.
15	do	do	1.20	do	Do.
Feb. 4	Hempstead, O. G., & Son	Jute machinery	97.20	Exhibit 17, appendix	Do.
4	Hackfeld, H., & Co. (Ltd.)	Cotton	13.12	Clerical error	Do.
11	Hogan, M. J	Hemp braid	133.35	Error in classification	Do.
18	Hawley & Letzerich	Wine	69.75	do	Do.
24	Howell Nurseries	Plants	24.75	Duty twice paid	Do.
24	Hazard, E. C., & Co	Coverings	28.50	Court judgment	Do.
24	Hahlo Co	Merchandise commissions	90.80	Exhibit 2, appendix	Do.
24	do	do	205.00	do	Do.
24	do	do	9.60	do	Do.
24	do	do	135.60	do	Do.
Mar. 5	Hazard, E. C., & Co	Coverings	15.70	Court judgment	Do.
13	Hawley & Letzerich	Fernet bitters	131.80	Error in gauge	Do.
Apr. 1	Hirzel, Feltmann & Co	Rotten fruit	83.49	Court judgment	Do.
1	Hahlo Co	Merchandise commissions	20.00	Exhibit 2, appendix	Do.
1	Hawley & Letzerich	Manufactures of straw	22.75	Error in classification	Do.
1	Hubbard, Eldredge & Miller	Flax straw	127.65	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Apr. 5	Hahlo Co	Merchandise commissions	$7.60	Exhibit 2, appendix	Sec. 28, subsec. 23, act Aug. 5, 1909.
8	do	do	17.45	do	Do.
8	Haynes Distilling Co	Liquidation	22.80	Court judgment	Do.
24	Hawley & Letzerich	Soap erasers	2.10	Error in classification	Do.
25	Harshaw, Fuller & Goodwin Co	Crude antimony	17.92	Error in weight	Do.
May 8	Hecht & Co	Straw matting	1.05	Error in quantity	Do.
8	Hershinger, Mrs. J. H	Embroideries	3.90	Error in appraisement	Do.
8	Hempstead, O. G., & Son	Matches	8.50	Error in classification	Do.
17	Horne, Joseph, Co	Embroidered cotton apparel	16.50	Clerical error	Do.
22	Hackfeld, H., & Co. (Ltd.)	Sulphur	3,928.40	Error in classification	Do.
June 16	Hawley & Letzerich	Herrings	458.00	do	Do.
16	Hume, Frank	do	7.45	do	Do.
16	Harper, F. F. G., & Co	Toys	83.30	Clerical error	Do.
16	Harper, F. F., & Co	Silk embroideries	1.20	Error in classification	Do.
1912.					
Oct. 26	Illfelder, I., & Co	Toys	1.70	do	Do.
Nov. 27	Indiana Veterinary College	Phil. apparatus	36.00	Apparatus for educational institution, free.	Do.
1913.					
Mar. 3	Ishimitsu, S	Fish	1.50	Short shipped	Do.
Apr. 10	Imitation Art Glass Co	Windowphanie paper	36.98	Exhibit 8, appendix	Do.
May 8	do	do	98.90	do	Do.
1912.					
July 24	Jewell Belting Co	Walrus hides	192.60	Error in classification	Do.
Sept. 21	Jefferson & Daly	Brandy	5.54	Short shipped	Do.
Dec. 16	Jerrems, W. G	Merchandise commissions	45.62	Exhibit 2, appendix	Do.
17	Jacoby, M. H., & Co	do	9.20	do	Do.
26	do	do	8.80	do	Do.
1913.					
Jan. 7	Jevne, H., Co	Vermuth	7.56	Short shipped	Do.
May 14	do	Whisky	8.48	do	Do.
June 16	Jenkins, J. W., & Sons Music Co	Musical instruments	13.95	Clerical error	Do.
20	Jung, Geo. H., & Co	Lithographic prints	39.51	Error in classification	Do.
20	Jesse Moore Hunt Co	Bottles	1.63	Nonimportation	Do.
1912.					
July 10	Kaufman Lattimer Co	Glass slides	5.26	Clerical error	Do.
Sept. 9	Koechl, Victor, & Co	Lanolin	345.25	Exhibit 20, appendix	Do.
24	Kansas Zinc Co	Zinc ore	70.44	Error in quantity	Do.
26	Kann, S., Sons & Co	Manufactures of metal	25.60	Error in classification	Do.
Oct. 8	Kimball, W. G	Lava millstones	180.00	Exhibit 24, appendix	Do.

14	Kimura & Co. (Ltd.)	Sake	287.90	Leakage	Do.
14	Kojuna, S	do	191.93	do	Do.
26	Kline, A. A., & Co	Wool blankets	10.00	Clerical error	Do.
29	Ketelsen & Degetan, Successors	Scrap iron	2.70	do	Do.
29	Kroll, Reinhold	Brandy	5.85	Court judgment	Do.
Nov. 29	Keramic Supply Co	White china	32.75	Error in classification	Do.
29	Kipp Bros. Co	Down powder puffs	3.20	do	Do.
Dec. 5	Kaita, I	Dried fish	4.46	do	Do.
14	Kwong Chong Lung Co	Merchandise	10.00	Clerical error	Do.
14	Koehler, R	Merchandise commissions	24.00	Exhibit 2, appendix	Do.
15	do	do	36.10	do	Do.
16	Kupfer, H., & Co	do	19.20	do	Do.
17	do	do	4.00	do	Do.
20	Kraemer, F. L., & Co	Antiques	235.90	Court judgment	Do.
21	Ketelsen & Degetan, Successors	Scrap iron	1.10	Clerical error	Do.
21	Kupfer, H., & Co	Merchandise commissions	20.85	Exhibit 2, appendix	Do.
28	do	do	6.50	do	Do.
1913.					
Jan. 9	do	do	68.40	do	Do.
10	do	do	8.80	do	Do.
Feb. 3	Kurtz, M	Beaver hair	14.70	Error in classification	Do.
24	Koechl, Victor, & Co	Coverings	308.00	Court judgment	Do.
25	do	do	426.25	do	Do.
25	Kupfer, H., & Co	Merchandise commissions	12.00	Exhibit 2, appendix	Do.
26	do	do	5.50	do	Do.
27	do	do	3.00	do	Do.
Mar. 21	Kraemer, F. L., & Co	Mineral substances	21.08	Court judgment	Do.
21	Kuehn, Otto S., Co	Herring	7.94	Short shipped	Do.
26	Kowalski, J. L	Cattle	17.50	do	Do.
Apr. 4	Kemper, P. A	Merchandise	4.05	Court judgment	Do.
4	do	Liquidation	29.00	do	Do.
11	Kong Yuen Co	Writing paper	1.26	Error in quantity	Do.
11	do	Woven flax	9.80	Error in classification	Do.
11	Kelly, Clarke & Co	Worcester sauce	4.80	Clerical error	Do.
11	Knauth, Nachod & Kuhne	Windowphanie	21.68	Exhibit 8, appendix	Do.
21	Kaufmann & Strauss Co	Post cards	33.49	Court judgment	Do.
25	Kraemer & Foster	Talc	214.52	Exhibit 38, appendix	Do.
25	Kwong On Co	Rice	2.86	Short shipped	Do.
May 14	Kowalski, J. L	Cattle	3.75	do	Do.
1912.					
Aug. 24	Leggitt, F. H., & Co	Coverings	10.10	Exhibit 25, appendix	Do.
Sept. 21	Lent, John F	Chicks and ducks	32.20	Error in classification	Do.
24	Lind Air Products Co	Brass goods	136.15	Short shipped and error in value	Do.
Oct. 14	Lovejoy & Co	Sake	85.63	Leakage	Do.
26	Lozano, F., Son & Co	Filler tobacco	333.60	Error in classification	Do.
Dec. 12	Long, Sperling & Stern	Merchandise commissions	8.60	Exhibit 2, appendix	Do.
14	do	do	73.20	do	Do.
18	Leonard, W. B	do	37.36	do	Do.
18	Long, Sperling & Stern	do	27.60	do	Do.
20	do	do	29.60	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1912.					
Dec. 21	Lewis, H. E	Colored silk	$19.40	Clerical error	Sec. 28, subsec. 23, act Aug. 5, 1909.
27	Long, Sperling & Stern	Merchandise commissions	32.30	Exhibit 2, appendix	Do.
27	do	do	9.60	do	Do.
1913.					
Jan. 6	Le Vine	do	5.60	do	Do.
7	Leal, Alberto	Beans	8.59	Error in quantity	Do.
7	Lozano, F., Sons & Co	Filler tobacco	91.20	Error in classification	Do.
4	Long, Sperling & Stern	Merchandise commissions	31.75	Exhibit 2, appendix	Do.
8	do	do	104.70	do	Do.
11	do	do	55.10	do	Do.
15	Loring, Andrews Co	Silk apparel	46.65	Antiquities, free	Do.
16	Long, Sperling & Stern	Merchandise commissions	16.00	Exhibit 2, appendix	Do.
27	Lorsch, A., & Co	Imitation pearls	61.05	Court judgment	Do.
29	Le Vin, Julius, Co. (Inc.)	Vermouth	2.16	Short shipped	Do.
Feb. 3	Lilley, M. C., & Co	Metal thread	2.60	Paid by carrier	Do.
24	Los Angles Notion Co	Infants' hose	79.90	Error in classification	Do.
25	Levi & Ottenheimer	Gin	5.82	Paid by carrier	Do.
25	Le Vin, Julius, Co. (Inc.)	Liquor	4.74	Short landed	Do.
25	Long, Sperling & Stern	Merchandise commissions	142.85	Court judgment	Do.
25	Louderback, A. E	Coverings	223.05	do	Do.
27	do	do	190.15	do	Do.
Mar. 4	do	do	11.75	do	Do.
17	Loveless, R. L	Chocolate	12.60	Clerical error	Do.
26	Lozano, F., Sons & Co	Filler tobacco	96.00	Error in classification	Do.
Apr. 10	Lankester, Howard	Wild animals	5.00	Zoological exhibit, free	Do.
10	Lewis, A. T., & Son	Gloves	106.26	Error in classification	Do.
25	Lozano, F., Son & Co	Filler tobacco	219.60	do	Do.
May 29	Leggett, F. H., & Co	Herrings	358.50	Exhibit 21, appendix	Do.
June 4	Leira, Manuel	Sweaters	19.76	Personal effects, free	Do.
5	Long, R. F	Herrings	97.15	Court judgment	Do.
23	do	Ham	23.86	do	Do.
1912.					
July 10	Maurer, W. A	Earthenware	7.70	Clerical error	Do.
10	Midland Linseed Product Co	Flaxseed	69.85	do	Do.
11	Meyer Bros. Drug Co	Metal containers	12.60	Error in classification	Do.
12	Maltby, David	Cattle and goats	4.95	Short shipped	Do.
12	Mexico North Western Ry. Co	Lumber	12.98	Clerical error	Do.
16	Menzel & Co	Herrings	6.60	Court judgment	Do.
22	Maynard & Child	Rotten grapes	37.50	Exhibit 34, appendix	Do.
31	Metz, H. A., & Co	Coverings	3.30	Exhibit 25, appendix	Do.
31	McComber, J. C	Rotten grapes	17.50	Exhibit 34, appendix	Do.
Aug. 16	Maddaus, I	Reappraisement	1,095.16	Exhibit 26, appendix	Do.

	19	Motor Car Equipment Co	Washers	332.96	Exhibit 15, appendix	Do.
Sept.	21	McBride & Co	Wool cloth	190.45	Error in classification	Do.
	21	McGettrick, P	Halibut	159.60	American products returned	Do.
	21	McNiven, I	Fertilizer	178.15	Error in classification	Do.
	23	Maltby, David	Cattle	4.25	....do	Do.
	23	Mustrat Bros. & Co	Straw mats	1.05	Clerical error	Do.
	24	Morimura Bros	Paper drawings	17.10	Error in classification	Do.
	26	Mallinckrodt Chemical Works	Cocoa leaves	3,532.85	Error in classification and weight	Do.
Oct.	8	Manufacturers Paper Co	Lava millstones	1,215.30	Exhibit 24, appendix	Do.
	24	Mill & Mine Supply Co	Wire rope	56.83	Error in classification	Do.
	24	Meier & Frank Co	Gloves	25.85	....do	Do.
Nov.	27	Murphy, Dan	Marble sculpture	160.65	....do	Do.
	27	Myers, F. W., & Co	Pine pickets	30.00	Clerical error	Do.
Dec.	5	MacDougall & Southwick Co	Embroidered fans	13.00	Error in classification	Do.
	11	Murphy, A., & Co	Merchandise commissions	59.85	Exhibit 2, appendix	Do.
	17	....do	....do	320.35	....do	Do.
	20	....do	....do	105.24	....do	Do.
	21	Milius Guggenheimer & Co	....do	240.15	....do	Do.
	23	Merck & Co	Wool grease	621.74	Court judgment	Do.
	24	Mack Bros. & Co	Merchandise commissions	24.00	Exhibit 2, appendix	Do.
	26	Milius Guggenheimer & Co	....do	486.05	....do	Do.
	27	Mack Bros. & Co	....do	3.60	....do	Do.
	27	Mexico North Western Ry. Co	Lumber	20.00	Clerical error	Do.
	27	Myers, F. W., & Co	....do	13.08	....do	Do.
	28	Milius Guggenheimer & Co	Merchandise commissions	412.70	Exhibit 2, appendix	Do.
	28	Murphy, A., & Co	....do	263.79	....do	Do.
	28	Marx, W., & Co	....do	39.92	....do	Do.
	31	Milius Guggenheimer & Co	....do	36.60	....do	Do.
1913.						
Jan.	2	....do	....do	157.00	....do	Do.
	3	....do	....do	19.80	....do	Do.
	7	....do	....do	59.79	....do	Do.
	8	....do	....do	1,186.70	....do	Do.
	9	....do	....do	86.90	....do	Do.
	10	....do	....do	1,351.10	....do	Do.
	11	....do	....do	1,159.35	....do	Do.
	14	....do	....do	656.51	....do	Do.
	15	....do	....do	14.55	....do	Do.
	28	....do	....do	282.75	....do	Do.
	29	Murphy, A., & Co	....do	118.10	....do	Do.
	30	Milius Guggenheimer & Co	....do	69.20	....do	Do.
	31	Metzger, L., & Co	Hatpins	6.45	Court judgment	Do.
	31	Maurer, W. A	Earthenware	13.20	Clerical error	Do.
	31	Mitchell & Jennings	Cattle	5.08	Error in classification	Do.
	31	Milius Guggenheimer & Co	Merchandise commissions	73.50	Exhibit 2, appendix	Do.
	10	....do	....do	7.35	....do	Do.
Feb.	1	Murphy & Co	....do	24.65	....do	Do.
	2	....do	....do	28.25	....do	Do.
	3	....do	....do	59.70	....do	Do.
	3	Mack Bros. & Co	....do	188.08	....do	Do.
	5	Milius Guggenheimer & Co	....do	887.70	....do	Do.
	6	Murphy & Co	....do	52.45	....do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Feb. 7	Murphy & Co	Merchandise commissions	$411.30	Exhibit 2, appendix	Sec. 28, subsec. 23, act Aug. 5, 1909.
11	Mack Bros. & Co	do	122.49	do	Do.
11	Magruder, J. H	Curry powder	3.60	Error in classification	Do.
11	MacKay, J. C	Overcoat	8.64	Personal effects, free	Do.
14	Metz, H. A., & Co	Coverings	861.70	Court judgment	Do.
18	do	do	447.60	do	Do.
19	do	do	261.10	do	Do.
25	do	do	37.50	do	Do.
26	do	do	20.60	do	Do.
26	Milius Guggenheimer & Co	Merchandise commissions	163.30	Exhibit 2, appendix	Do.
26	do	do	18.50	do	Do.
26	Mack Bros. & Co	do	107.45	do	Do.
26	do	do	183.84	do	Do.
Mar. 1	Mitchell & Jennings	Cattle	48.75	Short shipped	Do.
3	Macy & Co	Coverings	149.20	Court judgment	Do.
4	Maynard & Child	do	12.76	do	Do.
13	Morimura Bros	Decorated porcelain	70.20	Clerical error	Do.
13	Milius Guggenheimer & Co	Merchandise commissions	95.30	Exhibit 2, appendix	Do.
13	Mack Bros. & Co	do	30.30	do	Do.
17	Milius Guggenheimer & Co	do	159.00	do	Do.
19	Mack Bros	do	2.80	do	Do.
24	do	do	15.83	do	Do.
26	Milius Guggenheimer & Co	do	404.10	do	Do.
29	Massee & Whitney	Trimmings	225.00	Exhibit 27, appendix	Do.
Apr. 1	Milius Guggenheimer & Co	Merchandise commissions	298.95	Exhibit 2, appendix	Do.
2	do	do	240.10	do	Do.
3	do	do	7.50	do	Do.
8	do	do	333.27	do	Do.
11	Mitchell & Jennings	Cattle	7.50	Short shipped	Do.
24	McLaughlin, Mrs. H. M	Books, etc	1.28	American goods returned	Do.
30	Mill & Mine Supply Co	Wire rope	682.47	Error in classification	Do.
May 8	Mitchell & Jennings	Cattle	7.75	Short shipped	Do.
9	Marquette Box & Lumber Co	Mill waste	439.09	Error in clasification	Do.
14	MacManus, C. L	Onions	17.14	Short shipped	Do.
17	Myers, F. W., & Co	Horse	87.50	Exhibition purposes, free	Do.
29	Meyer & Lange	Ham	19.71	Court judgment	Do.
29	do	do	1.10	do	Do.
29	do	Matches	16.95	do	Do.
June 4	Miller & Paine	Linens	5.90	Clerical error	Do.
13	Masscy, C. A	Oil paintings	247.70	Error in clasification	Do.
13	Manufacturers Paper Co	Stone	160.20	Court judgment	Do.
17	MacManus, C. L	Onions	34.94	Short shipped	Do.
17	Maltby, David	Cattle	36.93	do	Do.
17	Mendiola, Jesus	Onions	14.20	do	Do.
17	Mitchell & Jennings	Cattle	38.00	do	Do.

20	McCleary, Wallin & Crouse	Wool	1,503.36	Clerical error	Do.
21	Marshall Wells Hardware Co	Enameled ware	4.00	....do	Do.
27	Meyer & Lange	Horse-radish, etc	73.36	Court judgment	Do.
27	Mayhew, F. E., & Co	Bottles	1.18	Nonimportation	Do.
27	McLean, L. D., Co	....do	1.46	....do	Do.
27	Martinoni, E	....do	2.92	....do	Do.
1912.					
Aug. 2	National Aniline & Chemical Co	Coverings	2.15	Exhibit 25, appendix	Do.
Sept. 21	Norton, Jesse	Fish balls	6.00	Clerical error	Do.
21	Noyes Bros. & Cutler	Paper	3.12	Error in classification	Do.
24	Nordlingers, H., Sons	Pearl buttons	16.45	....do	Do.
Oct. 24	Nicolini & Varani	Olive oil	6.35	Clerical error	Do.
Dec. 10	Noyes Bros. & Cutler	Manufactures of glass	30.75	Error in classification	Do.
10	Nugent & Bro. Dry Goods Co	Fur felt hats	5.10	Clerical error	Do.
12	Neumann, C	Merchandise commissions	11.10	Exhibit 2, appendix	Do.
12	Nathan, Mandel & Co	....do	7.70	....do	Do.
12	....do	....do	21.30	....do	Do.
14	Neumann, C	....do	1.65	....do	Do.
31	Newman, H., & Co	....do	254.60	....do	Do.
31	Nathan, Mandel & Co	....do	9.20	....do	Do.
1913.					
Jan. 6	Newman, H., & Co	....do	29.00	....do	Do.
9	....do	....do	20.50	....do	Do.
10	Nathan Mandel & Co	....do	85.85	....do	Do.
14	....do	....do	67.85	....do	Do.
29	Newman, H., & Co	....do	6.50	....do	Do.
30	Neumann, C	....do	.75	....do	Do.
Feb. 5	Newman, H., & Co	....do	168.18	....do	Do.
10	....do	....do	1,990.92	....do	Do.
14	Nathan Mandel & Co	....do	183.05	....do	Do.
17	....do	....do	61.05	....do	Do.
24	Newman, H., & Co	....do	900.20	....do	Do.
Mar. 12	....do	....do	75.75	....do	Do.
13	National Cash Register Co	Manufactures of metal	7.50	American goods returned	Do
17	Noa, Mrs. I	Rugs	65.84	Household effects, free	Do.
21	Nott, H. C	....do	66.90	....do	Do.
21	Newman, H., & Co	Merchandise commissions	5.60	Exhibit 2, appendix	Do.
26	....do	....do	604.36	....do	Do.
26	Nose, W	Straw slippers	5.78	Error in classification	Do.
Apr. 1	Newman, H., & Co	Merchandise commissions	53.81	Exhibit 2, appendix	Do.
4	National Cash Register Co	Liquidation	.45	Court judgment	Do.
8	Nathan Mandel & Co	Merchandise commissions	4.95	Exhibit 2, appendix	Do.
June 30	Neuman & Schwiers Co	Ham	22.99	Exhibit 23, appendix	Do.
1912.					
July 24	Oxford Tripoli Co. (Ltd.)	Tripoli	109.29	Error in classification	Do.
Aug. 1	Ohio Iron & Metal Co	Scrap steel	885.99	....do	Do.
Sept. 24	Oriental Trading Co	Salted plums	38.73	....do	Do.
Oct. 14	Odo, K	Sake	59.94	Leakage	Do.
14	Ozaki, L	....do	515.24	....do	Do.
Nov. 13	Odo Shoten	Dried fish	19.65	Error in classification	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Jan. 3	Osborn Manufacturing Co	African bassine	$78.20	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
7	Origet A., & Co	Merchandise commissions	211.05	Exhibit 2, appendix	Do.
9	do	do	191.15	do	Do.
10	do	do	312.05	do	Do.
13	do	do	356.45	do	Do.
14	do	do	34.05	do	Do.
Feb. 3	do	do	46.40	do	Do.
Mar. 13	Oneida Community (Ltd.)	Knife blades, etc	3.20	Clerical error	Do.
1912.					
July 5	Pastene & Co. (Inc.)	Macaroni	517.60	Exhibit 35, appendix	Do.
11	Pierson, Ralph, & Co	Printed matter	32.85	Error in classification	Do.
12	Pittsburgh Dry Goods Co	Linens	154.20	do	Do.
12	Preece, T. J., & Co. (Inc.)	Preserved milk	77.30	Abandoned	Sec. 28, subsec. 22, act Aug. 5, 1909.
15	Pierse, S. S., Co	Bottles	8.00	Court judgment	Sec. 28, subsec. 23, act Aug. 5, 1909.
23	Persons Sons Co	Pelican gin	8.75	Error in gauge	Do.
23	Pierson, Ralph, & Co	Rosaries	26.80	Error in classification	Do.
23	do	English books	46.09	do	Do.
24	Peregoy & Moore Co	Cigars from Cuba	2.05	Error in quantity	Do.
30	Peabody, H. W., & Co	Coverings	697.75	Exhibit 25, appendix	Do.
31	Patterson Transfer Co	Firecrackers	8.96	Paid by carrier	Do.
Sept. 30	Post, Alfred H., & Co. (Inc.)	Ornamental feathers	67.20	Error in classification	Do.
Oct. 4	Pernie, James	Scrap jute bagging	985.90	do	Do.
14	Peacock, W. C., & Co. (Ltd.)	Sake	346.92	Leakage	Do.
24	Portland Linseed Oil Co	Flaxseed	23.45	Allowance for impurities	Do.
26	Perry, Mrs. W. H	Slate pictures	5.85	Clerical error	Do.
26	Pittsburgh Dry Goods Co	Cotton corduroy	49.41	Error in classification	Do.
30	Perry, A. F	Repairs to automobile	13.30	Repairs, free	Do.
Nov. 12	Pittsburgh Dry Goods Co	Leather bags	6.80	Short shipped	Do.
12	Patterson, John	Printed matter	3.75	Clerical error	Do.
1913.					
Jan. 14	Peacock, W. C., & Co. (Ltd.)	Canadian whisky	6.01	Short shipped	Do.
6	Pye, S. M., & Co	Merchandise commission	349.07	Exhibit 2, appendix	Do.
7	do	do	15.55	do	Do.
8	do	do	218.70	do	Do.
13	do	do	150.40	do	Do.
14	do	do	3.60	do	Do.
15	do	do	23.07	do	Do.
16	do	do	94.00	do	Do.
25	do	do	16.40	do	Do.
30	do	do	411.51	do	Do.
Feb. 3	do	do	460.30	do	Do.
20	do	do	168.00	do	Do.

25	....do	....do	28.00	....do	Do.
25	Pabst Brewing Co	Hops	78.88	Error in weight	Do.
25	Pulver Chocolate & Chicle Manufacturing Co.	Gum chicle	21.10	Clerical error	Do.
Mar. 5	Pomeroy & Fisher	Veluvine	123.95	Court judgment	Do.
17	Parmelee, Dohrmann Co	Decorated earthenware	3.60	Short shipped	Do.
26	Pierson, Schade Forwarding Co	Artificial flowers	4.20	Clerical error	Do.
Apr. 25	Palm, Fletcher & Co	Decalcomanias	57.43	Exhibit 28, appendix	Do.
25	Phenix Lace Works	Lace-making machine parts	390.15	Court judgment	Do.
May 8	Palm Bros. & Co	Decalcomanias	1,260.75	Error in classification	Do.
9	Pierson, Ralph & Co	Books	3.25	....do	Do.
17	Pratt, C. N	Kippered herring	53.34	....do	Do.
June 6	Peabody, H. W., & Co	Herrings	1,260.34	Exhibit 21, appendix	Do.
16	....do	Mackerel	30.60	Error in classification	Do.
16	....do	Kippered herring	332.10	....do	Do.
16	Pierson, Schade Forwarding Co	Fish hooks	4.05	Short shipped	Do.
16	Pascal Dubedat & Co	Bottles	19.54	Nonimportation	Do.
16	Pottet, A	....do	1.46	....do	Do.
May 14	Quinn, B. B	Iris bulbs	9.50	Error in classification	Do.
14	Quong Lee & Co	Silk embroidery	.90	....do	Do.
1912.					
July 12	Richmond, E. L., & Co	Hay	4.43	Clerical error	Do.
24	Robinson, J. W. Co	Artistic antiquities	379.55	Antiquities over 100 years old, free	Do.
25	Richard, C. B., & Co	Mirrors	3.40	Court judgment	Do.
Aug. 26	Rosenblum & Sentner	Hats	67.20	Exhibit 11, appendix	Do.
Sept. 21	Rube, H	Sherry wine and whisky	22.30	Error in quantity	Do.
26	Rice, Stix Dry Goods Co	Linens	3.00	Error in classification	Do.
26	Rosenthal Sloan Millinery Co	Manufacturing paste	61.95	....do	Do.
Oct. 14	Revillon Freres (Inc.)	Furs	39.60	Court judgment	Do.
24	Rice, Stix Dry Goods Co	Commissions	1.80	Clerical error	Do.
26	Robbins Fish Co	Fish	267.03	Error in classification	Do.
29	Reed Bros. & Co	Celluloid manufactures	6.25	....do	Do.
29	Root & McBride Co	Wool wearing apparel	3.96	Error in weight	Do.
Dec. 16	Robertson, A., & Co	Merchandise commissions	139.15	Exhibit 2, appendix	Do.
18	Rothfeld, Stern & Co	....do	438.35	....do	Do.
19	Richard, C. B., & Co	....do	158.05	....do	Do.
19	Robertson, A., & Co	....do	279.50	....do	Do.
19	Rothfeld, Stern & Co	....do	950.80	....do	Do.
20	Robertson, A	....do	28.20	....do	Do.
20	Robertson, A., & Co	....do	319.25	....do	Do.
20	Robertson, A	....do	299.90	....do	Do.
20	Robertson, A., & Co	....do	123.00	....do	Do.
20	Rothfeld, Stern & Co	....do	1,521.55	....do	Do.
21	Robertson, A	....do	70.05	....do	Do.
21	Robertson, A., & Co	....do	296.65	....do	Do.
26	....do	....do	41.20	....do	Do.
26	Robertson, A	....do	66.65	....do	Do.
26	Rothfeld, Stern & Co	....do	2,407.60	....do	Do.
28	Robertson, A	....do	168.90	....do	Do.
28	Robertson, A., & Co	....do	277.45	....do	Do.
31	Rothfeld, Stern & Co	....do	1,549.05	....do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Jan. 2	Robertson, A	Merchandise commissions	$123.70	Exhibit 2, appendix	Sec. 28, subsec. 23, act Aug. 5, 1909.
3	....do	....do	385.78	....do	Do.
3	Robertson, A., & Co	....do	65.10	....do	Do.
3	Richard, C. B., & Co	....do	93.20	....do	Do.
3	Redden & Martin	Manufactures of fur	8.50	Clerical error	Do.
3	Rosenthal-Sloan Millinery Co	Glass or paste	76.35	Error in classification	Do.
3	....do	Fur	137.70	....do	Do.
6	Richard, C. B., & Co	Merchandise commissions	445.44	Exhibit 2, appendix	Do.
6	Rothfeld, Stern & Co	....do	1,859.69	....do	Do.
7	Robertson, A	....do	134.10	....do	Do.
7	Richard, C. B., & Co	....do	254.62	....do	Do.
9	Rothfeld, Stern & Co	....do	113.05	....do	Do.
11	Robertson, A	....do	74.95	....do	Do.
14	....do	....do	14.50	....do	Do.
15	Rothfeld, Stern & Co	....do	153.35	....do	Do.
27	Robertson, A	....do	36.60	....do	Do.
29	Rosenthal-Sloan Millinery Co	Manufactures of celluloid	11.95	Error in classification	Do.
30	Robertson, A	Merchandise commissions	15.90	Exhibit 2, appendix	Do.
31	Rothfeld, Stern & Co	....do	46.45	....do	Do.
31	Rosenthal-Sloan Millinery Co	Manufactures of paste	12.15	Error in classification	Do.
31	Richard, C. B., & Co	Merchandise commissions	3.85	Exhibit 2, appendix	Do.
31	Rothfeld, Stern & Co	....do	375.75	....do	Do.
31	Robertson, A	....do	1,622.46	....do	Do.
Feb. 1	Rosenthal-Sloan Millinery Co	Beads, unstrung	4.00	Clerical error	Do.
1	Rothfeld, Stern & Co	Merchandise commissions	38.26	Exhibit 2, appendix	Do.
2	Robertson, A., & Co	....do	3,776.86	....do	Do.
3	Richard, C. B., & Co	....do	4.95	....do	Do.
3	Robertson, A., & Co	....do	11.60	....do	Do.
4	Richard, C. B., & Co	....do	8.00	....do	Do.
5	Robertson, A	....do	358.80	....do	Do.
5	Robertson, A., & Co	....do	48.25	....do	Do.
5	Rothfeld, Stern & Co	....do	52.70	....do	Do.
11	Robertson, A., & Co	....do	268.40	....do	Do.
13	Rothfeld, Stern & Co	....do	280.30	....do	Do.
14	Robertson, A., & Co	....do	279.60	....do	Do.
14	Robertson, A	....do	38.00	....do	Do.
17	Robertson, A., & Co	....do	860.70	....do	Do.
19	Rothfeld, Stern & Co	....do	370.01	....do	Do.
20	Richard, C. B., & Co	....do	50.45	....do	Do.
21	Robertson, A	....do	54.66	....do	Do.
24	Rothfeld, Stern & Co	....do	252.00	....do	Do.
26	Robertson, A., & Co	....do	1,583.91	....do	Do.
28	....do	....do	4.95	....do	Do.
Mar. 12	Rothfeld, Stern & Co	....do	4.95	....do	Do.

12	.....do	.....do	35.50	.....do	Do.
12	Robertson, A	.....do	34.40	.....do	Do.
12	Robertson, A., & Co	.....do	31.60	.....do	Do.
17	Robertson, A	.....do	166.15	.....do	Do.
17	Redden & Martin	Embroidered lace apparel	19.80	Clerical error	Do.
17	Rosenthal-Sloan Millinery Co	Ornamental feathers	3.36	.....do	Do.
19	Robertson, A	Merchandise commissions	65.33	Exhibit 2, appendix	Do.
19	Robertson, A., & Co	.....do	65.50	.....do	Do.
24	Richard, C. B., & Co	.....do	1.65	.....do	Do.
26	Rothfeld, Stern & Co	.....do	55.60	.....do	Do.
26	Robertson, A., & Co	.....do	82.65	.....do	Do.
Apr. 1	Rosenthal-Sloan Millinery Co	Ornamental feathers	42.10	Error in classification	Do.
1	Rich, N. J., & Co	Artificial silk	69.57	.....do	Do.
1	Rothfeld, Stern & Co	Merchandise commissions	328.63	Exhibit 2, appendix	Do.
1	Robertson, A., & Co	.....do	78.22	.....do	Do.
1	Robertson, A	.....do	3.30	.....do	Do.
3	Robertson, A., & Co	.....do	74.80	.....do	Do.
3	Rothfeld, Stern & Co	.....do	9.40	.....do	Do.
5	.....do	.....do	55.20	.....do	Do.
7	Raphael Tuck & Sons Co. (Ltd.)	Post cards	273.39	Exhibit 37, appendix	Do.
8	Robertson, A., & Co	Merchandise commissions	976.55	Exhibit 2, appendix	Do.
8	Rothfeld, Stern & Co	.....do	18.00	.....do	Do.
11	Roche, P	Horses	61.25	Error in appraisement	Do.
11	Rice-Stix Dry Goods Co	Beaded articles	3.75	Error in classification	Do.
15	Roberts, F. L	Lace machines	2,309.40	Court judgment	Do.
22	Richmond Lace Works	Lace machine parts	337.95	.....do	Do.
22	Rhode Island Lace Works	.....do	552.15	.....do	Do.
22	Regina Lace Co	.....do	224.45	.....do	Do.
May 9	Reilly, jr., John	Copper coins	22.50	Error in classification	Do.
9	Rothschild & Bro. (Inc.)	Wrapper tobacco	29.36	Error in weight	Do.
22	Ridenour-Baker Grocery Co	Glass bottles	4.25	Clerical error	Do.
22	Rothe, M. A. Graser	Fish	236.90	Error in classification	Do.
22	Roth & Co	Bottles	6.78	.....do	Do.
29	Roberts, A., & Co	Herrings	595.80	Exhibit 21, appendix	Do.
June 4	Rosenthal-Sloan Millinery Co	Manufacture of paste	10.35	Error in classification	Do.
13	Reins & Meiss	Embroidered articles	82.80	Casualty	Sec. 2984, R. S.
13	Rodriquez, Salvador	Tobacco	63.60	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
16	Ridenour-Baker Grocery Co	Herring, etc	52.40	.....do	Do.
20	Robinson, W. A., & Co	Whale and sperm oil	45.92	Short shipped	Do.
1912.					
July 10	Schade, Wilfred, & Co	Forgings	12.40	Error in classification	Do.
11	.....do	Manufacture of paste	3.15	.....do	Do.
11	Schwerdtmann Toy Co	Smokers' articles	8.50	.....do	Do.
12	Strohmeyer & Arpe Co	Modeling clay	2.70	Court judgment	Do.
20	Strause & Hedges, attorneys (F. Zito)	Fruit	1,250.98	Exhibit 30, appendix	Do.
23	Saunders, T. W	Fish	237.16	Error in classification	Do.
23	Scruggs, Vandervoort & Barney Dry Goods Co.	Manufactured paste	8.25	.....do	Do.
30	Stern, B	Stationery	757.75	Exhibit 31, appendix	Do.
31	Salts Textile Manufacturing Co	Spun silk	16.20	Clerical error	Do.
Aug. 1	Sasai, T	Seaweed	13.20	Error in classification	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1912.					
Sept. 14	Sambucetti	Whisky	$6.37	Error in quantity	Sec. 28, subsec. 23, act Aug. 5, 1909.
24	Saunders, T. W	Scrap steel	44.32	Error in classification	Do.
25	Spingarn Bros	Wreaths	6.30	Court judgment	Do.
26	Schade, Wilfred, & Co	Iron drums	4.15	Error in classification	Do.
26	do	Benzoyl chloride	8.90	do	Do.
26	do	Manufactures of paper	2.70	do	Do.
26	Stix Baer & Fuller Dry Goods Co	Smokers' articles	10.92	do	Do.
Oct. 14	Shaw, S. I	Sake	14.25	Leakage	Do.
14	Shokai Fujü	Mushrooms	2.50	Error in weight	Do.
14	Sumida, T	Sake	477.74	Leakage	Do.
14	Sheldon, G. W., & Co	Resin	177.05	Court judgment	Do.
14	Suga, Y	Sake	94.50	Leakage	Do.
24	Seattle Sporting Goods Co	Fishing gut	5.20	Error in classification	Do.
24	Stix Baer & Fuller Dry Goods Co	Cotton cloth	9.24	do	Do.
26	Saks & Co	Manufactures of metal	2.00	do	Do.
Nov. 23	Schade, Wilfred & Co	Horn combs	60.58	Clerical error	Do.
23	Sayegusa Shoten, M	Dried fish	48.30	Error in classification	Do.
23	Sinclair Rooney & Co	Chip braids	11.40	do	Do.
Dec. 5	Staadecker & Co	Millinery	7.35	do	Do.
6	Schade Wilfred & Co	Jute waste	106.10	do	Do.
6	Sinclair Rooney & Co	Manila hemp braid	7.35	Short shipped	Do.
9	Stein, S., & Co	Merchandise commissions	66.35	Exhibit 2, appendix	Do.
11	Stern, N., & Son	do	9.20	do	Do.
12	Stern, S., & Co	do	349.85	do	Do.
13	do	do	284.85	do	Do.
13	Spiegelberg, L., & Sons	do	55.60	do	Do.
13	Stern, Nathan, & Son	do	3.60	do	Do.
13	Stern Brauer & Co	do	23.10	do	Do.
13	Steinman & Byck	do	12.40	do	Do.
13	Stein, S., & Co	do	20.35	do	Do.
13	Spaulding, A. G., Bros	Leather	6,384.16	Exhibit 32, appendix	Do.
14	Simiansky, M	Merchandise commissions	16.85	Exhibit 2, appendix	Do.
14	Scanlan, Jno. P	Cattle	177.74	Clerical error	Do.
16	Stein, S., & Co	Merchandise commissions	54.12	Exhibit 2, appendix	Do.
17	do	do	80.55	do	Do.
17	Steinman & Byck	do	8.00	do	Do.
18	Schade Wilfred & Co	Cartons	3.60	Error in classification	Do.
18	do	Plate glass	20.55	do	Do.
18	Stein Block Co	Woolen cloth	4.40	Error in weight	Do.
18	Sheldon, G. W., & Co	Antique tables	433.30	Antiquities, free	Do.
18	Stern, Brauer & Co	Merchandise commissions	184.20	Exhibit 2, appendix	Do.
18	Stern, N., & Son	do	4.00	do	Do.
19	Simiansky, M	do	12.80	do	Do.
19	Stein, S., & Co	do	11.55	do	Do.

20	....do	....do	41.80	....do	Do.
20	....do	....do	11.90	....do	Do.
21	Simiansky, M	....do	1.60	....do	Do.
26	Stein, S., & Co	....do	12.65	....do	Do.
26	Sternbach, H. Herman, & Co	....do	1.20	....do	Do.
27	Simpson, W	Scalloped articles	401.26	Exhibit 29, appendix	Do.
27	Schmetzer Arms Co	Air rifles	31.90	Error in classification	Do.
28	Sternbach, H. H., & Co	Merchandise commissions	265.50	Exhibit 2, appendix	Do.
28	Stein, S., & Co	....do	10.45	....do	Do.
30	Simpson, W	Scalloped articles	176.38	Exhibit 29, appendix	Do.
30	Sternbach, H. H., & Co	Merchandise commissions	6.50	Exhibit 2, appendix	Do.
31	Stern, N., & Son	....do	4.00	....do	Do.
31	Stern, Brauer & Co	....do	108.70	....do	Do.
31	....do	....do	199.10	....do	Do.
31	Stern, N., & Son	....do	27.60	....do	Do.
31	....do	....do	57.80	....do	Do.
31	Stern, Brauer & Co	....do	166.40	....do	Do.
1913.					
Jan. 3	San Pedro Wholesale Co	Liquors	5.00	Clerical error	Do.
3	St. Louis Fire Works Co	Firecrackers	97.44	Error in weight	Do.
3	Sternbach, H. H., & Co	Merchandise commissions	140.46	Exhibit 2, appendix	Do.
3	....do	....do	302.74	....do	Do.
3	Simpson, W	Scalloped articles	22.32	Exhibit 29, appendix	Do.
7	Sternbach, H. H., & Co	Merchandise commissions	116.92	Exhibit 2, appendix	Do.
9	....do	....do	77.00	....do	Do.
9	....do	....do	323.90	....do	Do.
10	Stein, S., & Co	....do	93.30	....do	Do.
11	Sternbach, H. H., & Co	....do	54.10	....do	Do.
13	Simpson, W	Scalloped articles	547.06	Exhibit 29, appendix	Do.
14	Sternbach, H. H., & Co	Merchandise commissions	175.84	Exhibit 2, appendix	Do.
15	....do	....do	175.33	....do	Do.
15	Stern, Brauer & Co	....do	29.35	....do	Do.
18	Sternbach, H. H., & Co	....do	10.40	....do	Do.
20	Simpson, W	Scalloped articles	10.10	Exhibit 29, appendix	Do.
20	Steinbach, H. H., & Co	Merchandise commissions	89.10	Exhibit 2, appendix	Do.
22	....do	....do	53.10	....do	Do.
23	Stern, S., & Co	....do	71.14	....do	Do.
23	Sternbach, H. H., & Co	....do	64.11	....do	Do.
27	....do	....do	10.90	....do	Do.
27	Stern, S., & Co	....do	40.15	....do	Do.
27	Sheldon, G. W., & Co	....do	1.50	Court judgment	Do.
28	Stein, S., & Co	....do	10.65	Exhibit 2, appendix	Do.
28	Sternbach, H. H., & Co	....do	383.53	....do	Do.
29	Stein, S., & Co	....do	10.90	....do	Do.
29	Schoellkopf, Hartford & Hanna Co	Sulphuric acid	12.90	Error in classification	Do.
29	Schade, Wilfred & Co	Manufactures of fur	51.45	....do	Do.
30	Sternbach, H. H., & Co	Merchandise commissions	557.06	Exhibit 2, appendix	Do.
30	Stein, S., & Co	....do	130.85	....do	Do.
30	Stern, Brauer & Co	....do	423.07	....do	Do.
30	Stern, N., & Son	....do	91.71	....do	Do.
30	Stern, Brauer & Co	....do	1,590.00	....do	Do.
30	Stern, N., & Son	....do	467.61	....do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Jan. 30	Stern, Katzenstein Co	Merchandise commissions	$10.30	Exhibit 2, appendix	Sec. 28, subsec. 23, act Aug. 5, 1909.
30	Stern, N., & Son	do	1,037.20	do	Do.
30	Stern, Brauer & Co	do	1,444.48	do	Do.
30	do	do	10.00	do	Do.
Feb. 1	Strauss Bros. & Co	do	4.95	Court judgment	Do.
1	Samstag & Hilder Bros	Lace pins	22.05	do	Do.
3	Schade, Wilfred & Co	Toys	1.18	Error in classification	Do.
3	Sternbach, H. H., & Co	Merchandise commissions	264.21	Exhibit 2, appendix	Do.
3	do	do	116.53	do	Do.
3	Stein, S., & Co	do	60.80	do	Do.
4	do	do	62.35	do	Do.
4	Sternbach, H. H., & Co	do	139.72	do	Do.
14	Simpson, W	Scalloped articles	38.50	Exhibit 29, appendix	Do.
14	Sternbach, H. H., & Co	Merchandise commissions	57.95	Exhibit 2, appendix	Do.
14	do	do	6.31	do	Do.
14	Stern, Brauer & Co	do	689.99	do	Do.
14	Stern, N., & Son	do	83.90	do	Do.
15	Sternbach, H. H., & Co	do	200.70	do	Do.
17	Steinman & Byck	do	12.00	do	Do.
17	Sternbach, H. H., & Co	do	231.14	do	Do.
19	Stern Katzenstein Co	do	73.65	do	Do.
19	Stein, N., & Son	do	9.35	do	Do.
21	Steinbach, H. H., & Co	do	2,613.59	do	Do.
24	do	do	3,273.04	do	Do.
24	Schade, Wilfred & Co	Dill seeds	6.60	Error in classification	Do.
25	Salisbury Nightingale	Steel in bars	1.40	Error in weight	Do.
25	Steinbach, H. H., & Co	Merchandise commissions	114.70	Exhibit 2, appendix	Do.
26	Stern, N., & Son	do	31.00	do	Do.
26	Sternbach, H. H., & Co	do	21.30	do	Do.
26	Savarese, F. S	Coverings	38.00	Court judgment	Do.
Mar. 1	Schade, Wilfred & Co	Manufacturers of gelatin	16.25	Error in classification	Do.
3	Saunders, T. W	Split leather	4.95	do	Do.
3	do	Bran	57.60	Clerical error	Do.
5	Snows U. S. Sample Ex. Co. (Ltd.)	Leather strips	11.50	Court judgment	Do.
6	Schumaker, F., & Co	Velvets	77.80	do	Do.
10	Stewart Hess Co	Manufacturers of metals	1.05	do	Do.
10	Salts Textile Manufacturing Co	Dyed spun silk	402.68	Error in classification	Do.
10	Steel, J. T., & Co	Easter novelty baskets	8.05	do	Do.
10	do	Birds, stuffed	1.40	do	Do.
10	do	Baskets	18.00	Clerical error	Do.
10	Sears, Roebuck & Co	Silk muslin	93.94	Exhibit 36, appendix	Do.
11	Sternbach, H. H., & Co	Merchandise commissions	61.19	Exhibit 2, appendix	Do.
12	do	do	1,059.57	do	Do.
12	Stern, Brauer & Co	do	17.00	do	Do.

	15	....do	....do	46.35	....do	Do.
	17	Sternbach, H. H., & Co	....do	1,058.46	....do	Do.
	18	....do	....do	828.99	....do	Do.
	19	....do	....do	160.58	....do	Do.
	21	Stern Katzenstein Co	....do	16.60	....do	Do.
	24	Sternbach, H. H., & Co	....do	282.17	....do	Do.
	26	....do	....do	1,024.62	....do	Do.
	31	Stern, Brauer & Co	....do	9.50	....do	Do.
	31	....do	....do	6.80	....do	Do.
Apr.	1	Schade, Wilfred & Co	Iron ore	93.65	Error in classification	Do.
	1	Stern, N., & Son	Merchandise commissions	42.10	Exhibit 2, appendix	Do.
	3	Sternbach, H. H., & Co	....do	766.44	....do	Do.
	4	....do	....do	78.10	....do	Do.
	4	Saunders, Chas. W	Liquidation	1.50	Court judgment	Do.
	4	Sauer, Geo. A., jr	....do	1.00	....do	Do.
	8	Sternbach, H. H., & Co	Merchandise commissions	26.30	Exhibit 2, appendix	Do.
	9	....do	....do	1,586.70	....do	Do.
	10	Schule, F. H	Rice milling machinery	103.50	Error in appraisement	Do.
	10	Selzer, C. A	Printed matter	10.65	Error in classification	Do.
	11	Scanlan, John P	Cattle	2.00	Short shipped	Do.
	11	Saunders, T. W	Cedar posts	38.40	Error in appraisement	Do.
	11	Stevens, L. V	Christmas trees	32.50	Additional duty erroneously exacted	Do.
	11	Schwerdtman Toy Co	Toys	1.00	Clerical error	Do.
	15	Stern, N., & Son	Merchandise commissions	9.50	Exhibit 2, appendix	Do.
	19	Stone & Downer Co	Lace machines	1,632.63	Court judgment	Do.
	24	Sambucetti & Co	Gin	8.99	Short shipped	Do.
	24	Schade, Wilfred & Co	Razors	125.09	Clerical error	Do.
	24	Sinclair, Rooney & Co	Feathers	6.50	Error in classification	Do.
	25	Standard Knitting Co	Artificial silk	30.18	....do	Do.
	26	Sisal Hemp & Development Co	Sisal fiber	1,576.87	....do	Do.
May	8	Seibold, L. P	Salol	34.55	....do	Do.
	8	Scanlon, J. P	Cattle	1.75	....do	Do.
	9	Salt Lake Brewing Co	Hops	400.16	Duty twice paid	Do.
	9	Sherwood & Sherwood	Olive oil	5.00	Clerical error	Do.
	14	Saunders, T. W	Old burlap bagging	21.90	Error in classification	Do.
	14	Stegemann, E., jr	Carbon	185.40	Exhibit 33, appendix	Do.
	14	....do	Handbags	32.00	Court judgment	Do.
	14	Steinhardt, A., & Bro. (Inc.)	Desk sets	.90	....do	Do.
	16	Saks & Co	Handbags	47.60	....do	Do.
	17	Smith, B. H., & Co	Kippered herring	5.18	Error in classification	Do.
	17	Straus, Henry	Cigars	11.25	Error in weight	Do.
	21	Steinhardt, A., & Bro. (Inc.)	Handbags	74.30	Court judgment	Do.
	22	Schoellkopf, Hartford & Hanna Co	Coal-tar products	2,116.20	Error in classification	Do.
	29	Strohmeyer & Arpe Co	Matches	140.65	Court judgment	Do.
June	3	Smith & Nessle Co	Herrings	180.82	Exhibit 21, appendix	Do.
	4	Shipman, B. M., & Co	....do	72.12	Error in classification	Do.
	4	Strobridge Litho. Co	Grain leather	172.90	....do	Do.
	4	Schade, Wilfred & Co	Herring	79.54	....do	Do.
	13	Strohmeyer & Arpe Co	Matches	19.95	Court judgment	Do.
	13	Sonderegger, Carl	Garden seed	5.04	Error in quantity	Do.
	13	Sing Fat & Co	Silk embroidery	11.90	Error in classification	Do.
	13	Soo Hardware Co	Charcoal	7.20	Clerical error	Do.
	13	Swayne, Hoyt & Co	Bottles	5.60	Nonimportation	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
June 16	Steeb, J. T., & Co	Novelty baskets	$7.25	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
16	Sherwood & Sherwood	Bottles	20.92	Nonimportation	Do.
20	Saunders, T. W., & Co	Fertilizer	25.00	Error in classification	Do.
21	Smith, James P., & Co	Patent barley	8.00	Clerical error	Do.
21	Steeb, J. T., & Co	Surface-coated paper	10.00	Error in classification	Do.
21	Stein Block Co	Worsteds	44.00	Court judgment	Do.
21	Seekonk Lace Co	Lace machinery	186.75	do	Do.
1912.					
July 24	Times-Herald	News print paper	20.82	Error in classification	Do.
Oct. 14	Takakuwa, Y	Shellfish	3.60	do	Do.
14	do	Fertilizer	6.00	do	Do.
Dec. 21	Trueba, Domingo	Alfalfa hay	3.00	Clerical error	Do.
21	Taylor, John, Dry Goods Co	Gloves	62.10	Error in classification	Do.
1913.					
Jan. 29	Todd, G. H. P	Eels	3.96	do	Do.
Feb. 4	Trueba, Domingo	Piloncillo	8.33	Error in weight	Do.
24	Tabb Storage Co	News print paper	14.05	Clerical error	Do.
Apr. 4	Traxler, Louis, Co	Liquidation	1.02	Court judgment	Do.
1912.					
July 24	United States Seed Co	Turnip seed	.92	Error in quantity	Do.
1913.					
Jan. 7	Universal Shipping Co	Aluminum strips	119.50	Error in classification	Do.
14	do	do	9.25	do	Do.
May 22	United Cigar Stores Co	Matches	3,531.45	Exhibit 22, appendix	Do.
June 17	Ulmann, B., & Co	Cord	810.75	Court judgment	Do.
1912.					
Sept. 21	Virginia-Carolina Chemical Co	Burlaps	19.37	Paid by carrier	Do.
24	Vittuci, John, Co	Artichokes	16.00	Destroyed under food and drugs act	Do.
Oct. 26	Viall, Ada O	Antiquities	1,028.45	Error in classification	Do.
Nov. 7	Virginia-Carolina Chemical Co	Burlaps	18.84	Paid by carrier	Do.
7	Vandiver, John L	Glassware, etc	.90	Error in classification	Do.
Dec. 13	Victor & Achelis	Merchandise commissions	12.65	Exhibit 2, appendix	Do.
16	Veit Son & Co	do	2.75	do	Do.
1913.					
Jan. 29	Vhay, W. J	Kippered herring	165.30	Error in classification	Do.
Mar. 1	Villareal, Frederico	Cattle	3.75	Short shipped	Do.
9	Van Heusen, Charles, Co	Clocks, etc	10.00	Clerical error	Do.
25	Valdespina, G	Gin	344.25	do	Do.

1912.					
July 11	Wyman, C. H., & Co	Cotton cloth	45.77	Error in classification	Do.
12	Wilder & Co	Chocolate	21.27	Clerical error	Do.
23	Wyman, C. H., & Co	Manufactures of paste	7.65	Error in classification	Do.
23	do	Cotton cloth	21.84	do	Do.
24	do	Marble vase	297.59	Error in appraisement	Do.
Aug. 21	Wertheimer Bros	Mousseline bands	330.57	Exhibit 14, appendix	Do.
23	Williams, L	Furniture	80.15	Court judgment	Do.
Sept. 13	Witcombe, McGeachin & Co	Cottons	12.76	do	Do.
23	Western Hardwood Lumber Co	Oak logs	748.71	Error in classification	Do.
24	Waterhouse, Frank, & Co	Rice fiber	6.68	do	Do.
26	Woodward & Lothrop	Manufactures of metal and glass	67.65	do	Do.
26	White, W	China clay	10.00	Clerical error	Do.
26	Wyman, C, H., & Co	Manufactures of glass	74.44	Error in classification	Do.
26	do	Music books	1.25	do	Do.
Oct. 8	Wagner, H. F	Furs	121.20	Court judgment	Do.
22	Weber, jr., C	Apples	29.50	do	Do.
26	White Star Line	Printed matter	63.75	No commercial value	Sec. 1, act Mar. 3, 1875.
30	Wyman, C. H., & Co	Lithographed booklets	2.00	Clerical error	Sec. 28, subsec. 23, act Aug. 5, 1909.
Nov. 23	do	Blown glassware	8.80	Error in classification	Do.
23	do	Chemical glassware	56.55	do	Do.
27	Waterhouse & Co. (Inc.)	Coal slack	335.40	do	Do.
27	Weidman Co	Brandy	36.40	Error in gauge	Do.
Dec. 12	Willis, W. P., & Co	Merchandise commissions	90.40	Exhibit 2, appendix	Do.
12	Waterhouse, Adler & Co	do	93.20	do	Do.
13	do	do	195.30	do	Do.
13	do	do	112.40	do	Do.
14	Willis, W. P., & Co	do	609.10	do	Do.
14	do	do	36.32	do	Do.
16	do	do	1,032.33	do	Do.
16	Waterhouse, Adler & Co	do	13.20	do	Do.
16	Worsdell. A. J., & Co	Leather	9.08	Exhibit 32, appendix	Do.
17	Waterhouse, Adler & Co	Merchandise commissions	30.25	Exhibit 2, appendix	Do.
18	Willis, W. P., & Co	do	898.95	do	Do.
18	Wyman, Chas. H	Glassware	36.35	Error in classification	Do.
18	do	Aeroplane	167.48	Clerical error	Do.
18	do	Lithographs	3.36	do	Do.
18	White, W	Turnips	4.25	do	Do.
19	Willis, W. P., & Co	Merchandise commissions	684.52	Exhibit 2, appendix	Do.
20	Worsdell, A. J., & Co	Leather	714.35	Court judgment	Do.
23	Willis, W. P., & Co	Merchandise commissions	545.40	Exhibit 2, appendix	Do.
23	Walker, A., & Co	do	45.91	do	Do.
26	do	do	30.00	do	Do.
1913.					
Jan. 3	Woodward & Lothrop	Embroidered apparel	19.80	Short shipped	Do.
3	Wyman, C. H., & Co	Stereotyped plates	7.80	Clerical error	Do.
7	Walker, A., & Co	Merchandise commissions	31.35	Exhibit 2, appendix	Do.
10	Willis, W. P., & Co	do	115.25	do	Do.
14	Walker, A., & Co	do	520.25	do	Do.
20	do	do	14.25	do	Do.
Feb. 3	Wilder & Co	Candy	15.40	Clerical error	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1913—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					Sec. 28, subsec. 23, act Aug. 5, 1909.
Feb. 3	Wulsin, Katherine E. R.	Velours	$5.80	Error in classification	Do.
3	Willis, W. P., & Co	Merchandise commissions	24.60	Exhibit 2, appendix	Do.
11	Wyman, C. H., & Co	Bologna sausage	92.00	Error in classification	Do.
15	Willis, W. P., & Co	Merchandise commissions	119.90	Exhibit 2, appendix	Do.
17	Walker, A., & Co	do	838.51	do	Do.
24	do	do	589.12	do	Do.
Mar. 1	Wise & Newman	Beans	3.09	Short shipped	Do.
4	Walker, A., & Co	Merchandise commissions	69.70	Exhibit 2, appendix	Do.
13	do	do	17.00	do	Do.
14	Wyman, C. H., & Co	Leather slippers	7.35	Error in classification	Do.
14	do	Cotton cloth	22.03	do	Do.
14	do	Needle cases	24.00	do	Do.
14	do	Grain leather	102.37	do	Do.
17	do	Toys	6.20	do	Do.
21	Walker, A., & Co	Merchandise commissions	277.00	Exhibit 2, appendix	Do.
25	do	do	22.25	do	Do.
29	do	do	63.73	do	Do.
29	Western Express Co	Woolen blankets	5.25	American goods returned	Do.
Apr. 1	Wyman, C. H., & Co	Manufactures of fur	26.40	Error in classification	Do.
1	do	Ornamental feathers	39.60	Short shipped	Do.
5	Walker, A., & Co	Merchandise commissions	77.60	Exhibit 2, appendix	Do.
8	do	do	303.24	do	Do.
22	Warwick Lace Works	Lace machine parts	369.90	Court judgment	Do.
22	do	do	630.90	do	Do.
25	Walker, L. B	Talc	408.75	Exhibit 38, appendix	Do.
30	Wolff, A. J	Ale and stout	6.38	Short shipped	Do.
May 14	Weideman Co	Kummel	14.00	do	Do.
14	Wyman, C. H., & Co	Paper	24.51	Error in classification	Do.
29	Weber, J	Herrings	43.25	Court judgment	Do.
June 4	Wilde, A. E., Co	Toys	.60	Error in classification	Do.
4	Wyman, C. H., & Co	Herrings	465.75	do	Do.
24	Walter, F. C	Ladder tapes	120.15	Exhibit 39, appendix	Do.
24	Wah Chong Lung & Co	Silk embroidery	5.80	Error in classification	Do.
24	Wing Sing Loong & Co	do	6.90	do	Do.
24	Wolff, Wm., & Co	Bottles	36.72	Nonimportation	Do.
24	Weniger, P. J., & Co	do	2.54	do	Do.
1912.					
Sept. 14	Young, H. H	Olives	163.95	Exported under food and drugs act	Do.
Dec. 27	Yturria Mercantile Co	Beans	1.13	Error in quantity	Do.
1913.					
Jan. 7	Young, H. H	Macaroni	16.50	Error in weight	Do.
Feb. 4	Yee Chan & Co	Silk fabric	3.59	Error in quantity	Do.

May 9	Yamamoto, S., & Co	Cotton cloth	5.10	Short shipped	Do.
14	Yeske, L. A	Book	.46	Educational library, free	Do.
June 17	Yturria Mercantile Co	Beans	.50	Short shipped	Do.
1912.					
Aug. 19	Zucca & Co	Olives	270.00	Court judgment	Do.
	Total		228,561.07		

Respectfully submitted.

OFFICE OF AUDITOR FOR THE TREASURY DEPARTMENT,
Washington, D. C., October 6, 1913.

W. E. ANDREWS, *Auditor.*

APPENDIX.

EXHIBIT 1.—(T. D. 32626.)—*Hand-decorated booklets.*

UNITED STATES *v.* HAGELBERG ET AL. (NO. 832.)

BOOKLETS IN CHIEF VALUE OF PYROXYLIN.—Hand-decorated booklets with pyroxylin covers and paper inserts, value in chief of pyroxylin, are duitable under paragraph 412, tariff act of 1909, as "booklets, decorated in whole or in part by hand, * * * whether or not lithographed," and not as manufactures of pyroxylin under paragraph 17 of that act.

United States Court of Customs Appeals, June 1, 1912.

Appeal from Board of United States General Appraisers, G. A. 7301 (T. D. 32019.)

[Decision affirmed.]

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel, and Thomas J. Doherty, special attorney, on the brief), for the United States.

Comstcock & Washburn (Albert H. Washburn and George J. Puckhafer of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Smith, judge, delivered the opinion of the court:

The goods which are the subject of controversy in this proceeding are booklets in chief value of pyroxylin, decorated in whole or in part by hand or by spraying. The inserts of the booklets are of paper. The covers, however, are either of pyroxylin or pyroxylin, silk, and paper. The merchandise was classified by the collector of customs at the port of New York as manufactures of pyroxylin and accordingly assessed for duty at 65 cents per pound and 30 per cent ad valorem under the provisions of paragraph 17 of the tariff act of 1909, which paragraph, in so far as it is pertinent to the case, reads as follows:

"17. Collodion and all compounds of pyroxylin or of other cellulose esters, whether known as celluloid or by any other name, * * * ; if in finished or partly finished articles, except moving-picture films, or of which collodion or any compound of pyroxylin or of other cellulose esters, by whatever name known, is the component material of chief value, sixty-five cents per pound and thirty per centum ad valorem."

The importers protested that the goods were not manufactures of pyroxylin, but booklets decorated in whole or in part by hand or by spraying and dutiable at 15 cents per pound under that part of paragraph 412 which reads as follows:

"412. * * * Booklets, decorated in whole or in part by hand or by spraying, whether or not lithographed, fifteen cents per pound; * * *."

The Board of General Appraisers sustained the protest and the Government appealed.

The Government contends that as the articles imported are in chief value of pyroxylin and not paper, they can not be assessed for duty under paragraph 412, but must be classified as manufactures of pyroxylin under paragraph 17. In support of this contention, counsel for the appellant calls attention to the first part of paragraph 412, which he claims limits the operation of the paragraph to articles which are composed wholly or in chief value of paper. Paragraph 412, in so far as it is pertinent to this inquiry, is as follows:

"412. Pictures, calendars, cards, labels, flaps, cigar bands, placards, and other articles, composed wholly or in chief value of paper, lithographically printed in whole or in part * * * shall pay duty at the following rates: Labels and flaps, * * * twenty cents per pound; cigar bands * * *, thirty cents per pound; * * * booklets, seven cents per pound; books of paper or other material for children's use, not exceeding in weight twenty-four ounces each, six cents per pound; fashion magazines or periodicals, printed in whole or in part by lithographic process, or decorated by hand, eight cents per pound; booklets, decorated in whole or in part by hand or

by spraying, whether or not lithographed, fifteen cents per pound; decalcomanias in ceramic colors, * * * seventy cents per pound and fifteen per centum ad valorem; * * *."

We do not think that that part of paragraph 412 which reads as follows:

"Pictures, * * * and other articles, composed wholly or in chief value of paper, lithographically printed in whole or in part * * *, shall pay duty at the following rates—"

excludes from the paragraph every article which is not wholly or in chief value of paper or that it is applicable to any of the subsequent provisions, from the language of which a contrary intent may properly be deduced. Books for children's use, not exceeding in weight 24 ounces each, are dutiable under the paragraph. Nevertheless, by virtue of the language which imposes the duty, such articles need not be of paper lithographically printed. Booklets decorated in whole or in part by hand or by spraying are dutiable under the paragraph whether or not lithographed, and, therefore, whether or not they are of paper lithographically printed. The trouble with the Government's position is that it fails to take account of the fact that if the limitation in the first part of the paragraph is to be carried into the provision for decorated booklets, it must be carried into it as an entirety or not at all. The limitation is not directed to articles composed wholly or in chief value of paper, but to articles composed wholly or in chief value of paper lithographically printed, and consequently any article which by the terms of any subsequent provision is not required to be of paper or to be lithographically printed is not within the intent of the limitation and is excluded from it. In other words, if there be a conflict between the limitation and a subsequent provision which determines the duty for specific goods, effect must be given to the subsequent provision without regard to the limitation. The limitation "composed wholly or in chief value of paper lithographically printed in whole or in part," if incorporated with the provision for decorated booklets, demonstrates its incompatibility, and, therefore, so far as that provision is concerned, it must be disregarded.

The decision of the Board of General Appraisers is affirmed.

EXHIBIT 2.—(T. D. 32627)—*Commissions.*

UNITED STATES *v.* BAUER ET AL. (NOS. 844–851).

1. PROTEST, SUFFICIENCY OF.—A commissionaire's service is rendered in connection with, on account of, and in consequence of the purchase of goods, is really a part of the transaction of the purchase and shipment of the goods, and the protest here fairly apprised the collector that commissions paid the commissionaire for the purchase of the goods abroad were claimed to be nondutiable.
2. COMMISSIONS PAID FOR THE PURCHASE OF GOODS ABROAD.—Leaving aside technical questions and treating the dutiability of commissions on its merits, regarding the substance rather than the form, it is clear it was not the intention of Congress to impose a duty upon commissions paid in connection with the purchase of goods abroad. When a payment is a commission proper must depend on the facts in the particular case.

United States Court of Customs Appeals, June 1, 1912.

Appeal from Board of United States General Appraisers, Abstract 27403 (T. D. 32089).

[Decision affirmed.]

William L. Wemple, Assistant Attorney General (Frank L. Lawrence, special attorney, on the brief), for the United States.

Curie, Smith & Maxwell (Thomas M. Lane of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Montgomery, presiding judge, delivered the opinion of the court:

This case involves the same questions considered by the court in the case of Stein *v.* United States (1 Ct. Cust. Appls., 36; T. D. 31007) and again on rehearing in 1 Ct. Cust. Appls., 478 (T. D. 31525). Indeed, the record in this case consists of the testimony given in the Stein case accompanied by two stipulations, and the additional invoices covering the importations here involved. The first of these stipulations recites that the entries covered by the protests were made under substantially the same circumstances as those described in the Stein case, and provides that the record

of the Stein case shall be incorporated in and made a part of the record in the present case. This was signed November 23, 1911. Later, on the 5th of December, 1911, a further stipulation was filed, reading as follows:

"It is further stipulated and agreed by and between the parties hereto that a decision or order of reliquidation substantially in the following form will be satisfactory to both parties if it meet with the approval of the board: These are cases which involve the question of the dutiability of an item of commissions appearing on the invoices of the merchandise. The question presented is substantially the same as in the case of Stein *v.* United States (T. D. 31007 and T. D. 31525). On the authority of said decisions the protests are sustained in so far as they relate to items of 2½ per cent commission on invoices of cotton, woolen, or worsted goods on invoices made out at Bradford, Huddersfield, or Manchester, England. In all other respects all the protests are overruled and the decision of the collector is affirmed in each instance. The collector is instructed to reliquidate the entries accordingly."

On filing these stipulations the Board of General Appraisers sustained the protests in an opinion substantially in form agreed upon between counsel. The Government brings this appeal.

The second stipulation might be said to be open to the construction that it provides for a consent order and decree, but counsel for the importers frankly concede that such was not its purpose, but they do contend that the intention was to put before the Board of General Appraisers the same questions that were involved in the Stein case. The board so interpreted the stipulation, and state that the questions of law are the same as those presented in the Stein case.

This being the state of the present record, it is manifest that it partakes of the nature of a reargument of a case twice decided by the court as to questions considered by the court in the Stein case. Under the doctrine of stare decisis we should proceed with caution in disturbing conclusions which were deliberately reached upon full argument. This rule does not preclude our examination of new questions, nor should we go to the length of reaffirming an erroneous position when firmly convinced that we are in error. But it must be expected that a court, having twice before considered a question later presented, having deliberately framed an opinion, will move with great caution in disapproving conclusions thus announced.

There is one new question, which we will proceed to consider. That question is whether the protests in the present case are sufficient. It is urged that they are not sufficient to apprise the Government of the point sought to be made.

The protest, so far as it is material to this case, reads as follows:

"We hereby protest against your decision, liquidation, and assessment of duties as made by you on our importations below mentioned, consisting of certain colored cottons, worsteds, mohairs, cottons, and other merchandise contained in the cases or packages marked and numbered as described on the entries and invoices thereof, to which for more certainty of description reference is hereby had, claiming that, as appears by the invoice and as matter of fact, there has been paid by the importer a commission for purchasing these goods, which is nondutiable; that the appraising officers have improperly advanced the value by disallowing the deduction of this commission, or that you have compelled the importers to include it in the entered value by duress and in order to avoid the imposition of additional or penal duties, contrary to the decision of the Supreme Court in the case of Robertson *v.* Frank Bros. Co. (132 U. S., 17). The correct rate of duty on these goods is that which would apply if the commission were treated as nondutiable, and any change in the classification or imposition of additional or penal duty caused by including said commission in the value of said goods is erroneous and illegal."

It is urged by the Government that this protest is insufficient for the reason stated, that the protest covers a commission for purchasing these goods and is restricted to such commission, whereas the record shows that the importers purchased the goods themselves.

This strikes us as a too technical view of the subject of this protest. It is true that the importers made the bargain for the purchase of these goods. Delivery was not consummated, however. We think the purchase of goods may well be held to include such acts as are performed by a commissionaire as shown by the record in this case. His duty consists, among other things, in comparing samples of goods ordered with those tendered for delivery. This service is rendered in connection with, on account of, and in consequence of the purchase of the goods and is really a part of the transaction of purchasing and shipping goods. We think the protest was sufficient to fairly apprise the collector of the point sought to be made.

It is stated by counsel for the Government that in the Stein case the question as to the nondutiable character of the commissions was not argued, and for that reason the Government has gone into an extended argument upon this question. The question

was considered by this court as well as by the Board of General Appraisers in the Stein case. In the Stein case (T. D. 28886) the board reviewed the testimony and proceeded to state:

"We think it is a fair inference from the testimony in the case that whatever outlay the commissionaires make for shrinking, packing, and putting up is paid as a separate item, outside of the commission of 2½ per cent. We do not think from the evidence in this case that they are required to do anything for the 2½ per cent which might not be properly paid for by that commission. Had they made the contract for the goods finished, ready for shipment, which might have included separate agreements for the different services of shrinking, putting up, and packing, the commission would have been a legitimate charge as such, and, as a commission, no part of the wholesale market price of the goods, and hence nondutiable."

In the original Stein case this court said:

"It appears that the principal duties of the commissionaire, for which this commission was paid, was to receive the goods after they had been manufactured and finished, unfold and compare them with the purchase samples, purchase the cases, and pack and ship the goods. Separate charges appear on the invoice for the cases and packing. The commission would seem to be a service connected with the fulfillment of the contract, rather than a performance of any of its terms. It entered into the cost of the goods to the importer, but did not become a part of their actual market value. We think the record fully supports the finding of the Board of General Appraisers that the 2½ per cent was a commission, pure and simple, and in no wise entered into the actual market value of the goods."

Without extending the holding in that case to include any services other than those which were specifically designated, and by no means intending to preclude the Board of General Appraisers, acting as appraisers, from dealing with each case as a question of fact in determining whether an alleged commission is in fact a commission for services so connected with the purchase as to be so considered, or as in the nature of a profit to the seller, or from in any way testing the good faith of the importer, we think the commission involved in the Stein case was legitimately a commission for services in connection with the purchase of goods. If we lay aside the technical questions connected with the case and treat the question of the dutiability of these commissions on its merits; if we regard substance rather than form, we think it entirely clear that it was not the purpose and intention of Congress to impose a duty upon commissions paid in connection with the purchase of goods abroad. Prior to 1863, section 2907 of the Revised Statutes provided that—

"In determining the dutiable value of merchandise there shall be added to the cost or to the actual wholesale price or general market value at the time of exportation in the principal markets of the country from whence the same has been imported into the United States, the cost of transportation, shipment and transshipment, with all expenses included from the place of growth, production, or manufacture, whether by land or water, to the vessel in which shipment is made to the United States; the value of the sack, box, or covering of any kind in which such merchandise is contained; commission at the usual rates, but in no case less than two and one-half per centum; and brokerage, export duty, and all other actual or usual charges for putting up, preparing, and packing for transportation or shipment. * * *

This was expressly repealed by the tariff act of March 3, 1883. From this time until the passage of the customs administrative act no claim was ever made that commissions were dutiable. Having in mind that they had been treated as dutiable, we turn to the construction of section 19, which reads that—

"The duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities, at the time of exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States."

This section said nothing about commissions, and in view of the history of the legislation it is to be presumed that the omission of commissions was intentional. The question was raised shortly after this section was put into operation as to whether commissions were dutiable, and that question having been referred to the Attorney General, it was held by him that they were not. When section 19 was before Congress, the report submitted by the Ways and Means Committee stated of section 19:

"While it returns to the former legislation and will accomplish the desired purpose, it does not include as dutiable items charges for inland transportation, *shipment*, transshipment, *commissions*, brokerage, insurance, export duties, etc., as was provided in sections 2907 and 2908, Revised Statutes."

So it is clear that Congress, by the enactment of section 19 of the customs administrative act, did not intend to go back to the rule of imposing a duty upon commissions. The whole difficulty has arisen from a treatment of commissions as a part of the market value. But turning back to section 2907 it will be seen that the general market value was treated as a value not including commissions, and commissions were treated as something separate and distinct from the market value. It would seem like extending the statute, after Congress has made commissions nondutiable by clear implication, to again include them under the guise of an attempt to make market value.

After listening to the able argument of counsel and examining and considering the elaborate briefs presented, we are all agreed that the Stein case was rightly decided, and that any discussion of the principles involved other than those herein adverted to would be but a repetition of the interpretation which we there placed upon the decisions of the Supreme Court, and that the ruling of that case should be affirmed.

At the argument of the case it was pointed out that notations on some of the invoices showed that the importers were not denied the right to make notations showing their claim that these commissions were not dutiable, and it was conceded by counsel as to such items that there was no just basis for applying the ruling in the Stein case, and this opinion is not to be taken as applying the rule of the Stein case to such cases.

There is another class of cases referred to in the brief of counsel in which the entries appear to have contained a statement of a commission due to sellers or agents of sellers and it is contended that a different rule should be applied to these entries than was applied in the Stein case. The stipulation bound both parties by the statement that the questions involved are the same as those in the Stein case. The importers state, and it appears to be conceded, that had the question been reserved out of the stipulation and an attempt made as to these entries to differentiate them from those involved in the Stein case, the entries would have been open to explanation. The importer rested his case upon the stipulation. The case, as put to the board, was a case involving commissions appearing on the invoices of merchandise, presenting substantially the same question as involved in the Stein case. We think the importers had the right to rely upon the stipulation and construe it, as they evidently did construe it, and as we have construed it, as designed to present to the board for its determination the same question that was involved in the Stein case, with a view to rearguing those questions before this court. We are unable to agree that the question here presented was reserved out of that stipulation, and it follows that, except as to the importations pointed out in which by a stipulation of counsel in open court it was conceded that as a matter of fairness where the notations on the entry were such as to differentiate the case from the Stein case an exception should be made, the decision of the board is in all respects affirmed and the case remanded.

EXHIBIT 3.—(T. D. 32196.)—*Jute card waste.*

SALOMON BROS. & CO. ET AL. *v.* UNITED STATES (NO. 729).

JUTE UNMANUFACTURED—ENTRY FREE.—The merchandise consists of broken fibers of undressed raw jute rejected by the carding machine in the first process of manufacture. These broken fibers had been later subjected to a carding process of their own. The product is more accurately described as jute, unmanufactured, than as waste not specially provided for and was entitled to free entry under both tariff acts of 1897 and 1909.—United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198; T. D. 31237).

United States Court of Customs Appeals, January 11, 1912.

Appeal from Board of United States General Appraisers, G. A. 7242 (T. D. 31739).

[Decision reversed.]

Searle & Pillsbury for appellants.

Wm. L. Wemple, Assistant Attorney General (Wm. A. Robertson on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Montgomery, presiding judge, delivered the opinion of the court.

The tariff act of 1897, in paragraph 463, imposed a duty upon waste not specially provided for of 10 per cent ad valorem. Paragraph 479 of the act of 1909 is identical.

Paragraph 566 of the act of 1897 reads as follows:

"Grasses and fibers: Istle or Tampico fiber, jute, jute butts, manila, sisal grass, sunn, and all other textile grasses or fibrous vegetable substances, not dressed or manufactured in any manner, and not specially provided for in this act."

This paragraph appears in the free list. The corresponding paragraph in the act of 1909 is identical with this with the exception that the word "section" is substituted for the word "act."

The merchandise covered by the protest in this case was imported at different times, a portion during the life of the act of 1897 and the remainder under the act of 1909. It was all assessed for duty under the provisions first above quoted for waste not specially provided for. It is claimed to be more specifically provided for as jute not dressed or manufactured in any manner and entitled to free entry. The board overruled the protest, and the importer appeals.

The merchandise in question consists of jute card waste, so called, and consists of the broken fibers of undressed raw jute which are rejected by the carding machine in the first process of manufacture to which undressed jute is subjected. The evidence discloses that in carding raw jute the carding machine picks up the longer filaments of the jute and that the short fibers and those which are inferior are rejected by the pins of the machine. It is this rejected substance which is in controversy here. The substance is unquestionably jute. It is inferior to the parent substance, however, in quality. But the evidence discloses that it may be devoted to the same uses to which the substance resulting from the first carding is devoted. It may be spun, or it may be felted, or it may be used without further manipulation for stuffing horse collars.

The evidence further discloses that before it can be put to the use of spinning it must be again recarded and the product of this recarding is that which is used for spinning. The so-called jute card waste is necessarily much cheaper than the natural substance, as the better part of it has been extracted.

Does the fact that this substance, which is called in one sense a waste, make it dutiable, or does it come, so long as it retains its native characteristics of jute and is susceptible of the same uses, more properly under the provisions of paragraph 566 of the tariff law of 1897 and paragraph 578 of the law of 1909, respectively?

We think the case of United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198; T. D. 31237) rules this question. In that case the court had under consideration fur gathered as scraps or waste from the first treatment of skins. It was claimed to be dutiable as waste not specially provided for, under paragraph 463 of the act of 1897. It was shown, however, that it could be used as undressed fur. After reviewing the evidence in the case, the opinion, by Judge Hunt, proceeds:

"With this evidence before the court, the case has been somewhat simplified by the fact that counsel for the respective parties agree generally that it proves the articles involved to be a waste. We can therefore move forward upon this assumption and at once proceed to the question whether, being waste, they are clippings or refuse scraps and pieces, dutiable merely as waste not specially provided for, or whether, although waste, they are yet articles of undressed fur specially provided for under the paragraphs of the tariff act of 1897 heretofore quoted.

* * * * * * *

"The finding of the Circuit Court that the articles are undressed clippings of rabbit skins and portions of fur that have become detached from the pelt by reason of heat and other means, is amply sustained by the evidence, and, as was said by Judge Martin, the evidence shows that they are all 'used for the same purpose to which the skin as usually cut up is employed, and that it comes from the rabbit pelt, which of itself is treated as free under the tariff act.'

"It is waste in a sense—that is, it is primarily a refuse in so far as the first treatment of the skin goes, and it may be that the object of the first treatment of the skins is not to obtain this refuse; it is a residuum. But, on the other hand, it is not at all a worthless quantity, as it has a commercial value for use in hat making and is imported for such purposes. The intent of the tariff law of 1897 was explicitly expressed by providing for free entry of skins and furs undressed, and it would seem to us that it was not meant to impose duty upon pieces or inferior kinds of furs, themselves valuable, and gathered as the scraps or waste from the first treatment of the skins, for they are still furs undressed."

It is equally true in the present case that the merchandise involved is in one sense a waste. It is a residuum after the first treatment of the native product. But, as in the case referred to, this residuum is not a worthless quantity. It has a commercial value and is used for the purpose which the better quality is devoted to, except that it produces an inferior article. We think that case is decisive of this point.

So in Patton *v.* United States (159 U. S., 500), Mr. Justice Brown, after reviewing the definitions of waste found in the dictionaries, concludes:

"The prominent characteristic running through all these definitions is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable and used for purposes for which merchantable material of the same class is unsuitable."

In Myers *v.* United States (110 Fed. Rep., 940) the court held that mica in small pieces or sheets which fall off in the process of thumb trimming are dutiable as mica unmanufactured, and not as waste not specially provided for. The court said:

"The merchandise does not lose its character as merchantable mica because it is of an inferior grade. The material called waste at the mica mines is refuse thrown out on the dumps, having little value and being incapable of use for any of the purposes for which mica is used."

It is contended that even if this be held to be jute waste it is not free because it has been dressed. The evidence discloses that the first process of carding is not with the purpose of getting this substance. The carder does not desire to get any. But it comes about from the presence of inferior fibers. It is a by-product and not the substance sought, just as was the case in the Hatters' Fur Exchange case, supra. But what is more significant is the fact that before it can be devoted to the same purpose that the superior quality is, namely, spinning, it must be subjected to a new process of carding and treated in precisely the same manner that the native substance is required to be treated.

Authoritative rulings are not wanting upon this question. In Seeberger *v.* Castro (153 U. S., 32) tobacco scrap consisting of clippings from the ends of cigars and pieces broken from the tobacco of which cigars are manufactured in the process of such manufacture, not being fit for use in the condition in which the same are imported, were held to be dutiable as unmanufactured tobacco. And in the case of Patton *v.* United States (159 U. S., 500), Mr. Justice Brown said:

"Waste in its ordinary sense, being merely refuse thrown off in the process of converting raw wool into a manufacture of wool, can not be considered a manufacture simply because it acquires a new designation, and if it be artificially produced by the breaking up of the tops it is with even less reason entitled to be so considered. Unless natural waste can be treated as a manufacture, artificial waste should not."

Our conclusion is that this importation is more accurately described as jute unmanufactured than as waste not specially provided for. The decision of the Board of General Appraisers is reversed.

EXHIBIT 4.—(T. D. 33121.)—*Gelatin.*

AMERICAN EXPRESS CO. *v.* UNITED STATES (No. 870).

1. GELATIN IN "SHEETS."—To determine what is a "sheet" in a given case, the particular facts of that case are to be considered; and the facts here showing the merchandise to be edible gelatin with irregular edges and uneven sufaces do not make it clear that the article is properly classifiable as sheets of gelatin. The doubt must be resolved in favor of the importer and the goods are dutiable as gelatin under paragraph 23, tariff act of 1909.
2. BOARD'S FINDING.—The board's finding of facts will not be disturbed unless clearly contrary to or unsupported by the weight of evidence, but here the finding that the gelatin was in sheets was based on an erroneous construction of the law itself and so does not fall within the rule.

United States Court of Customs Appeals, January 20, 1913.

Appeal from Board of United States General Appraisers, G. A. 7320 (T. D. 32223).

[Reversed.]

Comstock & Washburn for appellant.

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorneys, of counsel; Charles D Lawrence, special attorney, on the brief), for the United States.

Before Montgomery, Smith, Barber, DeVries, and Martin, Judges.

Barber, judge, delivered the opinion of the court:

The merchandise in this case is gelatin. It was assessed by the collector, and the Government here claims it to be dutiable as "gelatin in sheets," at 35 per cent ad

valorem under the last clause but one of paragraph 23 of the tariff act of 1909, while the importer contends that it is dutiable at 25 per cent ad valorem as "gelatin" under the first two clauses in said paragraph. There is no dispute as to the value of the merchandise.

The paragraph reads as follows:

"23. Gelatin, glue, isinglass or fish glue, including agar-agar or Japanese isinglass, and all fish bladders and fish sounds other than crude or dried or salted for preservation only, valued at not above ten cents per pound, two and one-half cents per pound; valued at above ten cents per pound and not above thirty-five cents per pound, twenty-five per centum ad valorem; valued above thirty-five cents per pound, fifteen cents per pound and twenty per centum ad valorem; gelatin in sheets, emulsions, and all manufactures of gelatin, or of which gelatin is the component material of chief value, not specially provided for in this section, thirty-five per centum ad valorem; glue size, twenty-five per centum ad valorem."

The majority opinion of the Board of General Appraisers affirmed the assessment of the collector, one member thereof dissenting.

Counsel upon both sides proceed upon the theory that although evidence as to commercial or trade designation was introduced before the board there is here no such issue, and we so treat the case.

It is established that this gelatin is edible and that edible gelatin is in various forms, as ground, flaked, shredded, or in the form of this importation, and possibly in other forms.

As we understand from the record, the form the gelatin assumes in this importation is the highest priced edible gelatin on the market, and that it is somewhat more expensive to produce than in the specified edible forms.

The importation is in thin pieces, practically transparent, about 8 inches long and 3 inches wide; the edges are irregular and uneven, and the surfaces have thereon dents or depressions on one side accompanied by corresponding elevations or protuberances on the other and are marked with practically straight intersecting lines crossing the entire piece at angles, obtuse at one edge and acute at the other, to the general line of the sides of the strips, which results that each surface presents a diamond-like figured appearance. The dents and depressions are generally found at the intersection of these cross lines and result in a surface that is not smooth, regular, or entirely flat. The record suggests that this surface condition serves no purpose in the use of the gelatin, but is the result of the appliances used in making these pieces from larger bodies thereof. It appears that the chief and perhaps the only use made of gelatin in this form is for food purposes.

The issue narrows down to this, Does the term "gelatin in sheets," as used in the paragraph, in the common meaning or understanding thereof fairly describe the merchandise here? If so, the contention must be settled in favor of the Government; if not so, the importer must prevail.

The Government, among other things, cites the following definitions of the word "sheet:"

Century Dictionary:

"In general, a broad, usually flat, and relatively thin piece of anything, * * *.

"(Sheet is often used in composition to denote that the substance to the name of which it is prefixed is in the form of sheets or thin plates, as sheet-iron, sheet glass, sheet-tin.)"

Standard Dictionary:

"A very thin and broad piece of any substance; * * *. A piece of metal or other substance hammered, rolled, fused, or cut very thin; as a sheet of tin, a sheet of glass, a sheet of veneer."

And it avers that the merchandise involved here "corresponds exactly with the above definitions," while the importer, with equal positiveness, asserts to the contrary, and says, among other things, that it is more appropriately designated as strips than sheets, as these terms are commonly understood.

The high authority of the lexicographers above cited gives force to the meaning of words as stated by them, but we are unable to go so far as the Government contends and say that the official exhibits here "correspond exactly" with the above-quoted definitions. Moreover, we have much doubt if in the common acceptation of the term these pieces of gelatin would be generally referred to as sheets of that substance, although we realize that this may be a close question. The size of the pieces, we think, is hardly that which would be required to constitute a sheet when composed of this substance. The Standard Dictionary, in connection with the definition above quoted, further defines a sheet as—

"Anything having considerable expanse with very little thickness."

We also notice that Webster defines "sheet" generally as—

"A large, broad piece of anything comparatively thin, as paper, cloth, etc.; a broad, thin portion of any substance."

We think these definitions suggest to the ordinary mind a breadth of sheet greater than that of the alleged sheets here.

Our conception of the meaning of the word "sheet" of anything, as generally understood, would be, in the first instance, somewhat varied according to the nature, value, and use of the material of which the alleged sheets were composed. For instance, it is very likely that an article might properly be referred to as a sheet of gold which was of less size than a sheet of tin or iron or a sheet of cloth or paper, and we do not undertake to fix the size above which an article, if it otherwise conforms to the definition of a sheet, is such and below which it is not.

It is doubtful if, generally speaking of most commodities, pieces of the size shown here, assumed in other respects to possess the characteristics of sheets, really rise to that dignity, although, as suggested, it is manifest that when length and breadth only are considered, other requisites being assumed, it may not be easy to fix with certainty any dividing line between what are and are not sheets. Each case must stand upon its own particular facts.

We think, too, that the irregular edges and uneven surfaces of these pieces of gelatin make against rather than in favor of their being described in common speech by the word "sheets."

The means by which sheets of anything are produced, so far as relates to metal at least, as given in the Standard Dictionary, namely, hammering, rolling, fusing, or cutting very thin, would suggest that the edges and more especially the surfaces of the sheets so produced would be more regular and uniform than are the pieces of gelatin here involved, and we think, as commonly understood, a sheet of anything ordinarily presupposes a smoother and more even surface than the official exhibits here possess.

There is another view of this case which makes in favor of the importer's contention. It appears that under the prior tariff act this particular kind of merchandise was passed as gelatin under the applicable paragraph corresponding to the one under which the importer now claims, and there was at that time no specific provision for gelatin in sheets.

In T. D. 25236, decided in 1904, the Board of General Appraisers had before them what was claimed to be gelatin in sheets, which were very much larger than the official exhibits here and apparently considerably thinner, that were made from ordinary gelatin combined with formaldehyde and other substances. The importers there contended that the merchandise was not gelatin, but was dutiable as a manufacture of gelatin under paragraph 450 of the tariff act of 1897, which specifically referred to manufactures of that substance.

In a carefully considered opinion the board found that those gelatin sheets were as claimed by the importers and not gelatin, as it had theretofore several times held. This resulted in overruling their previous decisions and in subjecting a manufacture composed very largely of gelatin to the lower duty of paragraph 450. The effect of this decision was called to the attention of Congress in Notes on Tariff Revision, prior to the enactment of the act of 1909, and it was there suggested that provision be made to correct the apparent inequitable results which followed upon the board's decision of assessing a rate of duty on manufactured articles of gelatin lower than the rate on the chief material of which they were made.

In paragraph 23 of the act of 1909 no change is made affecting the corresponding paragraph (23) of the act of 1897, so far as concerns the case here, except the addition thereto of the last two clauses.

A sample of this sheet gelatin or gelatin in sheets, whichever it may be called, is made an exhibit in this case and, from the record here and the opinion in T. D. 25236, we conclude it is very like if not identical with the merchandise passed upon by the board in that case. This sample is about 17 by 24 inches in size; it is thin and flat, but of uniform thickness; its sides are regular and even and the surfaces are smooth and uniform. It is produced by treating clear gelatin chemically with formaldehyde and other substances, manipulating the product, and, in the finished article, the chief value thereof is gelatin. It is and has been for many years a subject of commerce, can not be used for food purposes, and seems to satisfy the meaning of the term "gelatin in sheets" as used in the paragraph.

Although the legislative history, while the act of 1909 was under consideration, as it appears in the various reports of committees and in the different forms of the tariff bills in the House and Senate, affords some ground to believe, as claimed by the Government, that such history makes against the importer's contention, yet, on the whole, we think, considering the history of the entire subject matter, there is more

reason to believe that Congress by the use of the term "gelatin in sheets" in paragraph 23 was endeavoring to cure inequalities in the assessment of duties following upon said decision of the board, rather than to make an edible gelatin like the merchandise here subject to the higher rate of duty.

We have intimated this question is not altogether free of doubt, but we think the doubt is of such a character that it clearly comes within that class of cases where the doubt ought to be resolved in favor of the importer.

It is strenuously urged by the Government that, because the Board of General Appraisers has found as a fact that the merchandise is gelatin in sheets within the meaning of the paragraph, this finding should not be reversed as within the rule that a finding of fact will not be disturbed here unless clearly contrary to or unsupported by the weight of evidence. But this claimed finding rests upon the assumption that this merchandise answers to the call "in sheets" as that expression is used in the paragraph. We disagree with the board as to the ordinary meaning of the term "in sheets" as used therein, and hence it follows that this finding of the board, being based upon what we hold to be an erroneous conception of the law, is not within the rule.

The judgment of the Board of General Appraisers is reversed.

EXHIBIT 5.—(T. D. 32576.)—*Wantage on ale in casks.*

UNITED STATES *v.* CUMMINGS ET AL. (No. 763). CUMMINGS ET AL. *v.* UNITED STATES (No. 769).

1. CONSOLIDATION OF HEARINGS.—The several protests were virtually filed by the same party; the questions raised by these protests and the testimony offered apply alike to all the importations. No prejudice resulted from the consolidation of the hearings.
2. ALLOWANCE FOR SHORTAGE OF ALE IN CASKS, GENERALLY.—There is no inhibition of allowance for a shortage in ale imports, and it was error on the part of the collector to ignore the actual shortage in the importation as reported by the gaugers.
3. DREGS IN ALE.—Dregs and lees in ale are not usable ale, but neither is a foreign impurity. They are dutiable as a part of the importation.
4. ALLOWANCE HERE.—The question of wantage and the proper allowance for it is essentially one of fact, and upon the evidence in this case a proper allowance is found to be 3 per cent of the invoice or standard capacity of the several kinds of cases containing the ale.

United States Court of Customs Appeals, May 8, 1912.

Cross-appeals from Board of United States General Appraisers, G. A. 7270 (T. D. 31850).

[Decision modified.]

William L. Wemple, Assistant Attorney General, and CharlesE. McNabb, assistant attorney, for the United States.

Comstock & Washburn (Albert H. Washburn of counsel) for appellee, appellant.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case consists of Bass ale, which was imported in wood under the present tariff act, and was dutiable at 23 cents per gallon under the appropriate provision of paragraph 308 of the act.

Ten of the importations in question were made at Boston in the name of W. C. Cummings; 23 were made at New York in the name of R. J. T. Cooke; and 1 was made at Chicago in the name of the American Shipping Co. Each assessment was protested by the consignee, who conceded the correctness of the assessed rate of duty, but challenged the collector's findings as to the quantity of the consignment, and objected to the regulations prescribed by the department for the liquidation of such importations.

Upon the application of the protestants, and over the Government's objection, the board ordered a consolidation of the several protests and heard them together upon the same evidence. The protests were overruled in part and in part sustained. The importers and the Government severally appeal to this court for a reversal of that part of the board's decision adverse to the appellant.

The first contention of the Government is that the board erred in ordering a consolidation of the different protests, and this assignment of error properly becomes the first subject of the present review.

It appears from the evidence that the ale in question was brewed by the Bass company, at Burton-on-Trent, in England, and that the above named consignees at Boston, New York, and Chicago were merely agents for the home company, and received the respective shipments in that capacity. The importations were all made under the same act, and the same issue is made relative to all of them. It does not appear that the consolidation of the protests worked any actual prejudice to the Government, for the entire case was fully presented to the board upon the evidence, as it is now fully presented to the court by the record.

In view, therefore, of the fact that the several protests were virtually filed by the same party, and that the questions raised by them and the testimony relating to them apply alike to all the importations, and that no actual prejudice resulted from the consolidation, the court holds that the board's action in that behalf was not erroneous.

As has been stated, the issue made in this case relates to the action of the collector in finding the quantity of ale composing the importations. There are three Treasury regulations which enter into a discussion of the case, and they are here copied under the numbers which they bear as Treasury Decisions:

(T. D. 6055.)

Gauging of imported liquors.

TREASURY DEPARTMENT, *December 5, 1883.*

SIR: This department is in receipt of your letter of the 5th ultimo, relating to the gauging of imported liquors to ascertain the quantity imported, under the recent decision of the Attorney General relating to the assessment of duties on such merchandise.

You state that there is no accurate method of definitely ascertaining the quantity of beer actually received in any shipment, for the reason that if the cask be opened for gauging the liquor will thereby be spoiled.

When necessary, packages containing malt liquors may be gauged for capacity by "outside masurement," the length and also the head and bung diameter being separately measured on the outside of the package, and from the length the thickness of the heads and from the diameter the mean thickness of the bung and bottom staves being deducted. The equivalent of the inside measurements being thus ascertained, the capacity will be calculated, as in ordinary gauging.

When the bung is not removed, the gauger should ascertain the wantage by sounding the line at which the liquor stands in the package, and then computing the capacity of the empty space. The department understands that when the outage of a package of malt liquors is as much as three or four gallons the bung can be safely removed and the package be gauged in the ordinary manner.

You may cause your practice to conform to these views.

Very respectfully,

H. F. FRENCH, *Assistant Secretary.*

SURVEYOR OF CUSTOMS, *Cincinnati, Ohio.*

(T. D. 29929.)

Imported beer.

Instructions as to gauging of beer imported in barrels or casks.

TREASURY DEPARTMENT, *August 2, 1909.*

SIR: On and after August 15, 1909, duties will be assessed on beer imported in barrels or casks on the basis of the invoice quantity whenever the same is equal to or exceeds the capacity branded on the barrels or casks in liters. Fractions of a liter will not be considered.

You will keep a record by numbers, in a book provided for that purpose, of the branded capacity of every barrel or cask imported at your port. The returns of branded capacities will be made pursuant to articles 1503 to 1505 of the Customs Regulations of 1908, governing the return of gaugers. When the capacity is not branded on any barrel or cask the same shall be gauged for capacity by outside measurement, the length, head, and bung diameters being separately measured on the outside. From the length the thickness of the heads and from the diameters the mean thickness of the staves should be deducted for inside measurement.

If the total invoice quantity is found to be less than the total branded capacity of all the barrels or casks covered by the invoice, the entry will be liquidated upon the quantity shown by the branded capacity.

The empty barrels or casks when exported should be tested from time to time to ascertain the actual capacity thereof, the gauging being done in the same manner as that governing the gauging under the internal-revenue laws of barrels or casks containing domestic beer.

Department's regulations (T. D. 6055) of December 5, 1883, are hereby modified accordingly.

Respectfully, JAMES B. REYNOLDS,
(57753.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 30495.)

Gauging of ale, porter, and stout in kegs, casks, etc.

T. D. 29929 of August 2, 1909, respecting the gauging of beer, extended to cover ale, porter, and stout imported in kegs, casks, barrels, and similar containers.

TREASURY DEPARTMENT, *April 4, 1910.*

SIR: The instructions of August 2, 1909 (T. D. 29929), respecting the gauging of beer imported in barrels or casks, are hereby made applicable to ale, porter, and stout imported in kegs, casks, barrels, and similar containers.

Respectfully, JAMES F. CURTIS,
(57773.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

Bass's ale in casks has been continuously imported into this country for more than 30 years last past. A large part of such importations was sold to be bottled in this country for sale here; of this bottling ale probably 93 per cent was sold to the single firm of Thomas McMullen & Co., who were by far the largest distributors of Bass's bottled ale in this country. The residue was sold to dealers and consumers in the usual course of trade.

The casks in which the ale was imported have always been made in six different sizes. The following list gives their trade names and the number of English imperial gallons contained in each, viz: Hogshead, 54 gallons; barrel, 36 gallons; half hogshead, 27 gallons; kilderkin, 18 gallons; firkin, 9 gallons; and pin, $4\frac{1}{2}$ gallons.

One English imperial gallon is equal to 1.20034 American gallons. The fraction thus involved is so nearly equal in value to one-fifth that in commerce an English gallon is treated as equivalent to $1\frac{1}{5}$ American gallons, and commercial invoices are written by importers upon that basis.

According to that method of conversion the casks above listed contain the following number of American gallons each, viz: Hogshead, $64\frac{4}{5}$ gallons; barrel, $43\frac{1}{5}$ gallons; half hogshead, $32\frac{2}{5}$ gallons; kilderkin, $21\frac{3}{5}$ gallons; firkin, $10\frac{4}{5}$ gallons; and pin, $5\frac{2}{5}$ gallons. These figures give the standard capacities of such casks; nevertheless, at times there is actually an inconsiderable disparity between different casks of the same nominal capacity.

The importations in question were all entered after the promulgation of T. D. 29929, above copied, and in part after T. D. 30495. The collector acted upon the theory that T. D. 29929 applied to importations of ale as well as beer, although beer alone is specifically named therein. Accordingly, in computing the quantity comprised in the importations, the collector considered two factors only—first, the quantity stated in the invoices, and, second, the capacity branded on the casks. The invoice quantity was adopted whenever the same was equal to or exceeded the capacity branded on the casks, and the branded capacity was adopted if it exceeded the invoice quantity.

The present importations were all invoiced to the respective consignees in American gallons at the standard capacity of the respective casks, including the fractions. The casks were all branded in American gallons at even figures, the kilderkins having a fraction added, so as to make the next higher full number, the other casks having the fractions omitted, so as to make the next lower numbers.

In the present liquidations the invoice quantities were adopted for all the casks except the kilderkins, for which the branded capacities were adopted, the quantities thus found exceeding, of course, the aggregate of either the invoice or branded capacities if taken alone. In thus literally following the rule prescribed by T. D. 29929 the collector also ignored the gauger's reports of various shortages resulting from defective casks, and no allowance was made in the liquidation for any of these.

The protests challenged the correctness of this method of liquidation, and the board sustained the protests in that behalf.

It seems clear that this ruling of the board was correct. It is designed by the law that the duty of 23 cents per gallon should be collected only upon the actual quantity of the imported ale. In finding that actual quantity a deduction should have been made from the nominal capacities of the casks for any shortage of contents at importation resulting from leakage or other causes. The proviso of paragraph 307, inhibiting any allowance for leakage on wines, liquors, cordials, or distilled spirits does not apply to importations of ale.

It is therefore clear that the collector erred when he adopted the full invoice capacity of all the casks except the kilderkins and adopted the full capacity of the kilderkins with an arbitrary fraction added thereto and at the same time ignored the actual shortages which were reported by the gaugers. The decision of the board to this effect is approved by the court.

The court therefore next comes to consider the amount of the shortages in the present importations.

The importers include three several elements within their claims for allowance under this head. First, they claim an allowance for any unusual outage ascertained by the gaugers resulting from defective packages. This claim has already been approved by the foregoing statement. Second, the importers claim that each cask contains at importation several gallon of dregs and lees which are worthless and should not be held to be dutiable as ale. And, third, they furthermore contend that the casks are not filled bung full at the brewery, and that fermentation continues during the voyage, causing seepage and loss of carbonic-acid gas, even from normal casks, and that owing to these conditions there is an average wantage of contents at importation of several gallons to each cask, even where no special leakage or injury to the cask is apparent.

The importers claim in general that the imported ale is not a ripened stock ale, but is rather a present-use ale, which is poured into the casks at the brewery in a turbid state of incomplete fermentation, within a week or ten days after it is first brewed, and imported within a few weeks after that time. They claim that because of these conditions the casks can not be filled bung-full at exportation. They claim also that before importation a pound or more of dry hops is placed in each hogshead, tending to flavor and ripen the ale upon its voyage, in part by continuing the fermentation, and that these hops add to the lees when finally spent. They claim that because of this continuing fermentation the casks can not be tightly coopered when exported, but are necessarily liable to seepage; and that porous pegs are placed in the bungs to permit of the escape of carbonic-acid gas generated within the casks upon the voyage. They claim that Thomas McMullen & Co. have used 150,000 hogsheads of the importation during the last 20 years and have realized therefrom barely an average of about 57 gallons of bottling ale per hogshead, whereas the normal capacity of each hogshead was 64$\frac{1}{2}$ gallons; and that because of this experience an allowance of 8 gallons a hogshead has been regularly granted to that firm in its settlements. They claim, furthermore, that for 30 years preceding the publication of T. D. 29929 there existed a uniform official practice at New York, Boston, and Chicago, where such importations were received, whereby, because of the foregoing facts, minimum allowances were made to the importers of 3 gallons upon each hogshead; 2 gallons upon each barrel, half hogshead, and kilderkin; and 1 gallon upon each firkin and pin.

The importers submitted testimony before the board tending to prove the foregoing claims.

The Government upon its part denied, in general, the claims for shortage made by the importers, and introduced evidence in contradiction thereof.

The board overruled the importers' claims for an allowance because of dregs and lees, but sustained their claim for a minimum allowance for the alleged wantage of the imported casks.

In respect to the claim for dregs and lees, the decision of the board seems clearly to be correct. It is true that such lees are not usable ale, but neither are they a foreign impurity in the ale. They are really part of the importation, and the assessment was properly imposed upon the ale as an entirety.

In respect to the claim for an average allowance for wantage a more difficult question presents itself. The purpose of the law is to levy the duty of 23 cents per gallon upon the quantity of ale actually imported. In effecting that purpose the Treasury Department may doubtless determine upon tests deemed sufficient that a certain average wantage should be allowed upon such importations, with a view of reaching a true result without detailed tests of individual shipments. But certainly this court can not prescribe any such general rule for the department, nor make a finding designed to control anything more than the importations involved in the case upon trial. Therefore,

the sole present question before the court in that behalf is whether or not the importations at bar were entitled to the minimum allowances claimed by the importers and approved by the board.

Upon this subject it may first be said that T. D. 6055 can hardly be cited as an authority for the definite claim of the importers. That regulation did not undertake to fix any rule for allowances, but dealt with the method of gauging containers of beer.

It may furthermore be said that long-continued official practice is not controlling in such a matter as wantage, because the question is essentially one of fact only. If a practice ever existed of arbitrarily allowing an excessive wantage simply as a concession to the importers, tending to relieve them in part of the duty fixed by law, such a practice would be illegal, and would never ripen into a right upon the importers' part.

The minimum allowance claimed by the importers and allowed by the board amounts to 20 per cent of the capacity of each pin, 10 per cent of each firkin, 9 per cent of each kilderkin, 6 per cent of each half hogshead, and about 4½ per cent of each barrel and hogshead. The testimony contained in the record does not show any difference in the percentage of wantage among the different sizes of casks, nor does it seem to support so large a percentage of allowance. It is to be regretted that there is so little proof in the case directed to the particular importations in question; doubtless, however, it was impracticable to secure it, and no presumption arises because of its absence. The testimony relates generally to the manner of packing the ale at the brewery, its continuing fermentation in transit, the amount secured per hogshead for bottling by the McMuller company, the appearance of the casks at importation, and the condition of the ship's hold upon arrival, and all this leads to the belief that the casks were not bung-full when they reached port, but it is very indefinite when it comes to fixing the exact amount of the actual wantage.

The customs officials undertook to supply definite proof upon this subject by making actual tests of a number of selected casks from similar importations. Three such tests were made, all in the presence of the consignees.

The first test was made at New York on October 31, 1910. A cask of each of five different sizes was gauged by actually drawing off the contents into measuring vessels. This test failed to find any shortage at all in four of the selected casks; the fifth was found to be defective. The test was not fully satisfactory, and is not cited as authoritative; nevertheless it may be noted that it disclosed no shortage, so far as it went, except in the defective cask.

On December 12, 1910, a second such test was made at New York, again in the presence of the consignee. The hogshead selected for measurement was found to be 3.30 gallons short of its invoice capacity; the half hogshead, 0.55 gallons short; the barrel, 1.70 gallons short; the kilderkin, 1.25 gallons short; the firkin, 1.05 gallons short; and the pin, 0.40 gallons short. This statement assumes that the lees are part of the dutiable contents of the casks, and makes no allowance for them. The total shortage thus computed was 8¼ gallons, or about 4.6 per cent of the total invoice capacity of the six examined casks.

A third test was made on January 23–24, 1911, at Boston, in the presence of the consignee. Five several casks were measured, and the total shortage was found to be about 1 gallon, or less than 1 per cent of the capacity of the selected casks.

The consignees objected to these various tests. They complained because so few casks were examined, and claimed that those examined were not of the average appearance and condition of the imported casks. Other complaints were made, which are not now important in view of the opinion already expressed concerning the lees.

Upon a consideration and comparison of all the evidence the court reaches the conclusion that a minimum deduction upon all the imported casks of 3 per cent of their invoice or standard capacities is as great an allowance as should be sustained upon the record, and that such a deduction should be allowed to the importers as the most practicable method at present of finding the actual contents of the importations in question. This should apply alike to the different kinds of casks containing the importations.

The decision of the board is therefore approved, subject, however, to the foregoing modification; and it is accordingly ordered that reliquidation be made by allowing the importers, first, the special shortages upon individual casks as reported by the gaugers, and, second, an additional 3 per cent deduction from the invoice or standard capacities of all the imported casks as the average wantage thereof in cases where no special shortage was found.

Modified.

EXHIBIT 6.—(T. D. 32052.)—*Marble vase—Sculpture.*

UNITED STATES *v.* BAUMGARTEN & CO. (No. 687).

CARVED MARBLE VASE COPY OF AN ARTISTIC ORIGINAL.—A carved marble vase, made by a sculptor as a copy of an original in the Borghese collection, is not to be deemed a manufactured article. The evidence shows that artistic skill was employed in its production, and it was properly held to be dutiable as a "sculpture" under paragraph 470, tariff act of 1909.

United States Court of Customs Appeals, November 22, 1911.

Appeal from Board of United States General Appraisers, Abstract 25440 (T. D. 31543).

[Decision affirmed.]

Wm. K. Payne, Deputy Assistant Attorney General (Leland N. Wood on the brief), for the United States.

Brooks & Brooks (F. W. Brooks, jr., of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

Martin, judge, delivered the opinion of the court:

Under the tariff act of 1909 the appellees imported into this country a carved marble vase, which is a copy of one of the vases in the Borghese collection at Rome.

Duty was assessed upon the article by the collector at the rate of 50 per cent ad valorem as "marble manufactured into a vase," under the provisions of paragraph 112 of the act, which reads as follows:

"112. Marble, breccia, onyx, alabaster, and jet, wholly or partly manufactured into monuments, benches, vases, and other articles, or of which these substances or either of them is the component material of chief value, and all articles composed wholly or in chief value of agate, rock crystal, or other semiprecious stones, except such as are cut into shapes and forms fitting them expressly for use in the construction of jewelry, not specially provided for in this section, fifty per centum ad valorem."

The importers duly filed their protest to this classification, and contended that the importation should properly be assessed with duty at 15 per cent ad valorem only, as a "sculpture," within the provisions of paragraph 470 of the same act, which reads as follows:

"470. Paintings in oil or water colors, pastels, pen and ink drawings, and sculptures, not specially provided for in this section, fifteen per centum ad valorem; but the term "sculptures" as used in this act shall be understood to include only such as are cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as are the professional production of a sculptor only, and the term "painting" as used in this act shall be understood not to include such as are made wholly or in part by stenciling or other mechanical process."

The protest of the importers was sustained by the Board of General Appraisers, and the Government now appeals from that decision.

The question therefore is whether the imported vase should properly be classified as marble manufactured into a vase, or as a sculpture. In the former case it is dutiable at 50 per cent ad valorem, in the latter case at 15 per cent ad valorem.

The marble vase in question came from the studio of an Italian sculptor of ability and reputation, said by a witness to be one of the highest and best artists in Italy; it is identified as his production by the importer who is himself a student of art and who is familiar with the artist's work. The witness had seen the artist at work upon a companion to this piece, and is able to recognize this article by its style of execution as the artist's own work. The vase is not an original creation of the sculptor but is a copy of a classical masterpiece. The invoice value of the article is $453, and it is apparent that it has no utilitarian value at all proportionate to this cost.

The article is made from a solid block of marble, and although the rough tooling was doubtless done by a whipper, yet the vase was carved by hand as the professional production of the sculptor himself.

A photograph of the vase is filed as an exhibit in the case, and it appears therefrom that it is an article of great beauty, that the part of chief value is a procession of human figures surrounding the bowl of the vase, which are cut in pronounced relief and give every evidence of great artistic merit. The work shows the application of personal study upon the part of the artist and proves the professional character and ability of its author. It is obviously no mere mechanical effort at a reproduction of the original.

These qualities seem to entitle the article in question to the name of a sculpture. Among the several definitions of that term cited in the briefs are the following:

Century Dictionary:

"*Sculpture.*—A shaping art, of which the business is to imitate natural objects, and principally the human body, by reproducing in solid form either their true proportions in all dimensions, or else their true proportions in the two dimensions of length and breadth only, with a diminished proportion in the third dimension of depth or thickness.

Century Dictionary and Cyclopedia:

"Sculpture is the expression of human thought and emotion in solid form; that is, in the three dimensions of space, length, breadth, and thickness. * * * If a work in sculpture gives to all three dimensions of space their full value, it is said to be "in the round;" if only length and breadth are completely expressed, and thickness or depth is abridged, it is said to be 'in relief.'"

The New International Encyclopedia:

"Sculpture, a term including all methods of producing a purely artistic result in solid form, as distinguished from architecture, in which utilitarian work is beautified.

"Forms of sculpture: As to its forms and character sculpture is divisible into that which is in relief, in which the masses project slightly from a solid surface, and that 'in the round,' to use a phrase common among artists, and which denotes statues, busts, free groups, and the like."

The Government, however, contends that the article in question nevertheless comes with almost mathematical certainty within the class established by paragraph 112 above copied. That paragraph provides in terms for marble manufactured into a vase, and it is contended that the material of this article is certainly marble and the article which has been produced from that material is concededly a vase, and therefore that it must be marble manufactured into a vase. It is further contended that if the article in question is a sculpture and is also marble manufactured into a vase, the latter title should prevail in the classification because it is the more specific of the two.

The question therefore properly arises whether or not this article is marble manufactured into a vase within the meaning of paragraph 112.

A consideration of that paragraph leads to the conclusion that it was not intended to cover artistic productions in marble of such figures as are described in the foregoing definitions, whose value depends either upon the individual conceptions of the artist, or upon his professional taste, touch, and spirit in execution; and that, therefore, the same article can not come properly within the terms of both of the paragraphs under consideration. It is true that such an article as the one in question comes apparently within the letter of paragraph 112, as contended by appellant, but it is foreign to its spirit. That paragraph groups such vases as it covers with monuments and benches, and thereby in part implies that the classification is intended to cover only such productions as are above denominated as utilitarian works which are beautified, and not such reproductions of animate or inanimate forms in marble as reach the dignity and character of studies by professional sculptors. The fact that the article in question is a vase and that marble manufactured into vases is specially named in the one paragraph does not, therefore, effectually conclude the argument. The form of a vase, indeed, has been used from ancient times as a medium for the finest artistic productions, and in many such works the utilitarian character of the article is wholly lost in its artistic character. In the case at bar the form of a vase has been used by the artist merely as a support for the real work of the piece, and the importation is indeed doubly removed from utilitarian character by reason of the fact that it is a copy of an article which is preserved in a famous collection as a work of art of classical merit.

Again, the word "manufactured," used in paragraph 112, also confirms the view here suggested. That word, as implied from its etymology, originally meant made by hand, but in present-day usage it carries quite a different meaning: it now more nearly means made by machinery, or at least made in large quantities and as part of a regular business. A piece of marble chiseled by a sculptor into lifelike figures imposed upon the bowl of a vase, all comprising a single professional production full of artistic character, would not now ordinarily be said to be marble manufactured into a vase.

Nor does the fact that the work is a copy of an ancient masterpiece rather than an original conception of the artist change this conclusion. It is a matter of common knowledge that appropriate works thus reproduced are treated as sculptures quite as much as if they followed living models or actual inanimate objects. In the case of the copy the idealization is provided for the artist by the original, but the execution of the copy may nevertheless engage and require professional character and ability of a high order. This is proven by an inspection of the photograph of the work at bar, which may easily be distinguished from a marble vase manufactured by machinery or formed by the hand of a mere artisan.

There is high authority for the view last above expressed, as appears from the following excerpt from the opinion of Mr. Justice Gray in the case of Tutton *v.* Viti (108 U. S., 312, 313):

"There is nothing in the acts of Congress to limit the professional productions of a statuary or sculptor to those executed by a sculptor with his own chisel from models of his own creation, and to exclude those made by him, or by his assistants under his direction, from models or from completed statues of another sculptor, or from works of art, the original author of which is unknown. An artist's copies of antique masterpieces are works of art of as high a grade as those executed by the same hand from original models of modern sculptors."

These considerations are all consistent with the obvious legislative purpose incorporated into the respective paragraphs under review. The "manufactured" paragraph levies a duty of 50 per cent ad valorem, whereas the "sculptors" paragraph provides for a duty of only 15 per cent ad valorem. This lesser rate is in the interest of art and education and in acknowledgment of the labors of professional artists. The article in question properly belongs in character to this latter sphere, notwithstanding its seeming literal identity with the articles named in the other paragraph. In this view of the case, the decision of the board is therefore affirmed.

EXHIBIT 7.—(T. D. 33166.)—*Imitation precious stones.*

UNITED STATES *v.* AMERICAN BEAD CO. (No. 907). AMERICAN BEAD CO. *v.* UNITED STATES (No. 909).

1. IMITATION PRECIOUS STONES, HEART-SHAPED, WITH METAL RING ATTACHED.—Imitation precious stones in the form of hearts, having a hole in the upper extremity in which is inserted a diminutive brass screw ring, are parts of jewelry and are dutiable as such under the last part of paragraph 448, tariff act of 1909.—Cohn *v.* United States (3 Ct. Cust. Appls., 288; T. D. 32575).
2. IMITATION PRECIOUS STONES IN METAL SETTINGS.—Small imitation diamonds, rubies, and other precious stones set in metal claws that hold the stones in position and that are used as the proof shows chiefly for dress trimming are dutiable as manufactures under paragraph 109 or 199, tariff act of 1909.
3. IMITATION PRECIOUS STONES WITH FOIL BACKS.—Imitation precious stones with foil backs, either pierced or not pierced, are dutiable not as beads, but as imitation precious stones under paragraph 449, tariff act of 1909.
4. GLASS BEADS, BARS, AND ORNAMENTS, DRILLED.—Glass beads, bars, and ornaments, drilled, and unfit for use in the manufacture of jewelry are dutiable as beads under paragraph 421, tariff act of 1909.
5. IMITATION PRECIOUS STONES, OVAL OR HEART-SHAPED CAMEOS, ETC.—Imitation precious stones, oval, heart-shaped, etc., having a small shoulder pierced through in the process of molding, imitation cameos with two holes pierced in the sides, and other articles not in the form of beads, all suitable for use in the manufacture of jewelry, are dutiable as "imitation precious stones" under paragraph 449, tariff act of 1909.

United States Court of Customs Appeals, February 1, 1913.

Appeal from Board of United States General Appraisers, G. A. 7348 (T. D. 32417).

[Modified.]

William M. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel), for the United States.

Brown & Gerry for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Montgomery, presiding judge, delivered the opinion of the court:

Cross appeals are made from the decision of the Board of General Appraisers dealing with protests against the assessment made upon a variety of articles which were classified, in the opinion of the board and the briefs of counsel, as follows:

Class 1, illustrated by importers' No. 5670, consists of imitation topaz and other precious stones in the form of hearts, having a hole in the upper extremity in which is inserted a diminutive brass screw ring. These articles were classified by the collector as jewelry under the last clause of paragraph 448 of the tariff act of 1909.

Class 2, illustrated by importers' Nos. 5560, 5563, and 5565, consists of small imitation diamonds, rubies, and other precious stones set in metal claws holding the imitation stones in position in the usual manner gems are set by jewelers. They are of less value than 72 cents per gross and were returned for duty at 45 per cent ad valorem under paragraph 109 or paragraph 199 of said act as manufactures of glass or as manufactures of metal.

Class 3, illustrated by importers' Nos. 789, 1207, 1208, 1209, 5080, 5505, 5507, 5520, 5526, 5704, 7595, 11668, 11673, 11678, 12854, and 13503, consists of imitation precious stones with foil backs not commercially known as beads, but as "jewels," "stones," "settings," or some other name indicative of their intended use in the manufacture of jewelry, and which the board found to be suitable for such use. The return for duty was made as beads at 35 per cent ad valorem under paragraph 421.

Class 4, illustrated by importers' Nos. 14, 17, 600, 2000, 5004, 5007, 5504, 5522, 5707, 7608, 7614, 8060, and 11427, consists of glass beads, bars, and ornaments, drilled, which the board declared to be of such inferior quality as to render them unfit for use in the manufacture of jewelry. These articles were also assessed as beads under paragraph 421.

Class 5, illustrated by importers' Nos. 5528, 5530, 5540, 5554, 5555, and 5557, consists of imitation precious stones, some oval and others in the form of hearts, the upper parts of which have a small shoulder pierced through in the process of molding, some imitation cameos with two holes pierced in the sides, and other articles not in the form of beads, some drilled and others without holes, all this class being suitable for use in the manufacture of jewelry and assessed for duty at 35 per cent ad valorem under paragraph 421.

The claims of the protest are that the importations are dutiable under paragraph 449 as precious or semiprecious stones at 10 per cent ad valorem or as imitation precious stones for use in the manufacture of jewelry at 20 per cent ad valorem, or under paragraph 480 as unenumerated manufactured articles.

The board sustained the protests as to classes 1, 3, and 5, classing them as imitation precious stones—with the exception of those which are imitations of jet—and overruled the protests as to classes 2 and 4.

The major portion of the opinion of the board consists of a discussion of the claims relating to the classification of the merchandise represented in class 1. The opinion states that the articles are intended for use in the manufacture of jewelry as pendants for necklaces, etc., and states:

"Irrespective of the fact that these articles are not composed of gold or platinum, it is manifest that the collector's assessment of duty thereon at 60 per cent ad valorem was erroneous. They are valued at more than 72 cents per gross, and, as shown by the evidence, are intended for use in the manufacture of jewelry; hence if the imitation precious stones composed of paste here involved have been set in metal they are unquestionably dutiable at rates equivalent to 75 per cent ad valorem under paragraph 448 as materials suitable for use in the manufacture of articles of personal adornment, including jewelry. We, however, reach the conclusion and hold that the imitation stones have not been set in metal."

The opinion further proceeds:

"Are the articles in their imported condition included within the provision for imitation precious stones? If the answer is in the affirmative, the protests must be sustained. On the contrary, if by the addition of the metal screw rings they have been advanced beyond the condition of precious stones and become manufactures of paste and metal, the collector's classification of the articles as jewelry, although erroneous, can not be disturbed."

The board then proceeds to review the cases upon the subject, and on the authority of United States *v.* Weinberg (139 Fed., 1006), which followed the case of Lorsch *v.* United States (119 Fed., 476), dealing with a provision for imitations of precious stones not set, under paragraph 454 of the act of 1890 and paragraph 338 of the act of 1894, held that the fact that such articles were set on screw rings did not carry them into the class of imitation stones set. The court in these cases had under consideration no such provision as is here involved under the last clause of paragraph 448, which provides for jewelry and parts thereof. In the present case the board, although treating the article as further advanced than were those involved in the cases cited, held that they still had not lost their character as imitations of precious stones intended to be used in the construction of jewelry.

The last part of paragraph 448 reads as follows:

"* * * All articles commonly or commercially known as jewelry, or parts thereof, finished or unfinished, including chain, mesh, and mesh bags and purses composed of gold or platinum, whether set or not set with diamonds, pearls, cameos, coral, or other precious or semiprecious stones, or imitations thereof, sixty per centum ad valorem."

It is inferable that the board in the present case was of the opinion that the limitation of certain articles named in this clause to those composed of gold or platinum applied to the whole of the provision quoted. If so, the board was in error, as we held in Cohn *v.* United States (3 Ct. Cust. Appls, —; T. D. 32575), that the qualifying phrase "composed of gold or platinum" applies only to "bags and purses" which immediately precedes it, so that the clause here involved in its essential terms provides for "articles commonly or commercially known as jewelry, or parts thereof, finished or unfinished, * * * whether set or not set with diamonds, pearls, cameos, coral, or other precious or semiprecious stones, or imitations thereof, sixty per centum ad valorem," and the question here in issue as to class 1 is as to whether this clause more accurately describes the importation in question than that part of paragraph 449 reading "imitation precious stones, including pearls and parts thereof, for use in the manufacture of jewelry."

This question should be solved by considering whether the articles have been advanced to a condition in which they may be appropriately said to be jewelry or parts of jewelry. See Guthman *v.* United States (3 Ct. Cust. Appls.—; T. D. 32574).

The testimony in the case was offered by the importers, and as relating to class 1 is as follows:

"Q. Now, item 5670, what are those used for?—A. Also for jewelry purposes; also used for pendants—little heart.

"Q. Do they have this shank in when they come in?—A. I think we imported these made up.

"Q. You didn't put this shank in after it was imported?—A. I don't think we did.

"General Appraiser SHARRETTS. Are those articles used in that condition without any process of manufacture at all? Can you use them separately as an ornament?

"The WITNESS. Well, you could do it, but it is very seldom used as an ornament.

"Q. What is the ordinary use of those hearts?—A. Well, in the last few years we sold a good many of them for necklaces and pendants—mostly for pendants.

"By Mr. BAKER. They form part of a necklace at intervals?

"The WITNESS. Yes."

We think it impossible to escape the conclusion from this testimony that these articles are parts of jewelry and come directly within the last part of paragraph 448. Nothing whatever remains to be done to these articles except to append them to necklaces and, indeed, they may be sold or used as parts of different necklaces or chains.

The protest as to class 2 was overruled by the board and the importer appeals from the decision as it relates to the items represented. The testimony as to these items was that offered by the importers and is as follows:

"Q. Now look at item 5560. What are those used for?—A. They are mostly used for dress trimming; also for stage jewelry.

* * * * * * *

"Q. Now, item 5560 is another of the set jewels; is that right?—A. Yes.

* * * * * * *

"Q. Now, item 5565; what are those goods?—A. Those are the same as 5516.

"Q. Set jewels?—A. Set jewels.

* * * * * * *

"Q. Item 5563; what is that?—A. Also set jewel."

An inspection of these items shows that they are not to be distinguished as to their characteristics or appearance, and the testimony of the witness showing that they are mostly used for dress trimming would seem to forbid their classification as imitation precious stones for use in the manufacture of jewelry. The inference from the testimony is that usch use is not the chief use to which they are devoted, but that they are chiefly used for dress trimming.

The importers also appeal from the classification of certain of the items covered by class 4 as made by the board. No claim is made as to Nos. 2090, 5707, 7608, or 7614. As to items 14 and 17 it is said in the brief of counsel that if the court is unable to find from an inspection of the samples that they are for use in the manufacture of jewelry, it would seem that the decision of the board as to these two items should be affirmed. An inspection discloses that they are imitation pearl beads, and there is nothing to indicate that they are to be devoted to or are adapted to the manufacture of jewelry, and we therefore affirm the decision as to these items. As it is also frankly stated and as the testimony shows that as to items 600 and 8060 they are used for a hundred different purposes, it would follow that they are intended for other uses than the manufacture of jewelry. These items may therefore, upon this concession, be properly left out of consideration.

It is also conceded by the appellant that testimony as to No. 5522 is weak. An examination of the testimony discloses that these articles are used for ladies' collars,

and it does not indicate that they are used for collars which are in the nature of jewelry. We do not agree with counsel for the importer that an inspection of the samples indicates that such collars as could be made of these articles would be within the common understanding of the term "jewelry." The decision as to this item is therefore affirmed.

As to items 5707, 5004, and 5504, these are very plainly beads within any possible definition. They consist of glass in various colors and shapes pierced through the center, requiring nothing to be done to them except to be strung upon a thread, and as to 5707, a question to the witness was interrupted by an admission of counsel for the importer that the item was admitted to be a bead. It is true as to 5004 that the witness in answering the question, "Now, I call your attention to item 5004. Are those known as imitation precious stones?" answered, "Every one of them imitates precious stones."

"Q. For what purposes are they used?—A. Used for jewelry purposes."

It will be noted that the witness does not state that they are used for the manufacture of jewelry. He must have intended to be understood that they are used for ornamental purposes and worn as jewelry. If this be not his understanding, we are not convinced that they are adapted for use to be set into jewelry. Certainly that can not be their exclusive use, for they are adapted for use as strings of beads.

This leaves the only item to be considered upon appellant's appeal, No. 11427, which consists of glass bars from 1 inch to 1½ inches in length, pierced with holes and used for making so-called dog-collar necklaces. The testimony as to this item is not materially different from that relating to item 5522, which the importers admit to be weak, and an inspection of the item shows that it is difficult to distinguish between the two. We are not convinced that these articles are adapted to use in the manufacture of jewelry.

We discover no error in the classification of the items covered by classes 2 and 4, and the appeal of the importers as to these items is not sustained.

This leaves for consideration classes 3 and 5. Most of the items arranged within these two classes correspond to those described in T. D. 27420 and held to be imitation precious stones. Some of these are settings wholly of imitation stones, some plain and some cameo; others are foil back with two holes for settings; others are foil back without any holes. We think all of these fall within the reasoning of the board in the case cited, which appears not to have been questioned by the Treasury Department, and are also within the reasoning of the board in Abstract 26470 (T. D. 31850) and Abstract 27296 (T. D. 32073). See also Abstract 26470 (T. D. 31851), G. A. 5820 (T. D. 25713), and United States *v.* Goldberg (T. D. 25919).

The only items which have given us any doubt are some small pendants, the material of which is pierced and capable of being strung on thread or wire. These appear in various forms. And also some pear-shaped articles pierced lengthwise. Some of these articles might be used as beads, but the evidence shows that they were intended for use in the manufacture of jewelry. They are similar to the items considered in class 1, except that they have no attachment which admits of their being clasped to a necklace in their present form. They would appear to require some further process of manufacture. Giving the importer the benefit of any doubt there may be as to this classification, we affirm the decision of the board as to all items covered by classes 3 and 5.

The decision of the board will be modified in accordance with the terms of this opinion.

EXHIBIT 8.—(T. D. 33199.)—*Windowphanie paper.*

KNAUTH, NACHOD & KUHNE *et al. v.* UNITED STATES (No. 1032).

PAPER WITH DECORATED SURFACE, NOT LITHOGRAPHED.—The paper of the importation has been subjected to processes by which, after a finished design in colors had been imprinted on it, it was saturated with linseed oil and no varnish or other substance was applied to produce an added surface. This is not a surface-coated paper. It is dutiable as a "paper with the surface decorated or covered with a design, fancy effect, pattern, or character, * * * but not by lithographic process," under paragraph 411, tariff act of 1909.

United States Court of Customs Appeals, February 12, 1913.

Appeal from Board of United States General Appraisers, G. A. 7393 (T. D. 32829).

[Reversed.]

Churchill & Marlow for appellants.

William L. Wemple, Assistant Attorney General (Martin T. Baldwin, special attorney, on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case consists of paper intended to be applied to glass windowpanes to give them the appearance of stained glass. It bears the trade name of windowphanie paper.

The article was assessed for duty by the collector under the classification of "papers with coated surface or surfaces not specially provided for * * *, printed," at 5 cents per pound and 20 per cent ad valorem, under paragraph 411 of the tariff act of 1909.

The importers filed their protest against the assessment, claiming the merchandise to be dutiable as "papers * * * with the surface decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise, but not by lithographic process," at 4½ cents per pound; or alternatively under the classification of "all other grease-proof * * * papers not specially provided for * * * by whatever name known," at 2 cents per pound and 10 per cent ad valorem, under the same paragraph of the act.

The protest was duly heard upon evidence by the Board of General Appraisers and was overruled, from which decision the importers now appeal.

The following is a copy of those parts of paragraph 411 which are here called into question:

"411. Papers with coated surface or surfaces, not specially provided for in this section, five cents per pound; if wholly or partly covered with metal or its solutions (except as hereinafter provided), or with gelatin or flock, or if embossed or printed, five cents per pound and twenty per centum ad valorem; papers, including wrapping paper, with the surface decorated or covered with a design, fancy effect, pattern or character, whether produced in the pulp or otherwise, but not by lithographic process, four and one-half cents per pound; if embossed, or wholly or partly covered with metal or its solutions, or with gelatin or flock, five cents per pound and twenty per centum ad valorem; * * * parchment papers and grease-proof and imitation parchment papers which have been supercalendered and rendered transparent, or partially so, by whatever name known, two cents per pound and ten per centum ad valorem; all other grease-proof and imitation parchment papers, not specially provided for in this section, by whatever name known, two cents per pound and ten per centum ad valorem; * * *."

It appears from the testimony that the article in question is manufactured in its first condition in Italy. When first made, it is a plain white paper which is opaque in character. The paper is then packed in large bales and shipped to Germany, where it is converted into the present article. The process to which the article is there submitted consists of two parts. The paper first goes through a printing press having a number of rollers, each one of which impresses a separate color upon its surface, so that finally a finished design in divers colors is printed upon the article. The paper is then hung upon racks and allowed to dry for about three days, when it is passed through a second machine. The operating parts of this machine consist of two rollers, the lower of which turns in a solution of linseed oil and saturates the paper with the same. The upper roller tightly presses the paper upon the lower

one, and thus prevents an excess of oil remaining in it. The article is twice passed through the rollers in order that both sides may be successively presented to the lower roller. The paper is again suspended upon a rack for several weeks, and this brings the entire process to completion. No varnish or other substance is applied to the article in order to give it an added surface or to serve solely as a polish to the original surface. As a result of the process just described the paper is thoroughly and evenly saturated with the oil, and is thereby changed from an opaque to a translucent condition. It is also made proof against both water and grease. When the paper as thus finished is attached to the surface of a windowpane it does not prevent the passage of light, but it produces the stained-glass effect for which it is chiefly designed.

As has been stated, the article was assessed by the collector as paper with a coated surface, printed. The importers, upon their part, do not deny that the paper is printed but they maintain that it has not a coated surface. This presents the real issue in the case, whereby the correctness of the assessment must be determined.

It should be noted that there is no question of commercial designation in the case, and nothing appears in either the testimony or the briefs in the nature of trade usage or history tending to aid in the construction of the respective paragraphs. The record presents the simple question whether or not the article which results from the above-described treatment is a surface-coated paper.

It may be noted, however, that in paragraph 420, act of 1890, the corresponding provision was for "papers known commercially as surface-coated papers." In the tariff act of 1894, as well as the subsequent tariff revisions, the article was directly described as "surface-coated papers."

In Notes on Tariff Revision (531) the following apposite statement appears:

"GENERAL INFORMATION.

"To meet the requirements of certain kinds of presswork, some *papers* are '*coated*' on one or both sides with china clay or other substance, which gives an exceedingly smooth surface, without the hardness of supercalendered papers. A paper is 'calendered' by being passed through a series of rolls, i. e., it is '*ironed.*' When calendered papers are passed through a second series of rolls they are said to be 'supercalendered.'

"Flock is very fine woolen or cotton refuse, especially that from shearing the nap of cloths, used as a coating for paper to give it a velvety or clothlike appearance. The dust of vegetable fiber is used for a similar purpose. These *flock-coated, metal-coated,* and *gelatin-coated papers* are used largely in the manufacture of fancy boxes.

"Plain *basic photo papers* are uncoated papers which are designed to be sensitized for use in the manufacture of photographs. Some of these papers are coated with various substances, such as baryta, albumen, gelatin, etc., before they are sensitized; others are sensitized uncoated."

The following definitions are also given as bearing upon the present issue:

Murray's Dictionary:

"*Coat.* v. 2. To cover with a surface layer or coating (or with successive layers) of any substance, as paint, tar, tin foil, etc.; also predicated of the substance covering the surface."

Standard Dictionary:

"*Coat.* v. t. 1. To cover or spread over with a surface layer, as of paint, tar, etc. 2. To cover with or as with a coat."

Century Dictionary:

"*Coat.* n. 8. A thin layer of a substance covering a surface; a coating; as a coat of paint, pitch, or varnish; a coat of tin foil.

"*Coat.* v. t. 2. To overspread with a coating or layer of another substance; as, to *coat* something with wax or tin foil."

A consideration of these definitions and of the record leads the court to the conclusion that the paper now in question is not surface coated by the oil with which it is treated. The manufacture of the paper involves the complete saturation of the entire body and substance of the article in order to make it translucent. This condition of translucency is absolutely essential to the use for which the paper is designed. In the absence of the oil the paper would be opaque, and therefore unfitted for use as a covering for window panes. If at the completion of the process any part of the paper should remain untreated by the oil, such part would be an imperfection in the article requiring correction. It can not properly be said that the oil is a surface coating which only incidentally affects the body of the paper; to the contrary, the oil is not designed to be a surface coating at all, but is intended to effect a thorough and even saturation of the article throughout. If the two surfaces of the paper were covered with a film of oil leaving between them a layer of paper free from oil, the entire article would remain

opaque, and the essential purpose of the treatment would be defeated. The method whereby the oil is applied to the paper bears some resemblance to the process of printing, because the paper is passed through a set of rollers. But the result reached is simply a saturation of the article such as might less efficiently be accomplished by immersing it in a bath of the same liquid. This fact marks the difference between the process just described and the mere painting of the exterior of an article. In the latter case the purpose would be to reach the surface of the article only, and if the paint found its way beneath the surface that result would be unintentional and would not be an essential part of the process.

These considerations lead the court to conclude that the merchandise at bar has not a coated surface, and therefore is not within the classification adopted by the collector. The protest includes two proposed classifications which aptly describe the importation. The more specific and applicable is that for "papers with the surface decorated or covered with a design, fancy effect, pattern, or character, * * * but not by lithographic process." The duty imposed upon importations so described is 4½ cents per pound.

In accordance with the foregoing statement, the decision of the board is reversed and reliquidation is accordingly ordered.

EXHIBIT 9.—(T. D. 33170.)—*Books—Free entry.*

UNITED STATES *v.* BADISCHE CO. (No. 1011).

1. "INDIVIDUALS" IN PARAGRAPH 517, TARIFF ACT OF 1909.—It is reasonably clear that the term "individuals," as employed in paragraph 517, tariff act of 1909, was intended to differentiate between the publications of those other than literary associations or academies and foreign governments and to include under "individuals" all others.
2. PUBLICATIONS FOR GRATUITOUS PRIVATE CIRCULATION.—The publishers of the books imported were dealers in dyes and chemicals; were sellers of the dyestuffs listed in the publication. The testimony showed that these books were intended to be, and were, circulated gratuitously. They were entitled to free entry under paragraph 517, tariff act of 1909.—Schieffelin *v.* United States (84 Fed., 880).

United States Court of Customs Appeals, February 1, 1913.

Appeal from Board of United States General Appraisers, Abstract 29309 (T. D. 32714).

[Affirmed.]

William L. Wemple, Assistant Attorney General (Thomas J. Doherty, special) attorney, of counsel), for the United States.

Walden & Webster for appellee.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Montgomery, presiding judge, delivered the opinion of the court:

The importation in question in this case consists of books published by the Badische Anilin & Soda-Fabrik, a corporation engaged in the manufacture and sale of colors and dyestuffs. They were assessed for duty under the general provisions for books in paragraph 416 of the tariff act of 1909. The importers protested and claimed that the books were entitled to free entry as "publications of individuals for gratuitous private circulation" under paragraph 517 of said act.

Paragraph 517 in full reads as follows:

"Books, maps, music, engravings, photographs, etchings, bound or unbound, and charts, which shall have been printed more than twenty years at the date of importation, and all hydrographic charts, and publications issued for their subscribers or exchanges by scientific and literary associations or academies, or publications of individuals for gratuitous private circulation, and public documents issued by foreign governments."

The board sustained the protest and held the publication entitled to free entry. The Government subsequently made an application for a rehearing, which was denied, and this appeal was taken to review the two decisions of the board.

Testimony of the importers, which is uncontradicted, was offered by a member of the importing firm, who testified that the English translation of the title of the books

would be "Pocket Guide of Scientific Books," which "we give away to dyers, for dyers or users of dyes, to schools that make a specialty of preparing dyes, such as the Lowell Textile School, to colleges, and so on." It also appeared that the publishers of the books were dealers in dyes and chemicals and were sellers of the dyestuffs listed in the book.

The board was of the opinion that these books were of the class intended for gratuitous private circulation within the meaning of paragraph 517, and relied for this ruling upon the case of Schieffelin *v.* United States (84 Fed., 880).

In view of the history of that case we do not see how the conclusion reached by the Board of General Appraisers can be well avoided. Paragraph 410 of the act of August 27, 1894, provided for the admission free of duty of "publications issued for their subscribers by scientific and literary associations or academies, or publications of individuals for gratuitous private circulation, and public documents issued by foreign Governments." This provision came before the Circuit Court of Appeals in the case cited, and it appeared that the publication, claimed to be the publication of individuals for private circulation, was a book treating of various subjects relating to Norway, its fishermen and fisheries, its customs, to Moller's cod-liver oil, and containing some matter of scientific research original with the author. It was published, not for general circulation or for sale, but for gratuitous distribution to such selected persons, principally physicians and others who might become interested in Moller's cod-liver oil, as should be designated by the publisher or his friends. This was held to be free of duty under the paragraph quoted. It was stated:

"The publisher doubtless expected by its distribution to promote the sale of his cod-liver oil by enlightening those who might read it in regard to the valuable properties of that article.

"This circumstance, however, is not material. The books were imported for gratuitous private circulation, and, if this was done in the effort to accomplish some ulterior object of interest to the publisher, the statute does not condemn it or make it in any sense a test of the dutiable character of the books."

The present publication is in all essentials similar to that there under consideration, and with this decision before it, and attention having been drawn to it in the Notes on Tariff Revision (pp. 670, 671), Congress reenacted this portion of the paragraph in the terms employed in the act of 1894. This is a legislative recognition of the judicial interpretation previously given to the enactment.

But it is urged in this case as a reason why the books are not entitled to free entry that the publication is limited to publications of an individual, and it is pointed out that the word "individual" is sometimes construed to mean a single person, as a man or woman. Yet numerous decisions have been given, and are referred to in the brief of the Government, in which the word "individual" used in the statutes has been held to include corporations and partnerships, as, for instance, a Massachusetts statute which provided that no abatement should be made of the taxes assessed on any individual until he should have filed a list under oath, was held to have included under the term individual both natural persons and corporations. Otis *v.* Inhabitants of Ware (74 Mass., 509).

So, in construing a statute of Mississippi, which levied an ad valorem tax of one-fourth of 1 per cent on all money loaned on interest by individuals, it was held that the term included natural persons and foreign banks or corporations as distinguished from banks incorporated under the laws of Mississippi.

This is a case which we think strongly in point here, as it would seem that the word "individuals" here employed was used to distinguish between the classes entitled to introduce their publications free. This brief paragraph provides for three classes of publications—publications issued for their subscribers or exchanges by scientific and literary associations or academies, public documents issued by foreign Governments, and publications of individuals intended for gratuitous private circulation. It seems reasonably clear that the word "individuals" as here employed was intended to differentiate between publications of those other than literary associations or academies and of foreign Governments and to include under the term individuals all others. Other cases might be cited.

The subject is summed up in 22 Cyc., 494, under the term "individual," where, after citing that as a noun it means one distinct being, a single one, and when spoken of the human kind it means one man or one woman, the paragraph concludes: "As used in statutes relative to taxation the term applies equally to corporations and individuals."

We think this contention of the Government should be overruled. The decision of the board is affirmed.

EXHIBIT 10.—(T. D. 32571.)—*Jewelry.*

UNITED STATES *v.* COHN & ROSENBERGER (No. 859).

ARTICLES COMMONLY OR COMMERCIALLY KNOWN AS JEWELRY.—The articles are hand-wrought sterling silver necklets, set with pearls and marquisettes. The words "gold or platinum" in paragraph 448, tariff act of 1909, refer to and qualify the immediately preceding classification only, "chain, mesh, and mesh bags and purses," and not to all articles commonly or commercially known as jewelry. The goods are dutiable at 60 per cent under that paragraph.

United States Court of Customs Appeals, May 17, 1912.

Appeal from Board of United States General Appraisers, G. A. 7330 (T. D. 32281).

[Decision modified.]

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, on the brief), for the United States.

Hatch & Clute (Edward S. Hatch and Walter F. Welch of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case consists of certain silver necklets, which were imported under the tariff act of 1909. They were assessed with duty by the collector at cumulative rates equal to 85 per cent ad valorem, under the provisions of paragraph 448 of the act, as "brooches, lockets, necklaces, and other articles of personal adornment of silver and of brass, plated, some set with imitation precious stones, valued at over 20 cents per dozen pieces."

The importers duly filed their protest to this assessment, claiming, among other things, that the importations were dutiable at 60 per cent ad valorem, under paragraph 448, as "articles commonly or commercially known as jewelry, etc." The alternative claim was made that the articles were manufactures of metals, not specially provided for, dutiable at 45 per cent ad valorem under paragraph 199 of the act.

The protest was heard by the Board of General Appraisers, and was sustained upon the latter claim, the board holding that the goods were dutiable at 45 per cent ad valorem, as manufactures of metal, not specially provided for, under paragraph 199. The Government now appeals from that decision.

Paragraph 448, above mentioned, reads as follows:

"448. Chains, pins, collar, cuff, and dress buttons, charms, combs, millinery and military ornaments, together with all other articles of every description, finished or partly finished, if set with imitation precious stones composed of glass or paste (except imitation jet), or composed wholly or in chief value of silver, German silver, white metal, brass, or gun metal, whether or not enameled, washed, covered, plated, or alloyed with gold, silver, or nickel, and designed to be worn on apparel or carried on or about or attached to the person, valued at twenty cents per dozen pieces, one cent each and in addition thereto three-fifths of one cent per dozen for each one cent the value exceeds twenty cents per dozen; all stampings and materials of metal (except iron or steel), or of metal set with glass or paste, finished or partly finished, suitable for use in the manufacture of any of the foregoing articles (except chain valued at less than thirty cents per yard other than nickel or nickel-plated chain), valued at seventy-two cents per gross, three cents per dozen pieces and in addition thereto one-half of one cent per gross for each one cent the value exceeds seventy-two cents per gross; rope, curb, cable, and other fancy patterns of chain, without bar, swivel, snap, or ring, composed of rolled goldplate or of silver, German silver, white metal, or brass, not exceeding one-half of one inch in diameter, breadth, or thickness, valued at thirty cents per yard, six cents per foot, and in addition thereto three-fifths of one cent per yard for each one cent the value exceeds thirty cents per yard; finished or unfinished bags, purses, and other articles, or parts thereof, made in chief value of metal mesh composed of silver, German silver, or white metal, valued at two dollars per dozen pieces, ten cents per piece and in addition thereto three-fifths of one cent per dozen pieces for each one cent the value exceeds two dollars per dozen; all of the foregoing, whether known as jewelry or otherwise and whether or not denominatively or otherwise provided for in any other paragraph of this act, twenty-five per centum ad valorem in addition to the specific rate or rates of duty herein provided; all articles commonly or commercially known as jewelry, or parts thereof, finished or unfinished, including chain, mesh, and mesh bags and purses composed of gold or platinum,

whether set or not set with diamonds, pearls, cameos, coral, or other precious or semiprecious stones, or imitations thereof, sixty per centum ad valorem."

The articles are delicately wrought sterling silver necklets, each set with a genuine pearl, and with marquisettes, which are semiprecious stones. The pearl and marquisettes constitute the chief value of each piece. The article is hard-wrought and plainly exhibits the handiwork of the jeweler. It is both commonly and commercially known as jewelry.

The description just given seems to bring the merchandise within the last classification established by paragraph 448, in accordance with the first claim presented by the importers' protest. The articles are commonly and commercially known as jewelry; they are finished; they are set with pearls and with semiprecious stones.

It is suggested, however, that the last provision of paragraph 448 provides only for articles composed of gold or platinum, and if this suggestion be accepted the importations, of course, can not be placed within it. In order that this question may be the better presented the last provision of paragraph 448 is again copied.

"448. * * * All articles commonly or commercially known as jewelry, or parts thereof, finished or unfinished, including chain, mesh, and mesh bags and purses composed of gold or platinum, whether set or not set with diamonds, pearls, cameos, coral, or other precious or semiprecious stones, or imitations thereof, sixty per centum ad valorem."

It will be seen at once that if the qualification, "composed of gold or platinum," modifies the first classification, viz, "all articles commonly or commercially known as jewelry," then the importations can not be brought within this provision, for they are not composed of either gold or platinum. But, on the other hand, if the qualifying phrase modifies only the classification immediately preceding it, viz, "chain, mesh, and mesh bags and purses, then it is equally clear that the importations should be assessed under the provision in question. That question therefore becomes the controlling factor in the case.

The ordinary rules of grammatical construction favor the view that the qualifying phrase relates only to the antecedent immediately preceding it. That view is furthermore sustained by the fact that the qualifying phrase in question is introduced by the word, "including," which is here used as a word of addition rather than of specification. Chain, mesh, and mesh bags and purses composed of gold or platinum would not be included within the classification, "all articles commonly or commercially known as jewelry," unless added thereto by force of such a provision as that above quoted.

It may also be noted that the preceding provisions of the paragraph contain a classification of "bags, purses, and other articles or parts thereof, made in chief value of metal mesh composed of silver, German silver, or white metal. Apparently the complement to that provision is the one now in question, whereby a different rate of duty is assessed upon such articles if composed of gold or platinum.

The court is therefore inclined to the conclusion that only the provision for bags and purses is modified by the phrase "composed of gold or platinum," and that the classification "all articles commonly or commercially known as jewelry" is not modified thereby. And this inclination is strengthened by a contemplation of the concrete results which in this case would follow the adoption of a contrary rule. Under such a ruling the present importations would be relegated to the residuary metal paragraph and would find no place at all in the lengthy and comprehensive paragraph which obviously is designated to be the jewelry paragraph. The articles themselves, however, are most distinctively articles of jewelry and are commonly and commercially known as jewelry. It is suggested in answer to this that necklets of silver having pearls and marquisettes as chief value are so unusual that Congress did not consider it necessary to provide for them under the jewelry paragraph. This suggestion, however, hardly seems to be tenable either in fact or theory.

As stated in the premises, the board overruled the assessment of the importations at the compound rate of 85 per cent ad valorem, as made by the collector, and it is conceded that thus far the ruling of the board was correct. The collector's assessment was based upon the findings that the articles in question were set with imitation precious stones and were in chief value of silver, whereas in fact the articles were not set with imitation precious stones and were not in chief value of silver.

The decision of the board reversing the assessment by the collector is therefore affirmed, but with the modification that the importations be assessed with duty at 60 per cent ad valorem, as articles commonly or commercially known as jewelry, and reliquidation is ordered accordingly.

Modified.

EXHIBIT 11.—(T. D. 32349.)—*Imitation horsehair hats.*

UNITED STATES *v.* COCHRAN & CO. (No. 552).—UNITED STATES *v.* ROSENBLUM (No. 553).

1. ASSESSMENT BY SIMILITUDE.—The assessment of an unenumerated article by similitude properly depends on its resemblance to some enumerated dutiable article and not upon the manner in which the enumerated article is itself named in the law; the unenumerated article is subject to the same duty that is levied on that enumerated article it most resembles in material, quality, texture, or use.—Patterson *v.* United States (166 Fed. Rep., 733) distinguished.
2. WOMEN'S IMITATION HORSEHAIR HATS.—Imitation horsehair hats are in material almost identical with, in quality and texture they resemble, hats of cotton; the use of them, too, is similar. They were dutiable at the same rate with cotton wearing apparel under paragraph 314, tariff act of 1897, at 50 per cent ad valorem.

United States Court of Customs Appeals, March 20, 1912.

Transferred from United States Circuit Court for Southern District of New York, G. A. 6487 (T. D. 27743).

[Decision reversed.]

Wm. L. Wemple, Assistant Attorney General (Martin T. Baldwin on the brief), for the United States.

Brooks & Brooks (F. W. Brooks, jr., of counsel), for appellees.

Before Montgomery, Smith, Barber, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case consists of women's untrimmed hats, made by sewing into concentric form certain braids composed of strands of imitation horsehair. The importation was made under the tariff act of 1897. The articles were unenumerated by the act, and the collector classified them by similitude with partly manufactured silk wearing apparel, under paragraph 390. Duty was accordingly assessed thereon at 60 per cent ad valorem.

The importers filed their protest to this assessment, and contended, among other claims, that the goods were dutiable at 50 per cent ad valorem by similitude with cotton wearing apparel, under paragraph 314; or at 35 per cent ad valorem by similitude with untrimmed hats of straw, under paragraph 409. This protest was heard upon testimony by the Board of General Appraisers, and was overruled. The importers thereupon appealed the case to the United States Circuit Court, Southern District of New York. Additional testimony was taken in that court; and upon consideration the court reversed the decision of the board, holding that the articles in question were not dutiable at 60 per cent ad valorem by similitude with silk wearing apparel, but instead were dutiable at 35 per cent ad valorem by similitude with hats of straw.

The Government now applies to this court for a reversal of that decision, no longer, however, contending for the collector's assessment by similtude with silk wearing apparel, but now contending for a classification by similtude with cotton wearing apparel. This latter claim was one of those contained in the importers' protest, and was strongly urged by the importers before the board.

In brief, the articles were hats of imitation horsehair, and under the act of 1897 were unenumerated; the collector assessed them at 60 per cent ad valorem by similitude with silk wearing apparel; the board affirmed that decision; the circuit court reversed the board's decision, holding the articles dutiable at 35 per cent ad valorem by similitude with straw hats; the Government appeals from the court's decision, claiming that the importation was dutiable at 50 per cent ad valorem by similitude with cotton wearing apparel.

The case therefore now presents the single issue, Were imitation horsehair hats dutiable under the act of 1897 by similitude with straw hats or by similitude with cotton wearing apparel?

The following is a copy of the pertinent part of the similitude section of the act of 1897, and also of the paragraphs containing the classifications in question:

"SEC. 7. That each and every imported article, not enumerated in this act, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this act as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; and if any nonenumerated article equal ly resembles

two or more enumerated articles on which different rates of duty are chargeable, there shall be levied on such nonenumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest rate of duty * * *.

"314. * * * Articles of wearing apparel of every description * * *, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, made up or manufactured, wholly or in part, by the tailor, seamstress, or manufacturer, and not otherwise provided for in this act, fifty per centum ad valorem * * *.

"409. * * * Hats, bonnets, and hoods, composed of straw * * *, whether wholly or partly manufactured, but not trimmed, thirty-five per centum ad valorem * * *. But the terms "grass" and "straw" shall be understood to mean these substances in their natural form and structure, and not the separated fiber thereof."

The present competition as above stated is between alternative similitudes, and its decision depends upon the question whether the hats at bar, in material, quality, texture, and use, most resembled articles of wearing apparel composed of cotton on the one hand or hats of straw upon the other hand.

In respect to material, it is stated by a witness that imitation horsehair is 90 per cent cotton. This is not understood to mean that the article is to that extent composed of natural cotton fiber, but rather that a material derived from cotton and retaining its substance composed that percentage of the manufactured article. In that sense the statement is doubtless correct, and establishes a close relation, indeed almost an identity, between cotton and imitation horsehair in point of component material. It is probably true that straw also is composed of somewhat similar material, but it may be said that the actual derivation of imitation horsehair from cotton and its substantial identity with cotton in constituent elements are almost conclusive of its assimilation with cotton in respect to material.

In respect also to quality and texture imitation horsehair hats incline toward articles of cotton. Each has a filament which is comparatively tough and which is not flat or brittle. There is considerable testimony in the record tending to show a resemblance of the imported hats with hats of straw and that they are treated by the trade as almost identical in character; but after all it seems that the hats in question resemble cotton articles more nearly than articles of straw, not only in material, but also in quality and texture.

In respect to the use of the articles, as an element of similitude, the importers present an argument which they claim to be decisive of the issue. They call attention to the fact that the cotton paragraph above copied does not specifically name hats of cotton, but contains only a general classification of "articles of wearing apparel of every description composed of cotton," whereas in the straw paragraph hats are included by an eo nomine designation. The importers contend that "in applying the similitude clause, the article as imported should be compared, first, with articles provided for eo nomine in the tariff act;" and that "to give a concrete example, imitation horsehair hats are hats, imitation horsehair hats are weraing apparel, and, resort to the similitude clause being necessary, they should first be compared with such hats as are provided for eo nomine in the law, and the similarity required by the statute having been found not to exist they should then be compared with the wearing apparel that is denominatively provided for."

Acting upon this assumption, the importers assert that hats of straw appear eo nomine in the act of 1897, and that the only other hats appearing eo nomine therein are hats of fur. They therefore contend that imitation horsehair hats must be classified with hats of straw under that act, since the foregoing rule limits the comparison in the first instance to hats only, and the points of similarity palpably incline toward hats of straw rather than toward hats of fur.

In answer to this, however, it should be observed that the similitude section requires a comparison as to material, quality, texture, and use between a given unenumerated article and any similar enumerated article chargeable with duty by the act; and it provides that the unenumerated article shall bear the same rate of duty that is imposed upon the enumerated article which it most resembles in these particulars. In the application of this provision an article is "enumerated" if it comes within a class made dutiable in general terms by the act, quite as certainly as if the article is made dutiable under an eo nomine designation. Therefore the paragraph which laid a duty upon articles of cotton wearing apparel of every description should be read the same as if all articles of cotton wearing apparel of every description were individually named by it. Such a reading makes the paragraph include cotton hats quite as effectively, for similitude purposes, as if they were designated eo nomine therein. In this view, under the act of 1897, hats of straw, under an eo nomine designation, and hats of cotton, as included within the general designation of "articles of wearing apparel of every description, composed of cotton," were both simply enumerated articles, with which the unenumer-

ated hats of imitation horsehair must be compared, in material, quality, texture, and use.

"The general scope of the similitude clause in the customs acts is defined in a recent judgment of this court, delivered by Mr. Justice Field, as follows: 'To place articles among those designated as enumerated, it is not necessary that they should be specifically mentioned. It is sufficient that they are designated in any way to distinguish them from other articles.' Thus, the words 'manufactures of which steel is a component part' and 'manufactures of which glass is a component part,' have been held a sufficient designation to render the goods enumerated articles under the statute and take them out of the similitude clause. Arthur *v.* Sussfeld (96 U. S., 128). Upon the same principle, 'manufactures of hair' must be held a sufficient designation to place 'such manufactures among the enumerated articles.' Arthur *v.* Butterfield (125 U. S., 70, 76, 77). So the description, 'manufactures composed wholly of cotton,' or even 'manufactures of cotton,' has been held to be a sufficient enumeration. Stuart *v.* Maxwell (16 How., 150); Fisk *v.* Arthur (103 U. S., 431). See also Hartranft *v.* Meyer (135 U. S., 237).

"In the customs act of 1883, Schedule A, entitled 'Chemical products,' besides defining the duties on more than a hundred kinds of such products, makes the duty on 'all chemical compounds and salts, by whatever name known, and not specially enumerated or provided for in this act, twenty-five per centum ad valorem.' The designation, 'all chemical compounds and salts, by whatever name known,' includes all chemical compounds and chemical salts, used then or thereafter in any science or art, as clearly as if the proper names of each and all of them had been given.—Mason *v.* Robertson (139 U. S., 624)."

See, also, United States *v.* Eckstein, decided by the Supreme Court, December 4, 1911 (T. D. 32090); Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107); Robins *v.* United States (1 Ct. Cust. Appls., 252; T. D. 31278).

The rule of comparison advocated by appellees is not found in the language of the act, and is inconsistent with its purpose. By its application an unenumerated article might be assessed by similitude with an *eo nomine* article which it resembled in material, quality, texture, or use, even though the importation in those particulars much more nearly resembled some other article chargeable with duty under a class designation only. In this manner an artificial rule of construction would be introduced whereby the purpose of the law would be defeated. For the assessment of an unenumerated article by similitude properly depends upon its resemblance to some enumerated article chargeable with duty in the act, and not upon the manner in which such enumerated article is itself named in the act. The terms of the act are that the unenumerated article shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; whereas appellees' contention would provide that the unenumerated article shall pay the same rate of duty which is levied on the enumerated article most specifically mentioned in the act, which it most resembles in the particulars before mentioned. It may be observed that, according to the act, if an unenumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, the unenumerated article shall be classified with that enumerated article which bears the highest rate of duty, and not with that which is most specifically mentioned in the act.

Appellees cite the case of Paterson *v.* United States (166 Fed. Rep., 733) in support of their contention. In that case the court found that horsehair hat braids assimilated to straw hat braids rather than to silk braids, apparently upon the ground that the silk braids should be considered as if they were not hat braids, and therefore did not resemble horsehair hat braids in point of use. The court stated the matter as follows:

"Does a horsehair hat braid bear greater similitude to a straw hat braid than it does to a silk braid? We have no hesitation in answering this question in favor of the importer. As between the two paragraphs in question, we have no doubt that the importer has chosen the more specific."

It may be observed again that as between different similitudes, the act provides that an unenumerated article shall be classified by similitude with such enumerated dutiable article as it most resembles in material, quality, texture, and use. In the Paterson case, straw hat braid was enumerated eo nomine. Silk hat braid was enumerated by force of its inclusion within the general class of "silk braids" provided for by the act. If it had not been enumerated at all it could not serve as an exemplar in similitude for the unenumerated article in question; but being enumerated under the general classification of "silk braids," it became proper and necessary to compare the unenumerated horsehair hat braid with it as well as with straw hat braid. The real question in the Paterson case, therefore, was this: "Does the unenumerated horsehair hat braid most resemble straw hat braid, which is enumerated eo nomine in the act, or silk hat braid, which is enumerated therein under the class provision for

"silk braids"? The answer to this question, of course, depends upon the actual resemblance of the unenumerated article to the two enumerated articles with which respectively it stood in comparison.

In the case at bar, the enumeration of "articles of wearing apparel of every description, composed of cotton," must certainly be held to include cotton hats, which of course were well-known articles of wearing apparel at the time of the enactment of the law.

In conclusion, it appears that under the act of 1897 imitation horsehair hats were comparable in similitude with hats of straw and with hats of cotton; in primary material the first are almost identical with hats of cotton; in quality and texture also they somewhat incline in resemblance to hats of cotton; and in use they equally resemble hats of cotton and hats of straw. It is therefore proper that they should bear the same rate of duty as hats of cotton, which under paragraph 314 is 50 per cent ad valorem.

In this view, the decisions of the circuit court and also that of the board are reversed, and reliquidation ordered upon the basis of an assessment of 50 per cent ad valorem by similitude under paragraph 314 of the act of 1897.

De Vries, judge, did not sit in this case.

EXHIBIT 12.—(*T. D. 32533.*)—*Mousseline bands.*

UNITED STATES *v.* CAESAR & CO. ET AL. (No. 695).

CHIFFON BANDS.—Light-weight woven silk fabrics, 6, 8, and 10 inches, respectively, in width and generally known as "chiffon," "gauze," or "mousseline bands," are not articles made of chiffon, but are the material, chiffon, from which something can be made. The fabrics are dutiable as manufactures of silk under paragraph 403, tariff act of 1909.—Wertheimer *v.* United States (2 Ct. Cust. Appls., 515; T. D. 32249).

United States Court of Customs Appeals, May 8, 1912.

Appeal from Board of United States General Appraisers, G. A. 7217 (T. D. 31565).

[Decision affirmed.]

William L. Wemple, Assistant Attorney General (Thomas J. Doherty, special attorney of counsel), for the United States.

Brown & Gerry for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Barber, judge, delivered the opinion of the court:

This appeal involves the classification and consequent rate of duty upon what both parties agree are lightweight woven silk fabrics, 6, 8, and 10 inches, respectively, in width, and generally known as "chiffon bands," "gauze bands," or "mousseline bands." The principal use of the merchandise is in tying floral pieces or designs and for decorating purposes. They were woven in wide widths, with extra threads introduced at appropriate distances from each other, at which points the original fabric was cut before importation, resulting in the bands in this case. These extra threads are for the purpose of forming a selvage upon the bands after they have been cut apart. The length of these bands as imported is not shown, but for the purposes of this decision we assume it to be substantially identical with that of the original web from which they have been cut, and, the contrary not appearing, we also assume the bands have been subjected to no manipulation or treatment since being cut from the web, other than what is incident to transportation. They were assessed at the appropriate specific duty rate based upon the weight per yard provided in paragraph 399 of the tariff act of August 5, 1909, for woven fabrics in the piece further advanced by any process of manufacture.

The importers protested the assessment, claiming, among other things, that the merchandise was dutiable at 50 per cent ad valorem under paragraph 403 of the same act, the material part of which is as follows:

"403. All manufactures of silk, or of which silk is the component material of chief value, including such as have india rubber as a component material, not specially provided for in this section, fifty per centum ad valorem: * * *"

The Board of General Appraisers found the importation to be dutiable under said paragraph 403, and therefore sustained the protest.

The Government brings this appeal, alleging that these chiffon bands, although under the case of United States *v.* Wertheimer Bros. (2 Ct. Cust. Appls., 515; T. D. 32249), recently decided by this court, not dutiable as assessed, are nevertheless properly dutiable under paragraph 402, which is one of the paragraphs involved by importers' protest, at the rate of 60 per cent ad valorem.

We insert here the material portion of paragraph 402:

"402. Laces, edgings, insertings, galloons, flouncings, neck rufflings, ruchings, braids, fringes, trimmings, ornaments, nets or nettings, veils or veilings, and articles made wholly or in part of any of the foregoing, or of chiffons, embroideries, and articles embroidered by hand or machinery, or tamboured or appliquéed, clothing ready made, and articles of wearing apparel of every description, including knit goods, made up or manufactured in whole or in part by the tailor, seamstress, or manufacturer; all of the foregoing composed of silk, or of silk and metal, or of which silk is the component material of chief value, whether in part of india rubber or otherwise, and braid composed in part of india rubber, not specially provided for in this section, and silk goods ornamented with beads or spangles, sixty per centum ad valorem: *Provided*, That articles composed wholly or in chief value of any of the materials or goods dutiable under this paragraph shall pay not less than the rate of duty imposed upon such materials or goods by this section: * * *"

It is agreed that the issues originally raised by the Government's appeal here are identical with those involved in the Wertheimer case, which was decided adversely to the Government. But it is urged that in disposing of that case we did not give full consideration to the claim hereinafter decided, and so this case has been brought on for hearing pending a motion for rehearing in that case which is based wholly on the contentions now urged here.

It is claimed by the Government that these chiffon bands or strips are articles made of chiffon and that paragraph 402, in view of the proviso thereto, covers the same.

It will be observed that the main body of the paragraph refers, among other things, to articles made wholly or in part of chiffons. It provides that all the foregoing of which silk is a component material, either wholly or of chief value, shall, unless otherwise specially provided for, be dutiable at 60 per cent ad valorem; while the proviso declares that articles composed wholly or in chief value of any of the materials or goods dutiable under the paragraph shall pay duty at not less than the rate imposed thereon by the section.

Now, we do not think, in view of the record and the finding of the board, that these strips of chiffon are articles made of chiffon within the meaning of the paragraph. They are chiffon, the material from which something may be made, but the process of making has not yet been applied. If they had been transversely cut into appropriate lengths for specified uses, or had been given shape and form other than as appears in this case, a different question would be presented, but they have not been so treated. This view excludes them from the provisions in the main part of the paragraph.

Neither does the proviso affect their dutiable status. It may be conceded that its application is not altogether certain, but in view of the effect which we have given to a somewhat similar proviso (see United States *v.* Ewing & Clancey, concurrently decided) we are most inclined to think that Congress thereby intended that if an article named in paragraph 402 was composed wholly or in chief value of goods or materials that under some other paragraph took a higher rate of duty, such article should pay that higher rate instead of the rate of 60 per cent ad valorem under paragraph 402.

The use of the word "section" in the proviso in contrast with the word "paragraph" seems consistent with this interpretation, and in addition to this, if such had not been the intent, the enactment of the proviso was unnecssary, as the sweeping language of the paragraph before the proviso seems adequate to secure the assessment of the 60 per cent ad valorem rate on all articles thereinbefore described.

No inconsistent results are suggested which would follow the interpretation we reach, and it seems to be sound.

The result is that the judgment of the Board of General Appraisers is affirmed.

EXHIBIT 13.—(T. D. 32032.)—*Olive oil.*

SHELDON & CO. *v.* UNITED STATES (No. 138).—CUSIMANO *v.* UNITED STATES (No. 139).—KLIPSTEIN & CO. *v.* UNITED STATES (No. 140).—KRAEMER & FOSTER *v.* UNITED STATES (No. 141).

OLIVE OIL FOR MANUFACTURING OR MECHANICAL PURPOSES.—The result of chemical tests as here shown is inconclusive, and in view of the greater number and experience of the witnesses for the importers as to the appearance, taste, and smell of the oils, and further in view of the fact that the oils here were actually imported and sold as mechanical oils and for use as mechanical oils, the importation must be deemed olive oil for manufacturing or mechanical purposes, worth not more than 60 cents per gallon, and as such it was free of duty under paragraph 626, tariff act of 1897.—Holbrook *v.* United States (1 Ct. Cust. Appls., 263; T. D. 31317.)

United States Court of Customs Appeals, November 22, 1911.

Transferred from United States Circuit Court for Southern District of New York, Abstract 21336 (T. D. 29790).

[Decision reversed.]

Brown & Gerry for appellants.

William L. Wemple, Assistant Attorney General (Charles E. McNabb on the brief), for the United States.

Before Montgomery, Smith, Barber, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in these cases is olive oil which was imported in various shipments to this country from Greece, Sicily, and Turkey under the tariff act of 1897. Paragraph 40 of that act laid a duty of 40 cents a gallon upon olive oil not specially provided for. Paragraph 626 of the same act allowed free entry to olive oil for manufacturing or mechanical purposes, fit only for such use and valued at not more than 60 cents per gallon. The collector classified the importations now before the court under the paragraph first above named, and assessed duty uopn them at the rate therein provided. The importers severally protested against this ruling, and contended that the importations fell within the second paragraph above stated, and were therefore entitled to entry free of duty.

It is conceded that the importations are olive oil; that the oil was valued at not more than 60 cents per gallon; that if the oil was for manufacturing or mechanical purposes and fit only for such use, it was free of duty; and that unless it was for manufacturing or mechanical purposes and fit only for such use, it was dutiable at 40 cents per gallon as assessed by the collector. The sole question, therefore, is whether or not the olive oil composing these importations was for manufacturing or mechanical purposes and fit only for such use.

It appears from the testimony that olive oils are used either for food or for manufacturing purposes. The latter class is generally called commercial or mechanical oil. The mechanical oil is used in making soaps and in other industries. The edible oil is manufactured with great care from the best fruit, whereas the mechanical oil is pressed from inferior or decayed olives, with little care for cleanliness, or is sometimes pressed from better olives after all the edible oil has been extracted from them. The edible oil is carefully handled and packed, whereas the mechanical oil is often handled locally in vessels of goatskins and is often transported in second-hand petroleum barrels. If the edible oil becomes so rancid as to be unfit for food, it may nevertheless be fit for mechanical use. However, all such mechanical oil is not simply rancid edible oil, for much of it is given the lower rating because it is naturally not bland and smooth, but possesses a rank and acrid taste and an unpleasant ordor even when fresh. The olives grown in some districts are recognized as unfit for the production of edible oil, and the trade in such case ranks all the oil so produced there as mechanical oil. The class to which any given oil belongs is ascertained from its appearance, its taste, and smell. These proofs are also aided to some extent by chemical tests, but such tests are not conclusive. If such a test shows a high proportion of free fatty acid in the oil, it tends to show that the oil is not edible; if the free fatty acid is slight, it is more probable that the oil is edible. On the other hand, sometimes an oil is found with a relatively large measure of free fatty acid and is nevertheless undoubtedly edible; while, conversely, there are oils with little such acid that are palpably unfit for food. There are different grades both of edible and mechanical oils, and sometimes the better grades of the inferior oil approach very near in quality

to the inferior grades of the better oil. Yet even in such cases experts are capable of distinguishing between the two by sight, taste, and smell, aided by a knowledge of the province from which the oil comes, and witnesses say that there is rarely less than a difference of 20 cents a gallon in the price of inferior edible oils and superior mechanical oils.

The oils involved in this case, so far as appears, were packed in inferior barrels, being secondhand petroleum barrels, such as would not be used for edible oil. They were in fact bought, sold, and used as and for mechanical oil and that alone. The prices paid for the oil are consistent with this statement. Their value, as first above stated, also fell within the limit fixed by the paragraph as the maximum value of mechanical oil. In addition to this, numerous witnesses who qualify as experts and who gave the oils careful examination, testify that the oils in question were not edible, but were mechanical oils and fit only for such use.

In contradiction to this evidence the Government produced expert chemical testimony concerning the importations, showing a relatively small percentage of free fatty acids in most of them, supplementing this also by the testimony of the same witnesses concerning the appearance, taste, and smell of the oils. The contention of the Government is that the testimony taken together fails to show that the oils are fit only for manufacturing or mechanical purposes. The Government contends that even if the oils were actually used for mechanical purposes they were nevertheless not unfit for food purposes.

In view, however, of the inconclusiveness of the chemical tests, and in view of the greater number and experience of the importers' witnesses in so far as the testimony related to the appearance, taste, and smell of the oils, and in view of the fact that the oils were actually imported and sold as and for mechanical oils, it seems to be established that the oils fell within the class of manufacturing and mechanical oils created by paragraph 626 above referred to. It is true that some of the oils might possibly have been capable of use for food purposes, but such a use while not an impossible one would nevertheless have been a perverted and unfit use. The use and the only use for which the oils in question were really fit was the use to which they were actually applied; that is, for manufacturing and mechanical purposes.

The case of Holbrook *v.* United States (1 Ct. Cust. Appls., 263; T. D. 31317) is a case very similar to the one at bar in respect both to the issue and the testimony, and the reported decision in that case covers the entire subject with such fullness as to make a more extended discussion of this case unnecessary. Indeed, the present decision may be said to be a corollary of that in the case just cited in so far as that expression may properly apply to any ruling involving a review of testimony.

In the view above indicated the ruling below should have been for the appellants, and the decision against them is therefore reversed.

De Vries, judge, did not sit in these cases.

EXHIBIT 14.—(T. D. 32249.)—*Chiffon ribbons or mousselines.*

UNITED STATES *v.* WERTHEIMER BROS. ET AL. (No. 696).

MOUSSELINES—WOVEN FABRICS OF SILK—MANUFACTURES OF SILK.—The goods had been for many years well known as articles of commerce and their proper classification had been fixed by judicial construction. It must be presumed that this construction was adopted when the clause in question was brought forward into the new act from the old act, furnishing thus a clear expression of legislative will. The merchandise is dutiable not as woven fabrics in the piece, but as manufactures of silk, under paragraph 403, tariff act of 1909.—Robinson *v.* United States (121 Fed. Rep., 204).

United States Court of Customs Appeals, Februuary 1, 1912.

Appeal from Board of United States General Appraisers, Abstract 25928 (T. D. 31720).

[Decision affirmed.]

Wm. L. Wemple, Assistant Attorney General (Thos. J. Doherty on the brief), for the United States.

Comstock & Washburn (Albert H. Washburn of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case was imported under the tariff act of 1909. It consists of light-texture woven articles composed of silk, 4, 6, and 10 inches in

width, and variously known in trade as chiffon bands or ribbons, or as gauze bands or ribbons, or as mousselines. They are used as ribbons in tying floral designs and for other like decorative purposes.

The importation was classified by the collector as "woven fabrics in the piece" composed of silk, within the terms of paragraph 399 of the act, and were assessed with appropriate duties thereunder according to their weight, color, condition, and other specifications.

The importers filed their protest against this classification and assessment, contending chiefly that the goods were not "woven fabrics in the piece," but were properly "manufactures of silk" within the terms of paragraph 403, and should be assessed accordingly.

The protest was duly heard by the Board of General Appraisers and was sustained, the board holding the goods to be "manufactures of silk," as claimed by the importers. The Government now prays for a reversal of that decision.

It is clear that the goods may properly be called manufactures of silk, and they should be so classified, unless they are also woven fabrics in the piece, composed of silk. If they fall within both descriptions, the latter should prevail, because it is the more specific of the two.

In the case reported as T. D. 21115, May, 1899, such goods as these, imported under the act of 1897, became a subject of litigation. The importation was classified and assessed by the collector as "silk trimmings," within the terms of paragraph 390 of that act. The importers protested, claiming the goods to be either "woven fabrics in the piece" under paragraph 387 or "manufactures of silk" under paragraph 391. The Government contended for the classification made by the collector, and the board held with it and overruled the importers' protest. By this ruling, under the act of 1897, goods essentially similar to the present importation were held by the board, in accordance with the Government's claim, to be "trimmings," and not "woven fabrics in the piece" or "manufactures of silk," as alternatively maintained by the importers.

The following is a copy of that section of the board's syllabus which is relevant to this case:

"(1) Woven goods composed of silk, some weighing over one-third of an ounce and none more than 1½ ounces per square yard, from 4 to 6 inches wide, with selvages or borders covering a space from one-fourth of an inch to 1 inch in width, others having narrow stripes at intervals throughout, which are used directly in these widths for trimming women's hats, bonnets, and other wearing apparel, and are generally known as 'chiffon,' 'muslin bands,' or as 'gauze bands,' or as 'gauze ribbons,' are dutiable under the provision for 'trimmings' in paragraph 390, act of July 24, 1897."

The following part also of the decision in question relates specially to the issue in hand:

"Paragraph 387 of the act provides for 'woven fabrics in the piece.' The term 'fabrics' has been held to be applicable particularly to wide or 'piece' goods, which are generally intended for use in making wearing apparel and other articles (and have, therefore, to be cut into various smaller forms requisite for that purpose), as contradistinguished from ribbons, bands, and narrow articles, which are put to their final uses in the widths in which they are made. Velvet and plush ribbons were held not to be pile fabrics, Jaffray *v.* United States (71 Fed. Rep., 953; 77 Fed. Rep., 868), and the Congress has recognized the distinction between these and wider goods by making special provision for them in paragraph 386 of the act. Cotton ribbons, webbings, and similar narrow articles are likewise distinguished in paragraph 320 from cotton cloth—or piece goods or fabrics—in the same schedule. See Arnold *v.* United States (147 U. S., 494), In re Kursheedt Mfg. Co. (54 Fed. Rep., 159; and G. A. 4120)."

The importers appealed the foregoing decision of the board to the Circuit Court, Southern District of New York, where the decision was reversed. The court by this reversal directly overruled the contention that the goods were "trimmings" as classified by the collector and approved by the board, and also inferentially overruled the importers' contention that the goods were "woven fabrics in the piece," and sustained the alternative allegation of the importers that the goods properly came within paragraph 391 as "manufactures of silk."

The following is a copy of the syllabus of the circuit court's decision:

"1. *Customs duties—Trimmings.*—Goods woven wholly from silk from 4 to 12 inches wide, and used directly in these widths for trimming women's hats, etc., are not assessable as trimmings, under paragraph 390 of the act of July 24, 1897 (30 Stat., 187; U. S. Comp. St. 1901, p. 1670), not being trimmings until made into designs to be applied as trimmings, or into trimmings as they are applied to articles being trimmed, but are assessable as manufactures of silk, under paragraph 391."

Robinson *v.* United States (121 Fed. Rep., 204; Feb., 1903).

This decision continued to control the classification and assessment of such goods as the present importation, so long as the act of 1897 remained in force. According to it such goods were not "trimmings" nor "woven fabrics in the piece," but were "manufactures of silk." See also Gartner *v.* United States (131 Fed. Rep., 574).

As has been stated, the merchandise now before the court was imported under the act of 1909. The collector classified it as "woven fabrics in the piece," under paragraph 399 of that act, and assessed duties appropriate to the specifications therein contained. The importers protested, claiming the goods to be "manufactures of silk," which was the classification such goods had received by authority of the foregoing decision under the preceding act; and the board in conformity with that decision sustained the protest. The Government now appeals from the board's decision, contending that the goods are nevertheless "woven fabrics in the piece." The Government admits the authority of the cited decision under the act of 1897, but maintains that the present act differs materially from the former one in respect to such merchandise, and that the decisions interpreting the former act do not therefore controll the present construction. Upon the merits of the question as an original proposition, the Government contends that the goods are in fact "woven fabrics in the piece," and should be so classified. In event this classification is overruled it is contended that the merchandise should be classified as articles made wholly or partly of chiffon and assessed under paragraph 402 of the act.

The Government undertakes in its brief to specify the changes in the terms of the present act as compared with the preceding one, which demand a revised classification of these goods, but the alterations in the relevant provisions do not seem to require or even to justify such a change of construction. The classification in the former act which was the subject of interpretation was "woven fabrics in the piece." The decisions above cited were interpretations of that description so far as the present question is concerned, and the cardinal terms of that description appear unchanged in the present act.

It is well also to recall that such goods were all the time well-known articles of commerce and that their classification had been distinctly fixed by the reported decision of the circuit court in the above-cited case. It may properly be assumed, therefore, that if Congress had designed to change that classification its purpose would hardly have been intrusted to mere remote analogies. The only additional classification contained in the act of 1909 which touches distinctly upon this subject is paragraph 401, which provides for ribbons and bandings not exceeding 12 inches in width; but that paragraph is modified by the provision that it shall contain only such ribbons and bandings as have fast edges. The articles in question do not come within that description, for, as the reported cases seem to show, they have a "cut edge" and not the fast edge covered by paragraph 401. Without this limitation that paragraph would have included these goods; it is therefore somewhat difficult to understand the omission from the act of an equally specific provision for bands of this character. However, that omission is not necessarily inconsistent with the theory that such goods were simply left to their former classification as adjudged by the courts. The subject was obviously within the legislative attention. This may be stated not only because of the preceding decisions and the references to them in Notes on Tariff Revision, but also because in framing paragraph 401 terms were used which would have included these goods except for the specific limitation thereafter added to the paragraph. In the absence of any clear provision to the contrary, this is sufficient authority for the conclusion that no change in classification for these articles was intended by Congress, and that the classification adjudged by the circuit court should continue in force. In general, it must be conceded that a settled rule of construction, according to which such well-known importations as these have been for years classified, becomes adopted by the trade as a basis for commercial transactions, and should not be altered unless in conformity with a clear expression of the legislative will.

These conclusions apply likewise to the argument of appellant upon the general merits of the subject. The term "woven fabrics in the piece" does not seem properly to apply to strips of goods as narrow as those in question. This was held to be the rule by the decisions above cited, and this rule seems also to have survived in the act of 1909.

In answer to the question made relative to paragraph 402, providing for articles made of chiffon, the answer given by the board in its decision that these articles are chiffon and are not articles made thereof, seems to be correct.

The decision of the board is therefore affirmed.

EXHIBIT 15.—(T. D. 32355.)—*Lock washers.*

UNITED STATES *v.* MOTOR CAR EQUIPMENT CO. (No. 764).

WASHERS FOR AUTOMOBILES.—The authorities concur in the conclusion that lock washers or nut locks, such as these of the importation, intended for use on automobiles, are an evolution of the common washer, and they are properly to be designated "washers." The importation is dutiable as such under paragraph 162, tariff act of 1909, and not as manufactures of steel not specially provided for.

United States Court of Customs Appeals, March 20, 1912.

Appeal from Board of United States General Appraisers G. A. 7272 (T. D. 31864).

[Decision affirmed.]

Wm. L. Wemple, Assistant Attorney General (Thos. J. Doherty, on the brief), for the United States.

Brown & Gerry for appellee.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case consists of certain metal articles much used in mechanical construction; they are sometimes called lock washers and sometimes called nut locks. They resemble common metal washers, except that they have a cross section split through them, and are not flat, but have a distinct spiral twist. They slip over bolts and when the nuts are screwed down upon them they exert a constant upward pressure and thereby prevent the nuts from backing off the bolts.

The importers invoiced the importation as steel washers, claiming duty at three-fourths of 1 cent per pound under paragraph 162 of the present act. The collector, however, held them to be manufactures of steel not specially provided for, and accordingly assessed them at 45 per cent ad valorem, under the provisions of paragraph 199 of the act.

The importers duly filed their protest and the same was sustained by the board. The Government now prays for a reversal of the board's decision.

The following are the two competing paragraphs thus called into question:

"162. Spikes, nuts, and washers, and horse, mule, or ox shoes, of wrought iron or steel, three-fourths of one cent per pound.

"199. Articles or wares not specially provided for in this section, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem."

It is certain that the best known and most common type of metal washer is the familiar perforated metal disk which is used under a nut as a bearing surface. Such an article does not lock the nut fast upon the bolt, but simply protects the material covered by it from wear by the nut or gives a smooth and even bed to the nut.

The article at bar serves a different, or at least an additional, purpose, in that it holds the nut fast upon the bolt by means of the upward pressure resulting from its spiral formation. This quality makes the article very serviceable in use upon such machinery as is in constant vibration, where nuts would be shaken from their bolts if not locked upon them by some such means. And because of this function such articles are largely used in the manufacture of automobiles. On the one hand the importer contends that the imported article just described is simply an improved washer; on the other hand the Government contends that it is a different article, and not a washer at all.

A review of the definitions given by the authorities tends to show that while there is some confusion upon the subject, the term "washer" has been adopted as the genus within which are included a great many species, and that these are composed of different materials and perform various functions. The following are among the definitions thus referred to:

Standard Dictionary:

"*Washer.*—A small flat perforated disk, as of metal or leather, used for placing beneath a nut or pivot head, or at an axle bearing or joint, to serve as a cushion or packing.

"Blind washer, an unperforated metal washer, used in pipe-lines.

"Triangular washer, a washer thicker on one side than the other, and thus having triangular cross section; for holding a tie-rod inclined at an angle.

"Washer-hoop, a large washer resembling a hoop."

Century Dictionary and Encyclopedia:

"*Washer.*—An annular piece of leather, rubber, metal or other material placed at a joint in a water pipe or faucet to make the joint tight and prevent leakage, or over a bolt, or a similar piece upon which a nut may be screwed. Washers serve as cushions or packing between many parts of machines, rails, vehicles, and iron structures. When used in buildings at the ends of tie-rods, they are often of large size, and divers shapes, and are called specifically wall washers. Some forms are used in locks to prevent a nut from shaking loose, as in a railroad fishplate. Such washers are made in the shape of a spring, to allow a certain amount of vibration without disturbing the nut. (See Lock nut, and cuts under Bolt, Packing, and Plug cock.")

Henley's Encyclopædia of Engineering (1909):

"*Washer.*—A flat disk of metal or other material with a central hole. It is used either to receive a nut on top, or is used as a packing. Spring washers are used for locking nuts. (See Lock nut.)

* * * * * * *

"*Lock nut.*—When machinery is subject to vibration, it is necessary to provide means of locking the nuts on bolts and studs to prevent them from working loose. There are numerous ways of accomplishing this end, and new devices are constantly being brought out, but there are a few well-tried methods that find general favor. * * * The Grover spring washer is one of the most successful devices, and consists of a ring, split through and bent into the form shown in J. On placing it under the nut and screwing down the latter, the washer exerts a constant pressure upward * * *. A somewhat similar washer is the Thackery, K, in which the turns are increased."

Knight's Mechanical Dictionary (1877):

"*Washer.*—An annular disk of metal or wood which slips over a bolt, and upon which the nut is screwed fast. Washers are also placed between bolt heads; between contacting surfaces which are screwed together, when it forms a packing.

"Many locking washers have been invented for preventing nuts from jarring loose. (See Nut lock, fig. 3350.)

* * * * * * *

"*Nut lock.*—(Machinery.) A means for fastening a bolt nut in place, preventing its becoming loose by the jarring or tremulous motion of the machinery. Such are used upon fish bars of railways, upon harvesters, and in many other places. In railways especially there has been a great demand to hold the nuts from being loosened by the shock of the passing trains."

Forty-five cuts are here shown of lock nuts, figure 3350, several of which are very similar to this device; and all such are called washers; some of the descriptions are given below; the letters refer to the figures in the cut:

"(*a*) Has a washer cut obliquely so as to present cutting edges which sink into the nut and bar respectively.

"(*b*) Has a ratchet washer and a click; the nut is partially imbedded in the washer.

"(*m*) Has an unequal-sided washer, which causes one side to jam against the object and partially imbed itself.

"(*oo*) Shows a bifurcated washer, the legs of which are bent up against the nut.

"(*pp*) Has a split washer, one part of which springs up against the side of the nut.

"(*r*) Has a washer with wings which spring up against the sides of the nut.

"(*tt*) Has spring wings on the washer to hold the nut.

"(*z*) Is a nut which jams down upon a yielding washer."

The American Cyclopedia of the Automobile, vol. 5, pp. 1754, 1755 (1909). Russell and Root:

"*Washer.*—Flat rings or perforated disks of metal or other material placed under a nut or pivot head to prevent the metal underneath being damaged. Sometimes they take the form of a helical spring, which prevents the nut becoming loose. The following are some of the principal washers used in motor-car work:

"Asbestos washers * * *.

"Leather washers * * *.

"Mica washers * * *.

"Split washers: A form of spring washer.

"Spring washers: Washers which take the form of a helical spring and are used to lock a nut on bolt or stud, the nut being screwed down on the top of the washer. Where right-handed nuts are used the helix of the washer is left-handed."

1909 Yearbook (Motor Cyclopædia):

"*Washer.*—A perforated disk which is slipped over the end of a bolt and serves as a bed for the nut which is screwed down upon it. Washers are usually of iron, but rubber, leather, mica, etc., are also used for special purposes, say, in cocks and valves, to make tight joints. Sometimes they have the form of a helical spring, in which case they are called 'spring washers.' Figure 1 gives a plan and lateral view of a common washer, and figure 2 of a lock washer."

A study of the foregoing definitions leads to the conclusion that the article in question is regarded by the authorities as an evolution of the common washer and as still properly covered by that name. This probably results from the fact that the two articles resemble each other in form and because they serve certain similar purposes. When in use, the present article is designed to be held flat between the nut and the underlying material upon which it rests. In that position it not only fastens the nut, which is its peculiar function, but it also serves as a cushion or packing and furnishes a bearing surface for the nut, which are the functions of a common washer. It is therefore plain that the articles at bar are not called washers because of a merely fanciful resemblance to the commom washer in such manner as clotheshorses and sawhorses are named, but rather because of essential resemblances in form and use such as seriously make the name appropriate.

It should be remembered that the present competition is not between "lock washers" and "nut locks," but between "washers" and "manufactures of steel, not specially provided for." There can be no doubt that the articles in question are frequently called nut locks. The definitions above quoted virtually treat that classification, however, as a subdivision of washers; and in the descriptions given under the title the different articles are named as washers which possess certain improvements or peculiarities. For example, in Knight's Dictionary, under the caption "nut lock," figure *z* is described as a nut which jams down on a yielding "washer." In the definition quoted from Henley's Encyclopedia, under the head of "lock nut," the identical article now in controversy, or one at least essentially similar to it, is denominated the Grover "spring washer;" a somewhat different article designed, however, for the same use and having several complete turns of the spiral, is referred to as the "Thackery washer."

The articles at bar are imported for use upon automobiles; therefore the definitions above copied from the Standard Cyclopedia of Russell and Root and from the Motor Yearbook are especially authoritative. In both of these the article now in question is described as a washer. It is of course true that the mechanical engineers who developed and used the article were more intent upon the thing itself than upon its name, but manifestly they assumed that the article was a kind of washer and so described it; and in the automobile trade the same practice has prevailed.

The present case was heard by the board upon testimony, and there was a strong protest entered by most of the witnesses against the application to this article of the name washer or lock washer. However, it appeared that each of the two domestic companies named in the testimony as manufacturers of similar articles is named a Lock Washer Co.; and the attempted explanation of this fact, to make it consistent with the testimony of the witnesses, is not convincing. The witnesses claimed that the only proper name for the article is "nut lock," yet they admitted that they had at times heard the articles named as washers of one kind or another.

The second question raised in the case relates to the course taken by the board at the hearing of the testimony. The importers' counsel asked the board to incorporate in the present record the testimony taken in a former case. The Government counsel objected to the admission of the greater part of the testimony referred to in the application. Thereupon the board announced that it would reserve its decision upon the application until it could read the record in order to learn whether there was a basis for counsel's objection. Immediately following this there appears in the printed record the statement, "Testimony admitted in evidence." It is stated by counsel for the Government that this order was entered in his absence and without further notice to him, and that he was thereby effectually deprived of the right to cross-examine the witnesses whose testimony was thus added to the record.

There are, however, several considerations which lead the court to conclude that this contention does not require a reversal in this case. The board did not directly refuse counsel a right to cross-examine the witnesses, for no such request was distinctly made by counsel. The board evidently understood that no such request was intended, and this because its attention was not called to the matter at the time it took the question under advisement. This presents quite a different question from a case wherein a demand for an opportunity to cross-examine the witnesses is specifically made by counsel and refused by the board, or where the testimony is admitted under such circumstances as plainly evidence that counsel had no opportunity to prefer such a request. It may fairly be concluded from this record that the board understood that counsel did not wish to cross-examine the witnesses. This understanding was, of course, entertained in good faith, and resulted from the circumstances attending the trial in the board's presence. It may furthermore be observed that this question is hardly presented with sufficient particularity by the assignments of error appended to appellant's petition as filed in this court. The seventh assignment of error is the only one which relates at all to the question in hand. It reads as follows:

"7. In applying to the case at bar over the objection of the attorney for the United States testimony taken in another case that involved dissimilar merchandise."

This assignment does undoubtedly challenge the competency of the testimony in question, but it may well be doubted whether it covers a complaint that appellant was denied the right to cross-examine the witnesses whose testimony was thus added by the board to the present record. But whatever view may be taken of the foregoing considerations, this court is not of the opinion that the testimony to which this objection applies worked a substantial prejudice to the appellant; for it seems clear that the conclusion reached by the board and by this court is sustained by the record if the testimony in question were entirely eliminated.

The court therefore finds that the decision of the board should be, and the same is, affirmed.

EXHIBIT 16.—(T. D. 32911.)—*Liquid soap.*

UNITED STATES *v.* FARBENFABRIKEN OF ELBERFELD CO. (No. 944).

TETRAPOL SOAP.—The question is not one of commercial designation; it is, simply, whether the presence of 17 per cent in volume of alcohol in the mixture serves to make the classification of the merchandise as a soap improper. "Soap" is not limited in common understanding to solid combinations, but has been broadened in meaning to include substances liquid in form. The merchandise was properly held dutiable not as a chemical mixture, but as "other soaps not specially provided for" under paragraph 69, tariff act of 1909.

United States Court of Customs Appeals, October 28, 1912.

Appeal from Board of United States General Appraisers, Abstract 28692 (T. D. 32560).

[Affirmed.]

William L. Wemple, Assistant Attorney General (Charles D. Lawrence, special attorney, of counsel; Charles Duane Baker, special attorney, on the brief), for the United States.

Curie, Smith & Maxwell (Thomas M. Lane of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Barber, judge, delivered the opinion of the court:

The merchandise is composed of potash and fatty acids with an addition of alcohol to the amount of 17 per cent by volume. This addition of alcohol produces a liquid substance. The witnesses, all of whom were called by the importer, called the merchandise a liquid soap, with the exception that the Government chemist characterized it as an alcoholic solution of soap. The name given to this liquid by the importer is Tetrapol benzine soap. It was not known to the commerce of this country prior to the passage of the tariff act of 1909, and but two importations have since been made.

The merchandise was assessed for duty as a chemical mixture, alcoholic, at 55 cents per pound under paragraph 3 of the tariff act of 1909, which reads as follows:

"3. Alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all chemical compounds, mixtures and salts, and all greases, not specially provided for in this section, twenty-five per centum ad valorem; chemical compounds, mixtures and salts containing alcohol or in the preparation of which alcohol is used, and not specially provided for in this section, fifty-five cents per pound, but in no case shall any of the foregoing pay less than twenty-five per centum ad valorem."

It is claimed by the importer that it should be assessed under that part of paragraph 69 of the same act which refers to "all other soaps." The material part of the paragraph is as follows:

"69. Castile soap, * * * medicinal or medicated soaps, * * * fancy or perfumed toilet soaps, * * *; all other soaps not specially provided for in this section, twenty per centum ad valorem."

This case was heard before the Board of General Appraisers in December, 1910. The importer at that time introduced but little evidence and the protest was overruled. A rehearing was granted by the board and additional testimony was offered by the importer. Thereupon the board reversed its former finding and sustained the protest.

The contention is made here on behalf of the Government that the merchandise was not commercially known as a soap when the tariff act of 1909 went into effect or since,

and therefore the board committed error in sustaining the protest in that, under the evidence, the importer failed to bring itself within the decisions entitling it to relief.

It is urged, and the record appears to so show, that prior to the passage of the act of 1909 no liquid soap similar to the article involved here was known in the commerce of the country, and it is said that in order to come within the terms of the act that a novel article of merchandise subsequently introduced must acquire an established trade name which brings it within the paragraph claimed.

The cases cited and relied upon by the Government in this connection, as we understand them, so far as they are germane to the issue, hold that when it is attempted to classify an article by its commercial designation only, and regardless of the facts as to its materials or composition, it must be shown that the commercial designation exists. There is no proof of commercial designation in this case, as, from what already appears, such designation was not, and, in the nature of the case, could not be shown.

But it seems to us that the determination of this case is not concluded by this issue. In its last analysis the real question is whether the presence of 17 per cent in volume of alcohol takes the importation out of the classification of soap. It is agreed that but for the presence of the alcohol the merchandise answers the call of the definition of soap, which concededly is "any compound formed by the union of a fatty acid with a base" and used as a detergent. It is conceded to be a detergent, used in dry cleaning, and the uncontradicted evidence shows that the presence of the alcohol makes the merchandise more effective in cleaning and more easily soluble in benzine, with which it is designed to be used in the same way as ordinary solid benzine soap, and it appears from the evidence that benzine soap is in common use and has been so for more than 10 years. The record shows that ordinary solid benzine soap sells for 20 cents per pound or less, and because the merchandise at bar is assessed at 55 cents per pound, it is impracticable, as a commercial proposition, to import it.

The Government in its argument strongly urges that the soap of commerce is not a liquid or fluid soap, and points to the fact that seems to be supported by reference thereto that in the various lexicons and encyclopedias which treat upon the subject of soap there is no mention made of a liquid or fluid soap, and no reference to such an article as a benzine or Tetrapol benzine soap. On the other hand, it is to-day common knowledge that there is an article used for toilet purposes and known as liquid soap which not only fills all the requirements of solid soap, but is, in addition, more sanitary, as it minimizes the liability of diseases being transmitted by one user to another.

In June, 1899 (T. D. 21234), it was held by the board that a yellow liquid imported in glass bottles and labeled as a glycerin soap was a soap and dutiable as such. The evidence in that case satisfied the board that the article in question was commercially known as soap prior to the passage of the tariff act of 1897, paragraph 72 of which, the predecessor of the paragraph involved here, was under consideration.

In 1904 the board held (T. D. 25912) that an article known as benzine soap, evidently very like what is referred to by that name in the record before us, was dutiable as soap.

We think from what has already been said it is clear that the term "soap" is not limited in common understanding to solid combinations of a fatty solid with a base used as a detergent, but has been broadened to include soaps in liquid form; that under the phraseology of paragraph 69 of the act of 1909, when the article is composed of ingredients which form soap and is used as a detergent, unless commercial designation is made an issue, the question is not whether it is commercially known as a soap, but whether it is in fact a soap or not. If it is, it should be classified under the paragraph.

It was said by the Supreme Court in Newman *v.* Arthur (109 U. S., 132):

"The fact that at the date of the passage of the act goods of the kind in question had not been manufactured can not withdraw them from the class to which they belong as described in the statute, where, as in the present case, the language fairly and clearly includes them."

Now, in the case at bar the importer's claim in substance is that the merchandise is soap in fact, and no question of commercial designation is made. The statute applies to soap in the common meaning of the word unless a different commercial meaning is shown, and, as we have said, that is not attempted here.

The Board of General Appraisers has found the merchandise to be soap in fact. We are clearly of opinion that the finding was right, and its judgment is hereby *affirmed.*

EXHIBIT 17.—(T. D. 33004.)—*Jute-manufacturing machinery.*

UNITED STATES *v.* HEMPSTEAD & SON (No. 942).

MACHINE FOR MANUFACTURING JUTE AND OTHER SUBSTANCES.—Paragraph 197, tariff act of 1909, applies according to the usual and common or chief use of the articles there designated, and it is not necessary to show that the imported machinery is used solely in the manufacture of jute to make the importation assessable as jute machinery.

United States Court of Customs Appeals, November 27, 1912.

Appeal from Board of United States General Appraisers, Abstract 28254 (T. D. 32529).

[Affirmed.]

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel), for the United States.

Brooks & Brooks for the appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The importation involved in this case consists of a machine which is described as Boyd's patent stop-motion spring rail ring flyer twister with upright rollers for smooth yarn. The importation was made under the tariff act of 1909.

The appraiser returned the article as a manufacture of metal, dutiable at 45 per cent ad valorem, under paragraph 199 of the act, and duty was assessed accordingly.

The importers duly filed their protest against that assessment claiming that the machine was jute-manufacturing machinery, and was dutiable as such at 30 per cent ad valorem under paragraph 197 of the act.

A report upon this protest was filed by the appraiser, in which appears the following amplification of the original return:

"The merchandise consists of one Boyd's patent stop-motion spring rail ring flyer twister with upright rollers for smooth yarn, and was returned for duty as a manufacture of metal at 45 per cent ad valorem under paragraph 199 of the act of 1909. The machine above described may be used for either jute, hemp, flax, Chinese grass, and for this reason the machine was returned as stated, but could have been returned as suitable as jute-manufacturing machinery as provided for in paragraph 197."

The collector maintained his original classification, notwithstanding the explanation thus made by the appraiser of his first return. The protest thereupon came on to be heard by the Board of General Appraisers. No testimony was taken at this hearing nor was any exhibit filed; no sample had been retained. The case therefore stood solely upon the first return of the appraiser, the assessment made by the collector pursuant thereto, the protest of the importers, and the report made by the appraiser upon the protest.

The board upon this presentation held the collector's assessment to be erroneous, and sustained the claim of the importers that the imported article was entitled to classification as jute-manufacturing machinery. The collector's action was therefore reversed, and the Government now appeals from that decision.

It is hardly necessary here to copy either of the two competing paragraphs above cited. So far as this case is concerned it is sufficient to state that one paragraph imposes a duty of 45 per cent ad valorem upon manufactures of metal not specially provided for, and the other imposes a duty of 30 per cent ad valorem upon jute-manufacturing machinery. The latter provision is obviously the more specific of the two, and therefore controls any article which otherwise comes equally within both paragraphs.

The sole question in the case therefore is whether or not the article in question is jute-manufacturing machinery. The collector held that it is not, and this holding should prevail unless overcome by a sufficient showing to the contrary. Upon their part the importers cite the report of the appraiser upon the protest, and contend that it establishes the fact that the importation is jute-manufacturing machinery, notwithstanding the first return of the appraiser and the decision of the collector founded thereon. The decision of the case therefore finally depends upon the effect which should be given to the report made by the appraiser upon the protest.

In that report the appraiser states that the machine "may be used for either jute, hemp, flax, Chinese grass, and for this reason the machine was returned as stated, but could have been returned as suitable as jute-manufacturing machinery, as provided

for in paragraph 197." This language is not as precise as might now be wished and may find divergent interpretations. However, it may fairly be concluded therefrom that all the facts found by the appraiser justified and required the classification of the article as jute-manufacturing machinery, except only for the single fact that the machine in question might also be used for the manufacture of hemp, flax, and Chinese grass. This latter fact is specifically assigned by the appraiser as the sole reason why the machine was first returned as a manufacture of metal instead of jute-manufacturing machinery, the plain implication being that in all other particulars the machine fell within the terms of paragraph 197 as jute-manufacturing machinery, and could and would have been returned as such. No other fact or reason is assigned for the appraiser's refusal to return the article under paragraph 197, and the existence of any other fact or reason is fairly negatived by the language of the report.

In order the better to understand the meaning intended by the appraiser's report, a copy is here given of a public document which plainly belongs to the same subject matter and was apparently issued as the result of the litigation now before the court:

(T. D. 31287.)

Jute-manufacturing machinery.

Jute-manufacturing machinery to be dutiable under paragraph 197 of the tariff act must be of a character which is used solely in the manufacture of jute.

TREASURY DEPARTMENT, *February 10, 1911.*

SIR: The department is in receipt of your letter of the 23d ultimo, transmitting a communication * * * in regard to the classification of jute-manufacturing machinery and machines used only for the weaving of linen cloth from flax and flax fiber.

You state that from the said communication it would appear that there are machines that might be used in manufacturing both jute and flax, and that for this reason, on importations of machinery and machines of the kind under consideration imported on and after January 1, 1911, you will require clear and satisfactory evidence that the same is to be used solely in the manufacture of jute, and that in the absence of such evidence the machinery will be assessed with duty under paragraph 199 of the tariff act as manufactures of metal.

In reply, I have to advise you that the department approves the position taken by you that machinery to be admitted at the rate of 30 per cent ad valorem under paragraph 197 of the tariff act as jute-manufacturing machinery must be of a character which is used solely in the manufacture of jute.

Respectfully, JAMES F. CURTIS,
Assistant Secretary.

(69977.)

COLLECTOR OF CUSTOMS, *New York.*

The foregoing paper makes plain the fact that the collector had construed the provision for jute manufacturing machinery in paragraph 197 to apply only to such machinery as was to be used exclusively in the manufacture of jute. The only conceivable alternative to this ruling would be such a construction as would make the usual and common use of the article the criterion of classification rather than its exclusive use. Therefore it may well be understood from the foregoing that upon a presentation of these rival constructions, namely, classification according to the exclusive use of the article upon the one hand, and classification according to its usual and common use only upon the other hand, the collector had adopted the former principle as controlling and had established, that rule as authoritative in the assessment of jute-manufacturing machinery; and that in the present case the appraiser accordingly refused to classify the importation as jute-manufacturing machinery because such was not its exclusive use, whereas had the rule of chief use controlled the classification the machinery "could have been returned as suitable as jute-manufacturing machinery as provided for in paragraph 197." As appears from the above copy the collector made due report of this construction and was sustained in his ruling by the department, which approved the position taken by him, "that machinery to be admitted at the rate of 30 per cent ad valorem under paragraph 197 of the tariff act as jute-manufacturing machinery must be of a character which is used solely in the manufacture of jute."

It may be repeated that this corresponence strongly tends to confirm the interpretation which is first above placed upon the language of the appraiser's report. The board understood the appraiser's report in the same sense, as appears by the following extract from the board's decision at the trial below:

"The query in the case is whether the machinery is dutiable at 30 per cent ad valorem under paragraph 197, tariff act of 1909, as jute-manufacturing machinery. It

should be clear that the character of this machinery is determined if it satisfactorily appears that it is such as is *commonly and usually* used for jute manufacturing. The provision in question does not contemplate that exclusive use must be shown to permit of classification thereunder, and as the report in this case states that the merchandise 'could have been returned as suitable as jute-manufacturing machinery,' we feel no hesitancy in holding the machinery here in question to belong to that class of machines designed for and adapted to the manufacture of jute, including all processes requisite for the manipulation of the fiber. The conclusion follows out the clear intent of Congress."

The court is of the opinion that the dutiable character of such imported machinery as claims entry under paragraph 197 is properly to be determined by the usual and common or chief use of the article, and that it is not necessary that the imported machinery "should be of a character which is used solely in the manufacture of jute," in order to claim assessment as jute manufacturing machinery under the paragraph.

Therefore upon the present record, imperfect and unsatisfactory though it be, it appears that an incorrect rule was applied in the assessment of the importation, to the prejudice of the appellees, and that the classification presented by the protest was the correct one; and in accordance with this view the decision of the board, overruling the action of the collector, is affirmed.

EXHIBIT 18.—(T. D. 32538.)—*Statuary.*

UNITED STATES *v.* GODWIN'S SONS (No. 825).

BRONZE ARTICLES ARTISTICALLY FASHIONED.—The articles were bronze knockers fashioned after the human figure, and bronze busts and statuettes, together with bases made expressly for these. The uncontradicted testimony of the maker of the articles is to the effect his work on them was that of an artist rather than as an artisan; that he employed his professional skill in their production. The importations are dutiable under paragraph 454, tariff act of 1897.

United States Court of Customs Appeals, May 8, 1912.

Appeal from Board of United States General Appraisers, Abstract 27215 (T. D. 32046).

[Decision affirmed.]

William K. Payne, Deputy Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel; Leland N. Wood, assistant attorney, on the brief), for the United States.

Walden & Webster (Howard T. Walden of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case was imported under the tariff act of 1897, and consists of a bronze knocker fashioned after a human figure, and certain bronze busts and statuettes, together with bases made expressly for the same.

The collector classified the articles as manufactures of metal, and assessed them with duty at 45 per cent ad valorem under paragraph 193 of the act.

The importers protested against that assessment, and contended that the importations were statuary within the meaning of paragraph 454 of the act, and were therefore dutiable at 15 per cent ad valorem under that paragraph and the terms of the reciprocal agreement with Italy

The protest was heard upon evidence by the Board of General Appraisers and was sustained. The Government now applies for a reversal of that decision.

The paragraphs above named are as follows:

"193. Articles or wares not specially provided for in this act, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

"454. Paintings in oil or water colors, pastels, pen and ink drawings, and statuary, not specially provided for in this act, twenty per centum ad valorem; but the term 'statuary' as used in this act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone

or alabaster, or from metal, and as is the professional production of a statuary or sculptor only."

It will be observed that paragraph 454 includes only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and is the professional production of a statuary or sculptor only. The contention of the importers is that the importations came within that description; the contention of the Government is that they did not.

The only witness in the case was the owner of the articles in question. His testimony was not contradicted by any other evidence, and the board accepted it as correct. His testimony was to the effect that he is a professional sculptor with a studio in Rome; that the articles in question were made by himself in his studio, with the aid of assistants, who were also professional sculptors, working under his immediate direction; that the articles were first modeled by him in clay, from which successive molds were taken, from which, in turn, wax models were taken; that bronze castings were thereupon made by the use of the wax models, which castings produced the desired forms, but were yet entirely covered with metallic crust; that a workman with a chaser and files cut the irregular pieces from the castings; that thereafter the witness, with very tiny tools, remodeled all the edges, going over the entire surface, developing the anatomy of the figures; that the articles were thereupon fired under the personal care of the witness, who then took an art glass and went over them gradually with very fine sandpaper. All of these processes were had either by the personal action of the witness or by his professional assistants under his immediate direction in order to give the material the form and color which the finished articles possess.

There were no exhibits placed in evidence at the hearing before the board. An article was mentioned as an exhibit "for identification," but it was not formally introduced in evidence. It was therefore not made part of the record, and is not now before the court.

Upon the testimony, of which the foregoing is an outline, the board held that the importations were statuary within the meaning of paragraph 454, and entitled to the assessment of 15 per cent ad valorem.

The Government, however, contends that the work done upon the articles by the witness, as shown by his testimony, was hardly more than "chasing," or "slightly touching them up," and that such work was of an ordinary character, and did not constitute the articles the professional productions of the witness, wrought by hand from the metal bronze.

It must be confessed that the proof in support of the professional character of the articles and the work of the witness upon them is somewhat meager; nevertheless, giving the testimony the favorable construction to which it is entitled under the circumstances, it seems to be sufficient to sustain the board's decision. The personal exertion bestowed by a professional artist upon a bronze figure, after casting, might not be laborious nor greatly alter the bulk of the article, and yet it might give the piece its artistic spirit and character; and this may fairly be inferred concerning the present case, especially in view of the fact that the artist began with the first modeling of the productions, and personally directed all the labor bestowed upon them up to their finished condition. The relation of the witness to the articles throughout seems to have been that of an artist rather than an artisan, and was within the line of his profession.

Another assignment of error presented by the Government may be briefly considered. The importers moved for the incorporation in the record of the testimony taken in a former case upon a similar issue. However, no copy of that testimony was tendered by the importers, and because of that fact the board overruled the motion. The Government contends that, notwithstanding that decision of the board, both the board and the importers proceeded in the case as if the former testimony had been in fact added to the record in the present case. This is assigned as error.

However, this assignment does not seem to the court to be well taken. At the hearing, when it was found that the former testimony was not at hand, and therefore could not be incorporated in the present record, the importers proceeded with a more extended examination of the witness, so as to cover the same subject by his present testimony, and the decision of the board upon the facts was founded upon that testimony alone. The reference made to the former case, in the board's decision of the present case, is not an adoption of the testimony heard in that case, but rather a citation of the principles therein decided.

The court therefore concludes that no error is apparent in the record, and the decision of the board is affirmed.

EXHIBIT 19.—(T. D. 32620.)—*Gloves.*

UNITED STATES *v.* GERMAIN (No. 788.)

GLOVES EMBROIDERED WITH MORE THAN THREE SINGLE CORDS.—Reviewing the history of the legislation and of the decisions, and having these in mind, it does not appear affirmatively that the finding of fact as made by the board in this case was either contrary to or clearly against the weight of evidence. The gloves were not subject to a cumulative duty under paragraph 445, tariff act of 1897.

United States Court of Customs Appeals, May 31, 1912.

Appeal from Board of United States General Appraisers, G. A. 7282 (T. D. 31908).

[Decision affirmed.]

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel), for the United States.
Brown & Gerry for appellee.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Barber, judge, delivered the opinion of the court:

The question here is whether certain gloves are subject to the cumulative duty assessed thereon under paragraph 445 of the tariff act of 1897, which provides for an additional duty of 40 cents per dozen pairs "on all gloves stitched or embroidered with more than three single strands or cords." Other gloves were involved in the hearing before the Board of General Appraisers, the protests relating to which were overruled by the board, while as to the gloves represented by the official exhibit before us, the protests were sustained and the case is here for review upon the appeal of the Government.

As we understand the record in this case in connection with the exhibit, the gloves involved each have upon the backs three cords or points, each made of a single thread which is stitched through the leather of the back of the glove in such a manner as to present a raised appearance on the outside, and these three cords or points constitute what is referred to as one style of a "Paris point." The stitching which results in these points appears on the inside of the glove as well as on the outside.

Between each of the outer of these cords or points and the central one on the surface of the outside is a stitching, zigzag in appearance, made with one thread by a machine. This thread is not stitched through the leather, but the end of the thread marking the end of the stitch shows on the inside. This stitching may be referred to as "crow's foot" stitching, and seems to be embroidery.

One witness testified on behalf of the importers and one on behalf of the Government, and in effect the board found upon this evidence and the exhibit that the gloves involved in this appeal were not stitched or embroidered with more than three single strands or cords. The Government contends that this finding is so clearly against the weight of evidence, in view of the law applicable thereto, that it should be reversed.

As the board well says in its opinion, the issue of whether gloves are stitched or embroidered with more than three single strands or cords "has been repeatedly tried before the board and the courts, except that in practically every case the ornamentation on the glove involved has been different."

A proper understanding of the issues may best be obtained from a review of the authorities. The statute was first enacted as paragraph 445 of the tariff act of 1897. The first case thereunder seems to be the board decision (T. D. 19945) decided August 18, 1898. The opinion shows that "the embroidery is in three rows on the back of the glove, each row presents the appearance of three-plait crochet work, but this effect is produced by the needle with only one cord or strand of thread as is shown by the stitching through and on the inside of the glove." The opinion further shows that eight competent experts were examined, and upon their unanimous testimony it was found that the gloves were not stitched or embroidered with more than three single strands or cords. Upon appeal this judgment was affirmed in the circuit court January 18, 1900 (124 Fed. Rep., 1013), the court, by Wheeler, judge, saying:

"These are gloves with three rows of embroidery, each of a single cord, but passing more than once throughout the decoration. Paragraph 445 provides for an additional duty 'on all gloves stitched or embroidered with more than three single strands or cords.' * * * The addition is to cords and not to turns or directions of the same cord. Here are but three cords.

This was acquiesced in by the Treasury Department February 9, 1900 (T. D. 21996).

The Siegel-Cooper case (T. D. 25038) was decided by the board February 20, 1904. We quote from its opinion sufficiently to show what was involved and decided.

"Excepting in one instance all the gloves before us have stitching or embroidery submitted with three single parallel lines or rows, but the importers contend that as these lines or rows were made with the same single unbroken thread the gloves do not fall within the paragraph cited. The testimony before us shows that a 'cord' as understood in the glove trade is an embellishment on the back of a glove produced by creasing the leather longitudinally and then oversewing the same with a silk thread; * * * that a 'strand' in the trade is synonymous with the term 'row of embroidery.' A 'cord' is stitched and a 'strand' is embroidered. The former is known as a cord of stitching and the latter as a strand of embroidery. Whether or not a glove has more than three single strands or cords is not determined by the fact that it has or has not been stitched by one unbroken thread or filament, for the terms 'strand' and 'cord' have no reference to the thread or filament used, but only to the *effect* produced. There are many gloves which have highly ornamental embellishments but yet are stitched or embroidered with only three single strands or cords. This result is brought about by an attachment to the machine used that produces what is known as the 'Brosser stitch.' The number of strands or cords stitched on a glove is determined by turning the glove inside out and counting the number of lines of parallel needle holes. In the Brosser stitch there are only three such single parallel lines. Another variety of embellishment is known as the 'crow's foot.' * * * The Brosser stitch is shown in the glove submitted with protest 50628f, which is in the same general class as the glove that was held in United States *v.* Robinson (124 Fed. Rep., 1013) to have only three single strands or cords. Some of the gloves before us have three cords in the decoration, around which are lines of plain stitching. In some, these lines are produced by one thread additional to each cord and in others by two or more threads. Such gloves are stitched in more than three single ends or strands even within the importers' contention.

* * * * * * *

"The only conclusion to be reached is that Congress meant to charge an extra duty, not for using a new or separate thread for each line of stitching and to exempt therefrom gloves stitched with a continuous or unbroken thread, but against the cost and labor necessary to produce the finished effect, and the reference to cords or strands is * * * to the result achieved and not to the material used in accomplishing it. * * * The provision, however, is not for stitching applied with more than three strands or cords of *thread*. It concerns not the number of threads used but the number of lines of stitching that produce the cords or the strands of embroidery. The sample submitted with protest 50628f has a decoration which consists of three single strands, and it would be exempt from the additional duty imposed by paragraph 415, but it is not proved to have been part of the importation covered by said protest, and the special report of the local appraiser states that it was not. This protest, therefore, as well as all the other protests enumerated in the schedule, is hereby overruled, and the decision of the collector affirmed in each case."

In the Trefousse-Passavant case, Abstract 8396 (T. D. 26753), on the authority of the last-mentioned Siegel-Cooper case and another case theretofore decided by it, the board overruled the protests, but its opinion does not show the character of the stitching or embroidery on the gloves.

In Trefousse *v.* United States (144 Fed. Rep., 708) the circuit court, by Platt, judge, reversed the board on the authority of the Robinson case (124 Fed. Rep., 1013), saying, in effect, that in the case before him the board had departed from the rule it had adopted in the Robinson case, which had been acquiesced in by the Government, and, further, that the gloves were manifestly the same in respect of the manner of stitching as those considered in the Robinson case. This judgment of the circuit court was affirmed in the circuit court of appeals (154 Fed. Rep., 1005).

In the La Fetra cases, so called, beginning with T. D. 28966, decided in 1908, it appears that there were three points on each glove, each point having three distinct rows of stitching showing nine easily distinguishable rows of embroidery on the outside and nine single rows of stitching on the inside. The board there accepted as controlling the rulings in the Robinson and Trefousse cases, although they evidently disagreed therewith in some respects, and held the gloves were not subject to the cumulative duty. This case was reviewed in the circuit court (172 Fed. Rep., 297), decided May 19, 1909, and the action of the board was sustained, the court saying that the gloves were exactly like those in the Trefousse cases, and that the Government had not sustained the contention upon which it had embarked of showing that these gloves were commercially known as three-strand embroidered gloves. The

circuit court of appeals, in 178 Fed. Rep., 1006, by decision dated March, 1910, affirmed the circuit court, saying:

"It appears from examination of the samples that goods identically like the present importations were before this court when the decision of the circuit court in Trefousse *v.* United States (144 Fed Rep., 708) was affirmed several years ago in 154 Fed. Rep., 1005."

Now, while from the description of the gloves given in the various cases referred to we are unable to say just what was the nature and character of the embroidery or stitching, it is apparent that these decisions were to the effect that the stitching or embroidery must be made with more than three single strands or cords, which we take it is equivalent to saying that it must have been stitched or embroidered with more than three single threads or filaments, and probably, also, that the plain cord effect produced by oversewing the leather was not to be treated as a strand or cord in determining with how many strands or cords a glove was stitched or embroidered.

As we have already said, this case involves the tariff act of 1897. The act of August 5, 1909, however, contains the same provisions as that of 1897, and it is of some interest to note the proceedings which resulted in its reenactment. Prior thereto the attention of Congress was specifically called to the subject and to the various judicial determinations to which we have already referred and to the Government's claim respecting the proper interpretation of the paragraph in the law of 1897. (See Notes on Tariff Revision, p. 611.)

The committee charged with formulating the proposed law heard both importers and those representing domestic producers deemed to be affected thereby, and thereupon reported in the proposed bill a paragraph relating to the subject couched in the following language:

"On pique or prix seam gloves, forty cents per dozen pairs; on hand-sewn gloves, one dollar per dozen pairs; on gloves having 'crow's feet' stitched, sewn, or silked on the backs thereof, or having points stitched, sewn, embroidered, or silked on the backs thereof, each point being produced with more than a single row or line of stitching, sewing, embroidery, or silking, whether the same be continuous or otherwise, forty cents per dozen pairs."

It passed the House. Manifestly had this become law it would have indicated an intent on the part of Congress to impose the cumulative duty upon gloves like those here in question. The Senate, however, struck out this provision and restored the language of the paragraph in the act of 1897, and in such form it finally became law. This would seem to indicate that Congress after having all the various phases of the vexed subject brought to its attention did not for the future at least feel inclined to adopt the Government's view, or so far as the past was concerned to disagree with the judicial interpretations which its prior enactment had received. Not only this, but we think it indicates an adoption thereof and agreement therewith and is of some significance as relates to the issues here.

Cases similar to the one now here have already been before this court, some under the act of 1897 and some under that of 1909: United States *v.* Spielmann (1 Ct. Cust. Appls., 279; T. D. 31320); United States *v.* Perkins (ibid., 323; T. D. 31340); Carson *v.* United States (2 Ct. Cust. Appls., 105; T. D. 31656); United States *v.* Wertheimer (2 Ct. Cust. Appls., 454; T. D. 32204).

We have in each case refused to disturb the finding of fact by the Board of General Appraisers, it not appearing affirmatively that it was either contrary to or clearly against the weight of evidence, having in mind the provisions of the statute and the interpretations it had received.

Unless commercial designation is shown, it must of course in each case remain a question of fact, to be determined upon the evidence, as to whether or not a glove is stitched or embroidered with more than three single strands or cords, and that must in the first instance be determined by the Board of General Appraisers upon the evidence before it.

In the case at bar, the board seems to have correctly applied the law as interpreted by the courts in the decisions to which we have referred, and from a careful review of all the evidence we are unable to say that it has not correctly found the facts.

The judgment of the Board of General Appraisers is therefore affirmed.

EXHIBIT 20.—(T. D. 32619.)—*Refined wool grease.*

KOECHL & CO. *v.* UNITED STATES (No. 786).

ADEPS LANAE—WOOL GREASE.—Adeps lanae, or lanolin, is used as a basis for ointments and as a carrier for soluble medicinal salts, and the evidence shows that without the addition of medicinal agents it has no therapeutic value. The more specific provision levying duty upon it is to be found in paragraph 290, tariff act of 1909. It is dutiable under that paragraph as wool grease refined or improved in value or condition.

United States Court of Customs Appeals, May 31, 1912.

Appeal from Board of United States General Appraisers, Abstract 26810 (T. D. 31912).

[Decision reversed.]

Curie, Smith & Maxwell (Thomas M. Lane of counsel) for appellants.

William L. Wemple, Assistant Attorney General (Charles D. Lawrence, special attorney, on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

Smith, judge, delivered the opinion of the court:

A product returned by the appraiser at the port of New York as wool grease was classified by the collector of customs as a medicinal preparation, dutiable at 25 per cent ad valorem under the provisions of paragraph 65 of the tariff act of August 5, 1909, of which paragraph the part material to this case reads as follows:

"65. * * * All other medicinal preparations not specially provided for in this section, twenty-five per centum ad valorem."

In due time the importers protested against the classification of the goods and the duties assessed thereon by the collector and set up the claim that the merchandise was either refined wool grease, dutiable at one-half of 1 cent per pound within the meaning of paragraph 290 of said act, or that it was an unenumerated manufactured article dutiable as provided for in paragraph 480. The paragraphs relied upon by the importers are as follows:

"290. Tallow, one-half of one cent per pound; wool grease, including that known commercially as degras or brown wool grease, crude and not refined, or improved in value or condition, one-fourth of one cent per pound; refined, or improved in value or condition, and not specially provided for in this section, one-half of one cent per pound.

"480. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this section, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem."

The Board of General Appraisers overruled the protest, and the importers appealed.

The merchandise involved in the controversy is known to the Pharmacopœia and the Dispensatory as adeps lanae, which is the scientific designation and Latin equivalent for "wool grease." Hydrous adeps lanae is that which carries water in suspension and anhydrous that from which all water has been expelled. Wool grease is the fatty substance which results from the washing of the wool. This fatty substance, just as it comes from the wool, contains some free potash and is mixed with dirt, water, and other foreign matter derived from the substances employed as cleansing materials. The mixture is drawn off into tanks and when relieved of the dirt, excess water, and alkalies derived from the agencies used in washing the wool, it becomes degras or raw wool grease, which normally contains some fatty acids and free potash. Raw or crude wool grease is used for stuffing leather and for the manufacture of lubricating greases.

When degras or raw wool grease has been freed of the uncombined alkalies and fatty acids normally found in it, it is denominated "neutral wool grease." Neutral wool grease is used for the making of soap, the manufacture of paints, and the compounding of cylinder and machinery oils of the finer quality. If the cleansing and refining of the degras or crude wool grease proceeds so far as to leave no perceptible odor of wool and absolutely no uncombined alkalies or fatty acids, the product takes on the scientific name of adeps lanae, or is given by the manufacturers some fanciful proprietary designation, such as lanae, lanam, or lanolin. Adeps lanae, lanam, lanae, or lanolin is used by the pharmacist as a basis for ointments and as a carrier for soluble medicinal salts. When applied to the skin it renders the tissues soft and pliable and serves the purpose of an emollient.

On this state of facts the Government argues that adeps lanae is a medicinal preparation within the meaning of the present tariff act, and therefore dutiable as assessed. In support of its contention the Government points out that hydrous adeps lanae and lanolin are different designations for the same thing, and that lanolin has been uniformly held to be a medicinal preparation by the Board of General Appraisers and the courts. In re Movius & Son (T. D. 11215, decided in 1891 under the tariff act of 1883); Movius & Son *v.* United States (66 Fed. Rep., 734, decided in 1895 under the tariff act of 1890); In re Movius & Son (T. D. 17075, decided in 1896 under the tariff act of 1894); In re Soltau (T. D. 21943, decided in 1900 under the tariff act of 1897); In re Koechl & Co. (T. D. 25910, decided in 1904 under the tariff act of 1897); Zinkheisen *v.* United States (T. D. 29000, decided by the United States Circuit Court for the Southern District of New York on May 7, 1908, under the tariff act of 1897); Zinkheisen *v.* United States (167 Fed. Rep., 312, decided in 1909 under the tariff act of 1897).

In considering all these cases and what was finally settled by them some account must be taken of the law as it then stood and of the processes of reasoning by which the conclusion was reached. Proprietary preparations were provided for by name under paragraph 99 of the tariff act of 1883, and among those specifically designated were—

"Preparations or compositions recommended to the public as proprietary articles, or prepared according to some private formula, as remedies or specifics for any disease or diseases, or affections whatever, affecting the human or animal body."

Paragraph 99 was not reenacted in the tariff act of 1890, but care was taken to provide for medicinal proprietary preparations (nonalcoholic) in paragraph 75 thereof. Lanolin was originally a preparation patented in the United States by Dr. Otto Braun and Dr. Oscar Lieberich, of Berlin, Germany. This preparation was described by the patentees in the specifications of their letters patent as "a new manufacture of fatty matter from wool fat, * * * and as a compound of clean wool fat with water." (T. D. 11215.) It was put up in 1-pound tins, and held out to the world as a remedy for catarrh, as a cure for the cracking or excoriation of the skin, as a means of alleviating pain, and as an aid favoring the formation of fresh epidermis. (T. D. 11215.) Accordingly, the Board of General Appraisers, in the first Movius case (T. D. 11215), held that lanolin was a proprietary preparation, dutiable under paragraph 99 of the tariff act of 1883. With the same merchandise before it, the Circuit Court for the Southern District of New York held that lanolin imported under the tariff act of 1890 and found by the board to be a medicinal proprietary preparation was dutiable as such under paragraph 75 of that act. (Movius *v.* United States, 66 Fed. Rep., 734.) The same finding was made In re Movius & Son (T. D. 17075).

In neither of these cases was any question raised as to whether lanolin by itself really possessed any therapeutic value, and all three of them were apparently decided on the assumed or admitted fact that lanolin was held out to the public and claimed by its manufacturers to be a patented article for the relief of pain and the cure of disease. In the cases subsequently decided the importers seemingly raised no issue as to the therapeutic qualities of the merchandise, but endeavored to secure the admission of it as wool grease, or as rendered oil, or as something other than lanolin and bearing a different name. This the board and the courts would not permit, and just as often as the issue was presented it was held that wool grease, freed of dirt, water, alkalies, and fatty acids, was lanolin, and therefore subject to the rule laid down in Movius & Son *v.* United States (66 Fed. Rep., 734). No account was taken of the fact that medicinal preparations and medicinal proprietary preparations had been struck out of the tariff acts of 1894 and 1897.

The board and the courts simply found that adeps lanae, lanam, or lanae which resulted from the cleansing and purifying of crude wool grease was of the same character as lanolin, and as lanolin purported to possess therapeutic properties it was quite natural, in the absence of anything to the contrary, to conclude that the goods were, at least prima facie, medicinal preparations. In this case, however, the merchandise not only does not purport to be a medicinal preparation, but the testimony of Dr. Wainwright, a witness who is a pharmacist, a graduate in chemistry, a graduate in medicine, and who was formerly a practicing physician, shows that the merchandise has, properly speaking, no medicinal properties whatever. Dr. Wainwright testified positively that adeps lanae was used as a base for ointments just as was lard, mutton suet, tallow, or vaseline; that it was a mere carrier for soluble medicinal salts; and that without the addition of medicinal agents it had no therapeutic value.

Henry Pfaltz, a witness for the Government, did say that lanolin was used exclusively for medicinal purposes, but as he did not qualify either as a pharmacist or physician, we can not accept his testimony on the point in lieu of that of a witness who was fully qualified to give an opinion in the matter.

The fact that adeps lanae hydrous and adeps lanae anhydrous are enumerated in the United States Pharmacopœia and in the National Standard Dispensatory is not of and by itself any evidence that the articles mentioned have therapeutical qualities or that they are in truth and in fact medicinal preparations. In the same Pharmacopœia and Dispensatory may be found acids, lard, talc, ammonia, white wax, kaolin, paraffin, sirup, turpentine, and glycerin, all of which enter into the composition of medicinal preparations and medicinal remedies, but which as a matter of common knowledge can not be considered as medicinal preparations in the true sense of the term. We must, therefore, hold that in this case at least it has been established that adeps lanae, whether hydrous or anhydrous, is not by itself a medicinal preparation. But if it were a medicinal preparation, we think it has been more specifically provided for in paragraph 290 of the present tariff act as "wool grease refined or improved in value or condition."

From 1890 until the passage of the present tariff act the provision for wool grease was as follows:

"1890.

"316. * * * Wool grease, including that known commercially as degras or brown wool grease, one-half of one cent per pound.

"1894.

"Free List, 645. * * * Wool grease, including that known commercially as degras or brown wool grease.

"1897.

"279. * * * Wool grease, including that known commercially as degras or brown wool grease, one-half of one cent per pound."

In Movius *v.* United States (66 Fed. Rep., 734), paragraph 316 of the tariff act of 1890 was held to cover crude raw wool grease only. In that case the court took occasion to say that the term wool grease would convey to the mind of every business man familiar with the subject an idea of a crude raw material, and that in that sense the term "wool grease" was used in paragraph 316.

In the matter of the protest of Koechl & Co. (T. D. 25910), which involved the classification of goods invoiced as refined wool fat, and claimed to be wool grease, the Board of General Appraisers stated that the wool grease provided for in paragraph 279 of the tariff act of 1897 was not the highly finished product imported.

In Zinkheisen *v.* United States (167 Fed. Rep., 312) Judge Coxe, speaking for the Circuit Court of Appeals, said of the issue then pending:

"The case is stronger for the Government than the Movius case, for the reason that the court prior to the passage of the present act had construed "wool grease" to include only the crude raw material and not the refined and expensive products derived therefrom. With this construction presumably in mind, Congress reenacted the paragraph in identical language. This would hardly have been done if Congress had intended that the refined and expensive "lanolin" should enter as wool grease and pay duty at the rate of only one-half of 1 cent per pound."

From these decisions it is evident that the board and the courts considered that the language "wool grease, including that known commercially as degras or brown wool grease," was directed at the raw crude product, and that the wool grease from which the dirt, free alkalies, and fatty acids had been removed was not within its intention. Congress had all these decisions before it at the time the tariff act of 1909 was passed, and it seems but fair and reasonable to assume that when it made provision for wool grease "refined or improved in value or condition" it did so with the information that wool grease as provided for in the statutes of 1890, 1894, and 1897 had been interpreted to mean a crude raw product, and that adeps lanae and lanolin, on the other hand, had been found to be a highly finished and refined wool grease.

Paragraph 290 divides wool grease into two classes, the first of which is wool grease crude and not refined or improved in value or condition and the second wool grease refined or improved in value or condition. If it be wool grease in the condition in which it is washed from the wood or the article which is commercially known as degras or brown wool grease, it belongs to the first class. If it be refined by the removal of the fatty acids and alkalies or otherwise improved in value or condition, it belongs to the second class. The imperfectly refined "neutral wool grease" and the more highly refined adeps lanae are, on the record, presented, simply grades of *refined* wool grease. Under the testimony both are either refined wool greases or wool greases improved in value or condition, and therefore it can not be seriously contended that

Congress had in mind only neutral wool grease when by paragraph 290 it laid a duty on wool grease refined or improved in value or condition.

The decision of the Board of General Appraisers is therefore reversed.

EXHIBIT 21.—(T. D. 33312.)—*Fish.*

UNITED STATES *v.* SMITH & NESSLE CO. ET ALS. (NO. 956).

HERRING OR MACKEREL, PICKLED OR SALTED.—The processes to which the fish of the importation had been subjected put them in a class apart from "fish in tin packages," as provided for in paragraph 270, tariff act of 1909. The evidence sustains the finding that the merchandise here consisted of herring or mackerel, pickled or salted, and these were dutiable as such under the eo nomine provisions of paragraphs 272 and 273, respectively.

United States Court of Customs Appeals, March 25, 1913.

Appeal from Board of United States General Appraisers, G. A. 7380 (T. D. 32680).

[Affirmed.]

William L. Wemple, Assistant Attorney General (Thomas J. Doherty, special attorney, of counsel), for the United States.

Comstock & Washburn (Albert H. Washburn of counsel), Searle & Pillsbury, Brooks & Brooks, and B. A. Levett for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered to opinion of the court:

The merchandise involved in this case consists of herring and mackerel, separately packed in sealed tin cans, and severally invoiced as fresh herring, soused herring, herring in bouillon, herring in tomato sauce; fresh mackerel, soused mackerel, and mackerel in tomato sauce.

The goods were imported under the tariff act of 1909 and were classified by the collector as "fish in tin packages." They were accordingly assessed with duty at the rate of 30 per cent ad valorem under the provisions of paragraph 270 of the act.

The importers duly protested the assessment, claiming the importations to be herring and mackerel, pickled or salted, and therefore properly assessable under the oe nomine provisions contained respectively in paragraphs 272 and 273 of the act.

The protest was submitted upon evidence to the Board of General Appraisers, and the same was sustained. The Government now appeals from that decision.

The following extract from the board's decision will best define its terms and effect:

"The question really to be determined is whether the particular varieties of fish involved are salted, pickled, or smoked within the meaning of the language of paragraphs 272 and 273, and we think the evidence fully sustains the following findings:

"(1) That the herrings in tomato sauce and the so-called fresh herrings are herrings, salted; (2) that the mackerel in tomato sauce and fresh mackerel are mackerel, salted; (3) that the soused herrings are herrings, pickled; (4) that the soused mackerel are mackerel, pickled; (5) that the smoked herrings in bouillon are herrings, smoked.

"We sustain the claims for duty at the rate of one-half of 1 cent per pound on each of the kinds of fish covered by findings 1, 3, and 5, * * *. We also sustain the claim for duty at the rate of 1 cent per pound under paragraph 273 on the fish covered by findings 2 and 4. In all other respects the protests are overruled. Decisions of the collector are modified accordingly."

The relevant parts of the paragraphs which are thus called into question read as follows:

"270. Fish (except shellfish) by whatever name known, packed in oil, in bottles, jars, kegs, tin boxes, or cans, shall be dutiable as follows: * * *; all other fish (except shellfish) in tin packages, thirty per centum ad valorem; * * *.

"272. Herrings, pickled or salted, smoked or kippered, one-half of one cent per pound; herrings, fresh, one-fourth of one cent per pound; * * *.

"273. Fish, * * *; mackerel, halibut, or salmon, fresh, pickled, or salted, one cent per pound."

The real issue which was presented to the board was one of fact only, namely, whether or not the fish in question were herring or mackerel, pickled or salted. If they were such, they should be assessed under the eo nomine provisions contained in those terms in paragraphs 272 and 273, respectively. United States *v.* Rosenstein

(1 Ct. Cust. Appls., 304; T. D. 21357); Ahlbrecht *v.* United States (2 Ct. Cust. Appls., 471, 474; T. D. 32226). On the other hand, if the fish were not herring or mackerel, pickled or salted, then the collector's assessment of the goods as "fish in tin packages" should prevail. The board held on the testimony with the former premise and the protest was therefore sustained. The question now submitted to the court is whether or not that decision is sufficiently sustained by the record in the case.

In order to aid in reaching an answer to this question, the following extracts are given from the testimony of certain of the witnesses called by the importers:

"RALPH W. GOLDMARK:

"Q. Now, will you, just for my information, even though it be a repetition, describe to me, beginning at the beginning, the successive treatments of these herrings that are done up in tomato sauce, until the tin is closed?—A. Yes; these herrings are taken from the boat, brought in barrels to the factory, dumped out from the barrels on big stone or cement slabs. A man goes with a wheelbarrow, on which is a barrel of salt, and he has a big tin receptacle in his hand, and as these fish are put down on the cement floor he sprinkles these fish very copiously with the salt. Then there are two men with shovels, and while he is spreading the salt they turn the fish over, so that every part of the pile shall get its share of salt. After those fish have lain anywhere from 8 to 20, and I have known it for 25, hours in the salt, they are put in baskets, immersed in a solution of water. Then they are gutted, the heads taken off, brought in the packing rooms, put in tin cans. Then these girls go around and add this dessertspoonful of tomato sauce or purée or whatever you want to call it; the tins are sealed and soldered, put in a bath, as I said, probably around 210°, although I would not be positive of that. They are allowed to sterilize for about 20 minutes; then they are taken out, and with a sharp little chisel there is an indentation or hole made in each can to allow a vacuum to form or the gases to escape. Then they are again soldered up, immersed in hot water for about five minutes, labeled, put in boxes, and that ends it.

"Q. Does the tomato sauce serve any purpose at all in the preservation of the fish?—A. No, sir; simply for flavor, as anchovy sauce, or wine, or any other sauce.

"By Mr. DOHERTY. What is the preserving agency in the tomato herring put up as you have described?—A. Both the salt and sterilization.

"Q. Would the salt be sufficient to preserve them without any other process?—A. I don't think so; no.

"By Mr. WASHBURN. Would the heat be sufficient to preserve them without the salt?—A. No, sir.

"Q. What is the amount of salt, about? About what amount of salt is added in the first instance?—A. About 10 or 15 per cent.

"ADOLPH GOLDMARK:

"Q. Now, tell us how the salted herring are prepared?—A. Which kind, sir? There are so many kinds of salted herrings, and different processes—different kinds. There are salted herrings put up in cans, like tomato herring, herring in bouillon, herring in mustard sauce, herring in anchovy sauce—every few months a new kind and a new method of processing come up.

"Q. But those are all salted herrings, are they?—A. Yes, sir; they are all fundamentally salted herrings.

* * * * * * *

"Q. Would such a process of heating or sterilization, lasting as you say about 30 minutes, be in itself sufficient to preserve the fish for the market without the addition of any salt?—A. No, sir.

"Q. Would you say that the salt as well as the heat and sterilization plays an important rôle in the preserving process?—A. In the preserving process of this fish it is absolutely indispensable.

"Q. Do you know of any varieties of salted herring, other than those which have been further subjected to a process of pickling and smoking and kippering, which come onto the market in packages other than tin containers?—A. No, sir.

"Q. Give some of these specific kinds that come. Give the names—the trade, commercial names?—A. They come how, sir?

"Q. Salted herring that come onto the market in tin containers?—A. Tomato herring, and herring in bouillon, and herring in anchovy sauce, Worcester sauce, shrimp sauce, wine sauce.

"THOMAS ROBERTSON:

"Q. Then, what do you mean by salted herrings?—A. I have described the process—a herring which has been subjected to salt in the process of curing.

"Q. Has anything else been done to the herring that you call salted herring, except that it has been salted?—A. Yes.

"Q. Where do you draw the line between a salted herring and a pickled herring?—A. Well, I would call a pickled herring a herring which has been in brine for a period sufficiently long to enable the brine to strike through to the bone of the fish. I would call a salted herring a herring which has been treated with salt, left in salt for a considerable time, but which has not reached the pickling process.

"Q. Well, aren't salted herrings put on the market simply as the result of a salting process without anything further being done to them?—A. No; not in that way.

* * * * * * *

"Q. Is there any other way in which salted herrings are imported to this country?—A. No.

"Q. Would it be practicable, or would it be possible to import them in any other way than in tins?—A. Absolutely impossible.

* * * * * * *

"By Mr. BROOKS. In your experience have you ever heard the term 'salted herrings' applied commercially in this country?—A. Never.

"Q. There is no such commercial term, I take it?—A. Not that I am aware of.

"BENJAMIN M. SHIPMAN:

"Q. As to the articles that you designate as soused mackerel; is that a pickled mackerel or smoked mackerel, or what is it?—A. It is a pickled mackerel.

* * * * * * *

"By Mr. WASHBURN. Tell us how they are put up for market, Mr. Shipman.—A. The mackerel are taken from the boats fresh. The heads are cut off; they are ripped—the bellies ripped, washed out, washed in a salt solution for a very short time—just to draw the blood. They are put in tins, pickled with vinegar with a certain amount of condiments added, varying according to the idea of the packer, and that vinegar is put in the tin. The tin is then sealed, and it is put in a steam or water retort, as the case may be, processed for a certain amount of time, varying sometimes according to the size of the tin and sometimes according to the packer's idea of how much it should be processed. After taking out of the steam retort it is vented so as to blow off steam, and immediately sealed again, and then put in the bath for 8 or 10 minutes, and then it is ready.

* * * * * * *

"Q. These soused or pickled mackerel are a well-known article in the trade or commerce of this country, are they?—A. Yes.

"REGINALD S. TOBEY:

"Q. Now, referring to the item invoiced as fresh herring; will you state whether you have a sample of that?—A. Yes; we have a sample of that.

"Q. What is the character of that merchandise?—A. Fresh herring has no sauce added to it. The fish is caught fresh and brought into the factory and allowed to remain in a pickle of salt and water long enough to harden the same and make it satisfactory eating."

The statements appearing in the foregoing quotations were also supported by a considerable volume of other testimony which was submitted to the board on behalf of the importers. The witnesses who were thus called and examined appear to have been intelligent, experienced, and sincere.

On the other hand, the Government introduced the testimony of a large number of witnesses of like character, which testimony almost directly contradicted each and all of the statements made in the foregoing quotations. According to the Government's evidence, the herring and mackerel in tomato sauce are salted so slightly before canning as to make that factor wholly negligible in framing a description of the article for tariff purposes; and, furthermore, according to the Government's claim, the term "salted" as applied to such fish has a well-established commercial meaning, synonymous with the term "pickled," signifying the complete curing and preservation of the fish by means of salt or salt brine alone.

Nevertheless upon a consideration and comparison of all the evidence in the case the court is of the opinion that the board was justified in finding with the importers and against the claim of the Government upon the question of commercial designation, and also as to the name and character of the articles in question. Some of the contradictions which appear in the testimony probably result from the fact that different methods of preparing and preserving such fish may prevail at different places and in different seasons of the year; and that fish of the same name may sometimes differ so much in size and condition as to require different methods of treatment.

The testimony, however, as applied to the importations, indicates that the so-called fresh herring and mackerel are, in fact, slightly salted before they are canned; that the herring and mackerel in bouillon and tomato sauce are first carefully salted, then flavored with a small amount of material, and then canned and sterilized by heat; and that the so-called soused herring and mackerel are first salted and processed and finally put up in a pickle of spiced vinegar. The salting process which is applied to the so-called fresh fish and to those in bouillon and tomato sauce is a substantial factor in

their preparation; it makes the flesh of the fish firmer and thereby prevents the fish from breaking; it affects the flavor of the fish, whether subsequently cooked or not; and it aids materially in the preservation of the fish both before and after canning, if indeed it be not essential thereto.

These conclusions justify the classification which is adopted by the board in its decision.

The so-called fresh herring of the present importations had received the benefit of the process of salting, and although the process was slight in their case, yet it was sufficient to advance the articles to the higher duty imposed upon salted herring as compared with fresh herring by paragraph 272. In paragraph 273 the same rate of duty applies alike to fresh and salted mackerel.

In respect to the so-called soused herring and mackerel, it seems clear that the preparation of vinegar and spices in which the fish were put up was in fact a pickle, and therefore that the classification of herring and mackerel, pickled, furnishes an eo nomine designation of the articles.

As to the herring and mackerel in tomato sauce, or in bouillon, it may be said that the fish were salted as the first and fundamental process in their preservation, and it was as salted fish that they were flavored by the small addition of tomato or other sauce, which changed their appearance and taste but did not essentially change their character. It was also as salted fish that they were placed in the cans and sterilized by heat. This latter process, like the salting itself, was vitally important to their preservation, nevertheless it is not inapt to describe the final product as salted fish, even though cooked. And as between the classification of herring or mackerel, salted, upon the one hand, and the classification of other fish (except shellfish) in tin packages, upon the other hand, the former description is more apt and specific for articles thus prepared and preserved. It is true that the salting process is not the only process which was applied in the treatment and preservation of these fish; possibly it was not the most important one, but nevertheless it was a substantial one and furnishes an apt method of describing the articles in question.

It is true that pickled, smoked, and kippered herring are also generally salted herrings, but they are more narrowly and specifically distinguished by the terms pickled, smoked, and kippered, as used in the paragraph. On the other hand, the herring which are not pickled, smoked, or kippered, but which are first salted and then variously flavored with different sauces which change with the markets and the seasons, find in the term salted a description which is as clear and specific as is practicable under the circumstances. And thus a consistent meaning is attached to each of the descriptive terms used in the paragraph.

Upon a review of the record the court therefore finds that the decision of the board is sufficiently sustained by the evidence, and the same is affirmed.

EXHIBIT 22.—(T. D. 33311.)—*Matches.*

UNITED CIGAR STORES CO. ET AL. *v.* UNITED STATES (No. 952).

1. "FANCY."—"Fancy" is the antonym of "plain," "common," "ordinary," "staple," and to say that a thing is "fancy" implies that it has a value or has characteristics not found in the article of simpler type.
2. FANCY MATCHES, WHAT NOT.—No commercial designation is shown. The goods have no quality which is not found in the ordinary safety match of trade, and they have the same common use. The duty imposed on fancy matches was intended to fall on matches that served some purpose not answered by the ordinary article. The importation is dutiable at three-fourths of 1 cent per thousand under paragraph 436, tariff act of 1909.

United States Court of Customs Appeals, March 25, 1913.

Appeal from Board of United States General Appraisers, Abstract 28911 (T. D. 32645), Abstract 28971 (T. D. 32655), and Abstract 29212 (T. D. 32681).

[Reversed.]

Comstock & Washburn for appellants.

William L. Wemple, Assistant Attorney General (William K. Payne, Deputy Assistant Attorney General, of counsel), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

Smith, judge, delivered the opinion of the court:

The merchandise involved in this appeal was classified by the collector of customs at the port of New York as fancy matches and assessed for duty at 35 per cent ad valorem under that part of paragraph 436 of the tariff act of 1909 which reads as follows:

"436. * * * Wax and fancy matches and tapers, thirty-five per centum ad valorem."

The importers claimed by protest that the goods were "matches, friction or lucifer, of all descriptions, * * * imported otherwise than in boxes containing not more than one hundred matches each," and that they were therefore dutiable at three-fourths of 1 cent per 1,000 matches under that part of said paragraph which reads as follows:

"436. Matches, friction or lucifer, of all descriptions, * * * when imported otherwise than in boxes containing not more than one hundred matches each, three-fourths of one cent per one thousand matches; * * *."

The importation consists of matches made of thin flat sticks tipped with some ignitible composition colored yellow. The wood from which these matches are made is first cut into flakes about 2 inches long, an inch wide, and one-sixteenth of an inch thick. Each flake is stained red and cut into 12 pointed splints joined together at the bottom by a common wooden base from which they have not been completely severed. After tipping the splints the flakes are made up in pairs and pasted to a paper folder or wrapper in such a way that they may be conveniently carried in the vest pocket and the splints readily broken off one at a time as required. The folder or wrapper is provided with the specially prepared striking surface required for the ignition of the safety match and is so designed that it serves the double purpose of protecting the matches from injury and of advertising various kinds of goods.

The Board of General Appraisers found that the goods were fancy matches within the meaning of paragraph 436 and that they were therefore dutiable as assessed by the collector. The protests were accordingly overruled and the importers appealed.

Fancy matches and safety matches were not provided for eo nomine in the act of 1897, and while that act was in force all matches were classified under paragraph 423 thereof as "matches, friction or lucifer, of all descriptions." Paragraph 423 is as follows:

"423. Matches, friction or lucifer, of all descriptions, per gross of one hundred and forty-four boxes, containing not more than one hundred matches per box, eight cents per gross; when imported otherwise than in boxes containing not more than one hundred matches each, one cent per one thousand matches."

This paragraph was amended in such a way by paragraph 436 of the present tariff act that fancy matches were under that designation burdened with a duty of 35 per cent ad valorem, and the pending controversy arises from the fact that the collector of customs at the port of New York classified the importation here involved as fancy matches.

The provision for fancy matches in the new law seems to have been first subjected to interpretation at the instance of G. W. Sheldon & Co., of Chicago, who protested that an importation of safety matches made by the firm as agents for an unknown consignee were fancy matches and therefore dutiable at a higher rate of duty than assessed by the collector. On the hearing of that protest the evidence adduced by the Government and the importers proved to a conclusion that the designation "fancy matches" had never been used by dealers in matches and that it was a term wholly unknown to the trade. Nevertheless the witnesses on both sides testified with singular accord that safety matches and all matches which required a specially prepared surface to be struck should be regarded as "fancy matches" rather than as friction or lucifer matches, which might be struck anywhere. Evidently on the assumption that there was no real contest between the Government and the importers the Board of General Appraisers declined to make a decision upon this testimony, and of its own motion cited a number of witnesses who testified to their personal understanding of "fancy matches," although they all agreed that the term was never used in the match business. The board, after consideration of the evidence originally taken and that produced on its own motion, held in effect: (1) That safety matches put up in boxes or with undyed sticks in plain unprinted booklets were not fancy matches; (2) that safety matches with colored heads and dyed sticks or colored paper stems put up in printed booklets were fancy matches; (3) that wind matches or other matches serving the purposes of matches but designed to meet special conditions were fancy matches; (4) that so-called matches which did not serve the purposes of matches but which were designed to produce beautiful or scintillating effects were fireworks. (T. D. 31017.)

The matches now under under consideration are matches of the second class—that is to say, matches with colored heads and stained sticks or colored paper stems, put up in printed booklets. The protests directed to matches of this kind and claiming that they should not be classified as "fancy matches" were submitted to the board on the testimony taken in the Sheldon case and on the testimony of five additional witnesses produced by the appellants at the hearing. These witnesses testified that the phrase "fancy matches" had no special meaning in the trade, and to that extent

confirmed the evidence in the Sheldon case. In this case, as in the Sheldon case, each witness was allowed to give his own idea of what constituted a fancy match, with the result that there were nearly as many different ideas of a fancy match as there were witnesses. Some thought that a fancy match was a superior match—a match which would burn without an afterglow and which could be struck without breaking the stick or removing the head. Others thought that it was one which had some special value or upon which some special labor had been expended or which was more expensive than the ordinary match. Still others ventured the opinion that it was one which was not commonly used.

The witnesses whose testimony was submitted to the board for consideration were competent to establish any special meaning which the designation "fancy match" had in the trade; but, failing that, none of them was competent to testify as to what was commonly and generally understood by that expression. The special meaning which words and phrases have in trade, commerce, and the arts and sciences may in a proper case be proved by the testimony of witnesses. The ordinary signification of the words of common speech, however, is a matter of law within the judicial knowledge and is not usually made the subject of proof. United States *v.* Nordlinger (121 Fed., 690, 693); Toplitz *v.* Hedden (33 Fed., 617); Marvel *v.* Merritt (116 U. S., 11–12).

In common parlance a fancy article is one which is out of the ordinary; that is to say, one which has some special quality, virtue, or value not found in the article commonly used and not required by the use to which the ordinary article is commonly put; or it may be something which pleases not so much because of the qualities which make it useful as because of characteristics which appeal to the taste and to the fancy. "Fancy" is the antonym of "plain," "common," "ordinary," "staple," and to say that a thing is fancy necessarily implies that it has a value or characteristics not found in the articles of simpler type. There is nothing esthetic or fanciful about the goods in controversy, and in them is no quality or virtue which is not found in the ordinary safety match in general use. They are flimsy, safety matches, and beyond the fact that they are small, ordinarily cost nothing to the consumer, lie flat in the package, and may be conveniently carried, there is nothing about them which would recommend them to the consumer. Far from having any special value they are an inferior grade of match which is not sold but given away to smokers and which is not worth half as much as a good lucifer match. The fact that the sticks or stems of the matches are stained and that they are presented to the consumer in booklets can not be regarded as giving a character to the goods which would justify their designation as fancy matches. Indeed, that principle was recognized by the board itself in the Sheldon case, when it held that better matches with stained sticks put up in boxes and better matches with plain sticks put up in booklets were not fancy matches. Stained or unstained the matches are sold to the dealer for the same price, and their transformation into a fancy match can not be effected by putting them up in a booklet which advertises many kinds of goods rather than in a box which advertises matches only. The manner of putting up the matches might possibly give them the character of a novelty, but certainly by itself it would not be sufficient to make out of them a fancy article.

The contention that all safety matches are fancy matches is not supported by any sound reason and can not be sustained. The evidence tends to show that 90 per cent of all the matches imported are safety matches, and that they have been in common use in this country for 25 years. Prior to the passage of the tariff act of 1909 these matches were apparently classified as friction matches, and if Congress has intended to take them out of that classification and to impose upon them a higher rate of duty it does seem that they would have been provided for under the name by which they were commonly and generally known rather than under a designation which all the witnesses agree was never applied in the trade to the safety match. When a duty of 35 per cent ad valorem was laid on fancy matches Congress intended, in our opinion, to subject to that duty only those matches which as matches served some purpose which could not be met by the ordinary match, and that interpretation of the legislative will seems to be borne out by the fact that fancy matches are enumerated with wax matches and tapers, each of which performs a function which could not be performed by the ordinary match.

The decision of the Board of General Appraisers is reversed.

Barber, judge, did not participate in this decision.

EXHIBIT 23.—(T. D. 33310.)—*Hams in tins.*

NEUMAN & SCHWIERS CO. ET AL. *v.* UNITED STATES (No. 1010).

HAMS, WHEN NOT PREPARED OR PRESERVED MEAT.—These hams have not lost their name or their character by reason of any process to which they were subjected before importation; and the eo nomine provision for hams in paragraph 284, tariff act of 1909, being more specific than that for prepared or preserved meats in paragraph 286, paragraph 284 controls.

United States Court of Customs Appeals, March 21, 1913.

Appeal from Board of United States General Appraisers, Abstract 29530 (T. D. 32767).

[Reversed.]
Comstock & Washburn for appellants.
William L. Wemple, Assistant Attorney General (Charles Duane Baker, special attorney, of counsel), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise in question comes packed in hermetically sealed tin cans. Each can contains the meat of a cured and cooked ham, from which the bone has been removed. It does not appear in the record that the meat has been cut into pieces or otherwise changed in form, except in so far as that result necessarily follows from cooking and from the extraction of the bone. Each can of the importation is said to contain the entire meat of a single ham only and has the usual shape of a ham in outline.

The present importation comes from Germany, and a sample package has been submitted as an exhibit in the case. It bears a label printed in German and substantially repeated in English. The German label reads as follows: "Prima Gekochter Hamburger Schinken, Ohne Knochen, Gebrauchsfertig," which is said to mean "Prime cooked Hamburger ham, without bone, ready for use." The English label, which is printed as part of the same paper, reads as follows: "Prager style, cooked ham, without bone (ready for use), made in Germany," followed by the name of appellants as sole agents.

The merchandise was assessed with duty at 25 per cent ad valorem as prepared or preserved meat, under paragraph 286 of the tariff act of 1909. The importers duly filed their protest claiming a duty of 4 cents per pound upon the article as hams, under paragraph 284 of the act.

The several paragraphs of the act relating to meats are as follows:

"284. Bacon and hams, four cents per pound.

"285. Fresh beef, veal, mutton, lamb, pork, and venison and other game, except birds, one and one-half cents per pound.

"286. Meats of all kinds, prepared or preserved, not specially provided for in this section, twenty-five per centum ad valorem."

The protest was heard upon testimony by the Board of General Appraisers and was overruled. From that decision the importers now appeal.

As has been stated, the competition in the case is between the provision for hams contained in paragraph 284 and the provision for prepared or preserved meats contained in paragraph 286, above copied. It is immediately apparent that the eo nomine provision for hams is more specific than that for prepared or preserved meats and must control the assessment in case the importation nominally falls within both paragraphs.

The real question, therefore, is whether or not the merchandise consists of hams. If so, they should be assessed as such under paragraph 284. In answer to this question the court holds upon the evidence that each can of the importation actually contains a single ham and that the entire importation is therefore composed of hams.

It is conceded that the article at bar in its first estate is a ham, within the full and common meaning of that term. It is, then, the thigh of a hog cured by salting and smoking. If the article were then packed within a tin without further processing, it would undoubtedly remain a ham and would be dutiable as such. The question then arises whether or not the treatment of the article preliminary to its packing so changes its character and identity as to disentitle it to its original name. That treatment consists of two parts: First, the entire ham is cooked, and next, the thigh bone is removed. This is all that is done to the article before it is packed in the tin container. The court is of the opinion that the article in question does not lose its name and character

as a ham by reason of either or both of these processes. The meat is, of course, the valuable part of the ham, and that is the real importation in any event; and when the entire meat of a single ham is packed alone in a single tin, not changed in any particular except that it has been cooked and the bone removed, it seems to the court that the contents of the tin may still be called a ham within the meaning of that term as used in the cited paragraph.

In this view of the case the court reverses the decision of the board and directs a reliquidation of duty in accordance with the foregoing opinion.

Reversed.

EXHIBIT 24.—(T. D. 32353.)—*Dressed lava stone.*

MANUFACTURERS' PAPER CO. *v.* UNITED STATES (No. 737).

DRESSED LAVA STONE—UNENUMERATED MANUFACTURED ARTICLE.—These dressed lava stones are used as a part of drums in wood-pulp machines. The words "hewn, dressed, or polished" in paragraph 118, tariff act of 1897, would seem to have reference to the advancement of building stone as such, and the importation is not one of building stone. These stones in fact had been adapted for another and distinct use. They were dutiable as unenumerated manufactured articles at 20 per cent ad valorem, under section 6, tariff act of 1897. Vantine case (159 Fed. Rep., 289). United States *v.* Tamm (2 Ct. Cust. Appls., 425; T. D. 32173), distinguished.

United States Court of Customs Appeals, March 20, 1912.

Appeal from Board of United States General Appraisers, Abstract 26111 (T. D. 31757).

[Decision reversed.]

Comstock & Washburn (Albert H. Washburn and J. Stuart Tompkins of counsel) for appellant.

William L. Wemple, Assistant Attorney General (Charles Duane Baker on the brief), for the United States.

Before Montgomery, Barber, De Vries, and Martin, judges.

Montgomery, presiding judge, delivered the opinion of the court:

The importation in this case consisted of lava stone 5 or 6 feet in length, about 9 inches in depth, by 5 inches in width, the longer sides converging so that a cross section of the stone would not show as a parallelogram but somewhat wedge-shaped. In their use they are fitted into an iron drum, the reduced edge of the stone being inserted in the pocket of the drum and cemented in. In its completed form this drum with the stone surface is used for grinding up paper pulp. As imported, the surface of the stone is left rough, but on the 5-inch side of the stone grooves are cut from one-half to three-fourths of an inch in depth and of varying lengths the entire length of the stone. After being imported the 5-inch surface is smoothed down leaving the grooves, however, as they were, and it is then used as before stated as part of a drum in a wood-pulp machine.

The stone was assessed for duty under paragraph 118 of the tariff act of 1897 reading:

"Freestone, granite, sandstone, limestone, and other building or monumental stone, except marble and onyx, not specially provided for in this act, hewn, dressed, or polished, fifty per centum ad valorem."

It is claimed by the importers that the importation was dutiable under paragraph 119 as "Grindstones, finished or unfinished, one dollar and seventy-five cents per ton," or at 20 per cent ad valorem under section 6 as a nonenumerated article manufactured in whole or in part. The Board of General Appraisers sustained the collector's classification, and the importer appeals to this court.

The first question arising is whether the goods were properly classified by the appraiser. The testimony upon the question of whether the material of which these articles are made could properly be called building stone is not altogether clear or convincing. The only testimony offered by the Government was that of two witnesses taken in a previous case and would seem to be almost wholly hearsay. It is perhaps only fair to say that upon this question the testimony of the importers is also negative, and that if the case were to turn upon the question of whether, based upon the appearance and composition of the stone, it is properly classifiable as a building stone, the collector's classification being prima facie correct ought to prevail. But whatever might be the view as to whether these are to be treated as building stone, there would still be very serious doubt as to whether they would come under the

designation in paragraph 118 as hewn, dressed, or polished, within the meaning of that phrase. It would seem that those words "hewn, dressed or polished" would have reference to the advancement of building stone as such and that if they were hewn or dressed for any other or different use than as building stone, they would not come within that paragraph of the act, although they might fall under the preceding paragraph, No. 117.

But we think these articles were not properly assessed as building stone for another reason. In Athenia Steel & Wire Co. *v.* United States (1 Ct. Cust. Appls., 494; T. D. 31526), the rule was stated that—

"In order to bring any material for manufacturing within a tariff designation which covers one of its ultimate uses, it should be so far advanced by the processes applied thereto in the line of that particular ultimate use that, either from an examination per se evidences of its ultimate use are made clear, or so far advanced that its utility in any of its other possible uses shall have been destroyed."

We think, applying that rule to this case, that these articles are evidently not fitted for use as builders' stone, and are adapted to another and distinct use. In this respect the case is similar to the Vantine case (159 Fed. Rep., 289, and 166 Fed. Rep., 751), in which that same paragraph was under consideration. In that case stone lanterns were in controversy. It appeared that the parts or pieces imported had been cut and dressed, consisting of bases, dies, and caps, the top dies having holes or openings bored or cut through the sides thereof, and it also appeared from the evidence that those pieces were put together and set up in parks or graveyards. It was held in that case that these stones were no longer dutiable as building stones, but had become articles adapted to another and different use.

The authority of this decision was recognized in Austin *v.* United States (1 Ct. Cust. Appls., 510; T. D. 31532), where it was said—

"When such stone, although it formerly may have been monumental or building stone, is cut into the form of an article like a stone lantern, used as an ornamental garden lantern, it is no longer suitable for building purposes or for monumental stone."

We think the same may be said of this importation. True these blocks might be broken in pieces and portions of them made use of. They might be ground up and used in that form. But in the form in which imported, they are not adapted to use as building stone. The fitness of the native stone for such use has been destroyed, and it has been devoted to a new use.

It remains to determine whether this importation should be dutiable as grindstone. It is urged that it should be held dutiable as grindstone by similitude, and certain definitions of a grindstone are given in the brief of counsel from Murray, the Standard, and Webster's New International Dictionary, in which, under grindstone, appears the word "millstone." But the citation as given is misleading, for upon examining the dictionaries cited, it appears that "millstone" as so used is an obsolete word. So that we are left to compare this article with a grindstone, the meaning of which is well understood, and we think this importation as it is made bears no similitude to a grindstone.

At the argument the query was made as to whether this case would fall within the rule of United States *v.* Tamm & Co. (T. D. 32173; 2 Ct. Cust. Appls., 425). The present case, however, arose under the act of 1897 and the applicable paragraph 97, which was held not to include articles which were not susceptible of decoration. United States *v.* Downing (207 U. S., 354). See, also, Fensterer & Ruhe *v.* United States (1 Ct. Cust. Appls., 93; T. D. 31110). The importation could not therefore under these rulings be held dutiable as earthy or mineral substances. The Tamm case arose under paragraph 95 of the act of 1909, which covers articles or works of earthy or mineral substances, whether susceptible of decoration or not.

It follows that the goods should have the same classification that was given to stone lanterns in the case of United States *v.* Vantine, supra, 20 per cent as an unenumerated manufactured article. The decision of the Board of General Appraisers will be reversed and the case remanded with directions to reliquidate accordingly.

Smith, Judge, did not sit in this case.

EXHIBIT 25.—(T. D. 32383.)—*Containers or coverings.*

UNITED STATES *v.* PEABODY & CO. (No. 725).

COVERINGS OF LIQUIDS AND SEMILIQUIDS, TARIFF ACT, 1897.—Section 19, customs administrative act of 1890, provides that there shall be included in the dutiable value of merchandise subject to an ad valorem rate of duty the value of all cartons, crates, boxes, sacks, and coverings of any kind. The construction of this clause has been established in the light of the rule ejusdem generis, and the containers named have been limited to coverings of dry or solid merchandise. This construction is now adhered to.—United States *v.* Nichols (186 U. S., 298); Austin *v.* United States (1 Ct. Cust. Appls., 465; T. D. 31508).

United States Court of Customs Appeals, April 1, 1912.

Appeal from Board of United States General Appraisers, G. A. 7238 (T. D. 31717).

[Decision affirmed.]

Wm. L. Wemple, Assistant Attorney General (Frank L. Lawrence on the brief), for the United States.

Walden & Webster (W. Wickham Smith of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

This appeal is brought by the Government to establish the status, under the tariff act of 1897, of certain containers which were brought into this country filled with ad valorem contents of a liquid or semiliquid character.

Under that act the appellees imported various consignments of pineapples, Scotch kippered herrings, Yarmouth bloaters, oil geranium reunion, oil patchoule, and oil pennyroyal, all in hermetically sealed tins, chowchow and anchovy paste, in stone jars; alizarin green S. W. paste, in barrels, and rosewater in a metal drum.

The imported goods were severally dutiable at ad valorem rates, and in each instance the collector added the value of the container to the value of its contents in order to find the dutiable valuation upon which the respective rates of duty should be assessed.

The importers protested against that action of the collector, claiming that the value of the containers should not be added to the value of their contents for the purpose of fixing their dutiable valuation, but that the appropriate duty should be assessed upon the value of the contents alone, without regard to the value of the containers.

The protest was heard by the Board of General Appraisers, and was sustained. The Government now applies for a reversal of that decision.

The issue thus presented requires an interpretation of section 19 of the customs administrative act of June 10, 1890. That section is here copied in full:

"SEC. 19. That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities, at the time of exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subject if separately imported. That the words 'value,' or 'actual market value,' whenever used in this act or in any law relating to the appraisement of imported merchandise shall be construed to mean the actual marked value or wholesale price as defined in this section."

The foregoing section provides that whenever imported merchandise is subject to an ad valorem rate of duty the duty shall be assessed upon the actual market value thereof at the time of exportation in the principal markets of the country from whence imported, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

The Government contends that the foregoing section required the collector, in assessing ad valorem duties upon the importations at bar, to add the value of the

containers, namely, the hermetically sealed tins, the wooden barrels, the stone jars, and the iron drum, to the value of their respective contents, in order to find the dutiable value upon which the ad valorem rates were to be assessed; and that the action of the collector to that effect should have been sustained by the board.

The importers take issue with the foregoing claim; they contend that the ad valorem duties should have been assessed upon the value of the contents only; and that the decision of the board to that effect should be affirmed.

In the case of United States *v.* Nichols (186 U. S., 298), section 19, above copied, received an interpretation by the Supreme Court of the United States. The case came to that court from the Circuit Court of Appeals for the second circuit, which, being in doubt with regard to the question of law arising therein, desired the instruction of the Supreme Court for its proper decision. The importation was made under the tariff act of 1894, and consisted of ad valorem goods contained in glass bottles holding not more than 1 pint, and upon those facts the following question was certified to the Supreme Court:

"Should the value of the bottles filled with ad valorem goods be added to the dutiable value of their contents, under section 19 of the customs administrative act of 1890, to make up the dutiable value of the imported merchandise?"

The court upon consideration answered this question in the negative, basing that answer upon two reasons which may briefly be summarized as follows: In the first place, that section 19 did not include the glass bottles in question because such bottles were made dutiable by eo nomine provisions of the tariff act of 1894, as they had been by the tariff act of 1883, and those specific provisions should govern the articles in question rather than the merely regulative provisions of the administrative act; and in the second place, that the provisions of section 19 did not include the glass bottles in question, because those provisions related only to coverings of dry or solid contents, and not to bottles nor any other containers of liquid contents.

Each of these two separate reasons was complete within itself; each one was directly determinative of the issue before the court; and because of them, and of each of them, the Supreme Court held that the glass bottles in question were not governed by section 19, and that their value should not be added to the value of their contents, to make up dutiable valuation for ad valorem assessment.

The foregoing statements are sustained by the following extract from the opinion of the Supreme Court in the case above mentioned:

"Though the tariff act of 1883 is not directly in issue in this case, it is pertinent to inquire whether the sections above cited respecting duties upon glass bottles were repealed by section 19 of the customs administrative act. We are of opinion that they were not. The customs administrative act was not a tariff act, but, as its title indicates, was intended 'to simplify the laws in connection with the collection of the revenues' and to provide certain rules and regulations with respect to the assessment and collection of duties and the remedies of importers and not to interfere with any duties theretofore specifically imposed or thereafter to be imposed upon merchandise imported. Section 19 was intended to provide a general method for the assessment of ad valorem duties and to require the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind to be included in such valuation. We think the rule ejusdem generis applies to the words 'coverings of any kind,' and that glass bottles, which are never in ordinary parlance spoken of as coverings for the liquor contained in them, is such a clear departure from the preceding words as to exempt them from the operation of the section, provided at least they are taxed under a different designation. It is very singular that if Congress intended to include under the words 'coverings of any kind' vessels used for containing liquors it should not have made use of the words casks, barrels, hogsheads, bottles, demijohns, carboys, or words of similar signification. The inference is irresistible that by the word 'coverings' it only intended to include those previously enumerated and others of similar character used for the carriage of solids and not of liquids. Webster defines a covering as 'anything which covers or conceals, as a roof, a screen, a wrapper, clothing,' etc.; but to speak of a liquid as being covered by the bottle which contains it is such an extraordinary use of the English language that nothing but the most explicit words of a statute could justify that construction.

"So, too, by cartons, cases, crates, boxes, and sacks we understand those incasements which are not usually of permanent value, and such as are ordinarily used for the convenient transportation of their contents. Indeed it is quite plausible that they were made taxable in a general way by the customs administrative act in order that, if they were so made as to be of further use after their contents were removed, they might not escape taxation. The ordinary cartons, cases, crates, boxes, and sacks are of no value after their contents are removed, but in order that they should not escape taxation altogether if they were of permanent value they were included in the general terms of the customs administrative act."

In the case of Austin *v.* United States (1 Ct. Cust. Appls., 465; T. D. 31508), this court had before it certain containers of liquid or semiliquid contents, similar to those now at bar. Upon the authority of the Supreme Court decision, just above cited, this court held that such containers, like the glass bottles involved in that case, were not within the purview of section 19 of the customs administrative act, and that the value of such containers should not be added to that of their contents, to make up the dutiable valuation upon which the ad valorem rates were to be assessed. The appellant now asks the court to overrule its decision in the foregoing case; and in that behalf appellant contends that the Supreme Court decision in the Nichols case does not properly bear the interpretation placed upon it by this court in the Austin case; or if it does that this court should decline to follow it.

However, upon a consideration of the issue presented, the court reaches a conclusion in accord with that announced in the Austin case.

On June 10, 1890, when the section under review was enacted, the law upon the subject of the usual coverings of ad valorem goods was contained in section 7 of the tariff act of March 3, 1883. By its terms it was expressly provided that in ascertaining the value of goods to be imported, the value of the usual and necessary sacks, crates, boxes, or coverings of any kind should not be estimated as part of the value of the goods in determining the amount of duties for which they were liable.

In Meyers *v.* Shurtleff (23 Fed. Rep., 577, 580), being a case under the act of 1883, the Circuit Court for the District of Oregon reviewed the prior enactments upon this subject, and said:

"From this statement of congressional action or legislative habit on this subject, it may fairly be inferred that the expense of the 'coverings' of imported merchandise is never to be included in ascertaining the 'dutiable value' thereof, unless the statute expressly so provides."

The foregoing observation is little more than a statement that duties are not to be levied by construction, but only by express legislative enactment. It therefore appears that both the common law of the subject, using that term by analogy, and also the express provisions of section 7 of the tariff act of March 3, 1883, inhibited the addition of the value of usual coverings to the value of their contents, in ascertaining the dutiable valuation of ad valorem importations; and that this condition obtained at the passage of the customs administrative act of 1890.

Section 19 of that act amended the existing law upon the subject, by providing that there should be included within the dutiable valuation of ad valorem merchandise "the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States."

In construing this section it is at once apparent that the specified coverings, namely, cartons, cases, crates, boxes, and sacks, are all invariably used as coverings for dry or solid contents only. If Congress had designed to include containers for liquids within that provision, it is certainly reasonable to believe that some such container would appear by name in this list. The fact that no such container is named in the schedule is most significant against appellant's contention. Nor is this statement answered by a reference to the following provision for "coverings of any kind." That phrase, while nominally general, is an associate phrase standing in conjunction with the preceding list or schedule, and under the rule of ejusdem generis it should be limited to coverings of the general character of those specified therein. The principal characteristic possessed in common by the coverings specified in the section is their exclusive use as coverings for dry or solid contents only. The residuary phrase should not be extended beyond that meaning; to do so would be a violation of the rule of ejusdem generis, for the purpose of providing a duty by construction. The section in question provides also for the inclusion of "all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States;" but this provision does not have the effect contended for by appellant. The subject of coverings is provided for eo nomine by the section, and it is reasonable to conclude that any kind of covering not included within the eo nomine provision for coverings was intended to be excluded from the section, rather than to be included by force of the general provision for costs, charges, and expenses. And this doubtless was the view taken by the Supreme Court in the Nichols case. For although this provision was not specifically discussed in the decision of that case, it can not be assumed that it was simply overlooked by the court.

This construction is consistent with the terms of prior enactments upon this subject. In section 24 of the act of June 30, 1864, it was provided that in ascertaining the dutiable value of imported goods there should be added "the value of the sack, box, or covering of any kind in which such goods are contained," and also all "costs and charges paid or incurred for placing said goods on shipboard, and all other proper charges specified by law."

The foregoing enactment was repealed by section 7 of the act of March 3, 1865.

By section 9 of the act of July 28, 1866, it was again provided that in ascertaining the dutiable value of imported merchandise there should be added the cost of transportation, with all expenses included, and also "the value of the sack, box, or covering of any kind in which such goods are contained." This enactment became section 2907, Revised Statutes.

The foregoing section, 2907, and also section 2908, Revised Statutes, were repealed by section 7 of the act of March 3, 1883, whereby it was provided that none of the "charges imposed by said sections" should be included within the dutiable valuation of merchandise, nor "shall the value of the usual and necessary sacks, crates, boxes, or covering of any kind be estimated as part of their value in determining the amount of duties for which they are liable."

It may be observed that the foregoing sections, whenever making specific provision for coverings, named only such as manifestly serve for dry or solid contents only, and that the present word "coverings" was at first used in the singular, "covering," being more plainly ejusdem generis; and furthermore, that the terms "costs," "charges," and "expenses" as used in this connection were distinguished from the value of the coverings.

"The 'costs' and 'charges' of which these statutes speak, unless otherwise expressly stated, are the items of expense incurred by the importer in and about the purchase of goods, and afterwards, and before their arrival at the port of entry. They do not, unless specially mentioned, include the cost of the sack, box, or covering in which the goods are usually contained and purchased. And it may be admitted that when the statute declares 'without more'—without qualification—that the dutiable value of imported merchandise is 'the actual market value or wholesale price' in the principal markets of the country whence the same is imported, that such value includes the cost of the sack, box, or covering in which it is usually contained and purchased. Cobb *v.* Hamlin (3 Cliff., 200). The cost or expense of the covering usual and necessary for the protection and transportation of an imported article from the place of purchase is, as a matter of fact, an element of its value at such place. And the only question in this case is whether or not Congress has said, without qualification, that the dutiable value of this cement is 'the actual value or wholesale price' in London. And, *first*, although the 'actual value' of an article in the country where purchased does, in the abstract, include the cost of the outside package in which it is contained and placed for shipment, yet it is plainly inferable from the terms of the legislation on the subject, as above stated, that whenever Congress has intended to include that expense in such value as a basis for estimating duties it has expressly said so. To go no further back than 1864, that act expressly provided that the 'dutiable value' of goods should be their value on shipboard, to be ascertained by *adding* to their value at the place of growth, production, or manufacture, among other things, 'the value of the sack, box, or covering of any kind' in which they are contained. The act of 1865 simply made the 'dutiable value' of goods their 'actual market value' at the period of exportation, and expressly repealed section 24 of the act of 1864, requiring the value of the 'covering' to be considered in ascertaining such 'market value,' while the act of 1866 simply restored the rule of valuation prescribed by the act of 1864. Meyers *v.* Shurtleff, supra· Attorney General's opinion, contra (T. D., 6121); Oberteuffer *v.* Robertson (116 U. S., 499)."

It therefore appears that prior to the enactment of the customs administrative law in 1890 the value of usual coverings or containers, whether of dry or liquid contents, under the general rule, was not to be included as an element in ascertaining the dutiable value of their contents for ad valorem assessment. By the act of 1890, only such coverings or containers as were affirmatively indicated therein were taken out of the foregoing general rule. Those so indicated were, first, "cartons, cases, crates, boxes, and sacks," which plainly did not include containers for liquids, and next, "coverings of any kind," restricted nevertheless by the context to the genus of dry coverings first named. It further appears that the subject of containers did not come within the provisions for "costs," "charges," and "expenses," in the light of the legislative history of those terms in this connection, nor in the proper construction of section 19 taken alone.

Therefore the court concludes that the decision of the Supreme Court in the Nichols case, above referred to, in effect covered the issue made in this case; and that the decision is not only supported by the great authority of that court, but also is based upon sound principles of construction, and should be followed by this court. That decision appeared in 1902; the merchandise involved in the present case was afterwards imported under the same administrative act as that construed by the court in that case. Under such circumstances the rule of stare decisis is entitled to weight, and should not be ignored in a review of the issue thus presented.

Upon these considerations the court affirms the decision of the board.

EXHIBIT 26.—(T. D. 32623.)—*Reappraisement.*

MADDAUS *v.* UNITED STATES (No. 853).

REAPPRAISEMENT WITHOUT SAMPLES.—The decision in Oelrichs *v.* United States (2 Ct. Cust. Appls., 355; T. D. 32091) does not modify the decision in Tilge *v.* United States (1 Ct. Cust. Appls., 462; T. D. 31507). In the case here not only was there no sample before the appraising officer or a legal substitute therefor, but the record discloses that the jurisdiction of the appraising officer was protested because of that fact. Until the jurisdictional requirements of the statute have been complied with there can be no "decision," as contemplated by the statute to be accepted as final in character.

United States Court of Customs Appeals, May 31, 1912.

Appeal from Board of United States General Appraisers, G. A. 7311 (T. D. 32109).

[Decision reversed.]
Brown & Gerry for appellant.
William L. Wemple, Assistant Attorney General (William K. Payne, Deputy Assistant Attorney General, of counsel), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

De Vries, judge, delivered the opinion of the court:

This appeal involves the validity of a reappraisement proceeding. The reappraisement was held by a single general appraiser and related to certain machines. The appeal was by the collector. Prior to the hearing of the case the machines in question had been disposed of by the importer to purchasers in different parts of the United States. It is conceded that the machines were, therefore, not before the general appraiser when he heard the case, and as the only samples of the machines must, of necessity, be the machines themselves, there were no samples of the same. The opinion of the board recites, as affirmatively shown by the record, that "the general appraiser heard the case over the protest of the importer."

The importer protested against the proceeding by the general appraiser upon the ground that the machines were not before him, and that, therefore, he was without jurisdiction to proceed in the premises. The board affirmed the validity of the reappraisement upon the theory that the decision in Oelrichs & Co. *v.* United States, decided by this court (2 Ct. Cust. Appls., 355; T. D. 32091), modified the previous decisions of this court in Tilge *v.* United States (1 Ct. Cust. Appls., 462; T. D. 31507), and same (2 Ct. Cust. Appls., 149; T. D. 31676), and Loeb *v.* United States (1 Ct. Cust. Appls., 385; T. D. 31479).

The board stated:

"In Oelrichs *v.* United States, decided by the Customs Court December 6, 1911 (T. D. 32091), we understand the Tilge case to have been modified in this respect. In the Oelrichs case it affirmatively appeared that the collector had not complied with this provision of section 2901. While the court held that this is mandatory, they held that the board, nevertheless, had jurisdiction of the case and that the reappraisement proceedings before the board, in other respects being regular and proper, were valid."

The Oelrichs case, supra, in no sense modified the doctrine announced by this court in the Tilge and Loeb cases, supra. On the contrary, that which in the Tilge case (T. D. 31676) was intimated, obiter, was adopted in principle in the opinion of the court in the Oelrichs case, and it was so announced by the court. In the Tilge case, supra, not only were there no samples before the general appraiser and no legal substitute therefor, but the right of the general appraiser to proceed therein was for that reason challenged. In the Oelrichs case the fact was pointed out by this court that not only was no objection made to the procedure of the general appraiser, but samples of the merchandise, the subject of the appeal, were drawn by consent of all parties and examined by the general appraiser. Of this procedure the court in the Oelrichs case said:

"The classification board found as a fact that the evidence clearly shows that the board had before it ample and sufficient samples of all the merchandise under reappraisement. We think, in view of this finding, that the substitute procedure which the law admits, as intimated in Tilge *v.* United States, supra, was followed and that there was no want of jurisdiction."

The court held in the Oelrichs case that the board having jurisdiction of the parties and of the subject matter, and the examination of the merchandise, or samples thereof,

being jurisdictional as to procedure, might be either waived or satisfied by pursuit of one of the substitute processes provided by law. The same doctrine was announced by this court in Harris *v.* United States (3 Ct. Cust. Appls., —; T. D. 32286), wherein the case of Oelrichs & Co. *v.* United States (2 Ct. Cust. Appls., 355; T. D. 32091) is cited and quoted as authority.

We are unable to discover any conflict between or inconsistency in the cases of Wolff *v.* United States (1 Ct. Cust. Appls., 181; T. D. 31217) and Loeb *v.* United States (ibid., 385; T. D. 31479), and Beer *v.* United States (ibid., 484; T. D. 31526), and Tilge *v.* United States (2 Ct. Cust. Appls., 149; T. D. 31676), and Oelrichs & Co. *v.* United States (ibid., 355; T. D. 32091), and Harris *v.* United States (3 Ct. Cust. Appls., —; T. D. 32286), and Horace Day Co. *v.* United States (ibid., —; T. D. 32456).

These cases uniformly recognize the rule that in reappraisement proceedings legal samples duly selected are necessary and jurisdictional to the procedure of the appraising officers, that in lieu thereof substitute processes are provided by the law, which when followed by the appraising officers satisfy this jurisdictional requirement, and that that requirement, being jurisdictional as to procedure rather than as to the parties or subject matter, may be waived. In this case not only was there no sample before the appraising officer or legal substitute therefor, but the record expressly shows, and the Board of General Appraisers found as a fact, that not only was there no waiver of such, but the proceeding was protested upon this ground by the importer and the jurisdiction of the general appraiser to proceed in the premises for that reason denied.

We do not think the added language in section 13 of the customs administrative law, as amended in 1909, concerning the finality of the decision of appraisers in reappraisement cases, changes the rule where either the "appraiser or collector has proceeded on a wrong principle contrary to law or has transcended the powers conferred by statute," as declared by the Supreme Court in United States *v.* Passavant (169 U. S., 16, 21). The changed language of the statute is addressed to a review of "the decision" itself rather than to the jurisdiction of the board to render the decision. The injunction of the statute is against a review of the decision as a finding of fact, and not to the procedure of the board in acquiring jurisdiction to render the decision, which is a question of law. The statute entitles the importer or the Government to an appraisement by a single general appraiser or a board of general appraisers proceeding according to law. The decision thus had becomes final, and neither the board nor this court can review the same. Until, however, the jurisdictional requirements of the statute have been complied with or satisfied there is no "decision" within the statute of a single general appraiser or a board of three general appraisers. The review sought, therefore, is not a review of the decision itself, but a review of the legal power of the general appraiser or Board of General Appraisers to render that which without such power duly exercised does not become the "decision" contemplated and made final by the provisions of the statute.

Following the decisions of this court, supra, the decision of the Board of General Appraisers is reversed.

EXHIBIT 27.—(T. D. 33042.)—*Bindings.*

MASSCE & WHITNEY *v.* UNITED STATES (No. 995).

BINDINGS AND TRIMMINGS.—No commercial designation is shown. The plain surface of the fabric covers more than half of the fabric itself and the area of this plain surface makes it clear the merchandise is designed to be something more than a mere edge for the side that is ornamented. It can not therefore be deemed a trimming and the evidence moreover shows the use to be chiefly for binding. It was dutiable as binding under paragraph 320, tariff act of 1897.

United States Court of Customs Appeals, December 16, 1912.

Transferred from United States District Court for the Southern District of New York, G. A. 6671 (T. D. 28457).

[Reversed.]

Brown & Gerry for appellants.

William L. Wemple, Assistant Attorney General (Martin T. Baldwin, special attorney, of counsel), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case consists of certain narrow woven fabrics which are composed in chief value of cotton. The fabrics are in running lengths

and are less than an inch in width. Along one edge of the article appears a continuous ornamental design which covers less than half of its surface; the remainder of the surface, extending from the ornamental design to the opposite edge, is entirely plain.

The merchandise was imported under the tariff act of 1897, and was assessed with duty at the rate of 60 per cent ad valorem under the provision for trimmings in paragraph 339 of the act. The importers filed their protest against that assessment, claiming a duty of 45 per cent ad valorem under the provision for bindings in paragraph 320 of the act.

The Board of General Appraisers heard the protest upon evidence and overruled the same. The case now comes to this court upon appeal by transfer from the United States District Court for the Southern District of New York. In that court additional testimony was taken in the case, but no decision was entered.

The following is a copy of paragraphs 320 and 339 of the tariff act of 1897:

"320. Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing, and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed in part of india rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem; spindle banding, woven, braided or twisted lamp, stove, or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum ad valorem; loom harness or healds made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum ad valorem; boot, shoe, and corset lacings made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum ad valorem; labels, for garments or other articles, composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum ad valorem.

"339. Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings, and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck rufflings, ruchings, tuckings, flutings, and quillings; embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings, and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise; tamboured or appliquéed articles, fabrics, or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings, or ruchings; all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for in this act, whether composed in part of india rubber or otherwise, sixty per centum ad valorem: *Provided*, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed."

As appears from the foregoing statement, the case presents but a single issue, namely, whether or not the fabric in question is a binding within paragraph 320 of the act of 1897.

It may be stated that no commercial designation of the merchandise is proven by the testimony. Three witnesses testified that the article bears the trade name of trimming; three others testified that it is commercially known as binding; one stated that it is commercially called webbing; another, braid; and yet another, tape. In view of this confusing and unsatisfactory state of the record, the parties agree that no definite, uniform, and general trade classification of the article is established by the proofs; the importation must therefore be classified according to the common and usual meaning of the relevant terms.

In common acceptation a trimming is a fabric which is attached to a garment or the like for ornamentation, while a binding is a narrow strip of goods sewed over the edge of a garment or other material for its protection. The one article is essentially decorative in character, while the other is useful. Yet it can not be said that either article necessarily loses its nature or its name if in a given case it incidentally serves the same purpose as the other. A trimming may incidentally protect the material to which it is applied and yet remain a trimming; likewise a binding may incidentally ornament the fabric to which it is attached and yet remain a binding. In each case the classification of the article should follow that use to which the article is primarily adapted and commonly applied.

In the present case the appearance of the merchandise, and the testimony concerning it, convince the court that the importation is designed primarily to cover and protect the edge of other goods, and that its ornamental margin is merely an incident to that use. As first above stated, the face of the woven fabric is divided lengthwise into two

contracting sides or margins, one of which is ornamented by a running design, while the other is entirely plain. The fabric thus aptly lends itself to use as a binding, where one side is exposed to view and the other side is concealed. When so applied each margin performs a distinctive service for which it is fit, and no waste of material results. On the other hand, if the fabric be used exclusively as a trimming, the plain margin serves no appropriate purpose at all, but is mere waste. This does not seem to be consistent with the construction of the article, for the plain surface covers more than half of the fabric, and from its relative area it is evidently designed to be something more than a mere edge for the ornamental side. This fact seems to favor the classification of the article as a binding rather than a trimming; for, as stated, if it be used as a mere trimming more than half of its surface is useless, adding nothing to the ornamental effect of the article; whereas if it be used as a binding, the entire material is useful, the plain margin serving as a cover for the protected edge and the figured margin serving as an incidental embellishment. This view is supported also by the testimony in the case, for it fairly appears therefrom that the fabric is, in fact, chiefly used as a binding.

It is argued that a classification of the importation under paragraph 320 would place it within a group of articles which are manifestly useful in character but not ornamental, and that this result is inconsistent with the fact that this fabric is at least partly ornamental in character. However, it may be observed that paragraph 320 includes garters, ribbons, suspenders, and webbing, not embroidered by hand or machinery, and these articles, like that at bar, frequently exhibit some ornamentation, even if not embroidered. In such case, however, as in this, the ornamentation of the given article is but incidental to its use.

These considerations lead to the conclusion that the importation was dutiable under the act of 1897 as binding, and not as trimming. In this view the collector erred in the assessment, and the decision of the board sustaining the same is therefore reversed.

EXHIBIT 28.—(T. D. 33195.)—*Decalcomanias.*

UNITED STATES *v.* PALM, FECHTELER & CO. (No. 921).

DECALCOMANIAS NOT CERAMICS, METAL BACKED.—Application of the principles of statutory construction is not called for in this case, since there was a plain expression of intention that decalcomanias in ceramic colors if backed with metal leaf should pay a specified duty. But the decalcomanias of the importation are not of that described kind, and they fall appropriately under the classification "all other decalcomanias" in paragraph 412, tariff act of 1909.

United States Court of Customs Appeals, February 12, 1913.

Appeal from Board of United States General Appraisers, G. A. 7355 (T. D. 32452).

[Affirmed.]

William L. Wemple, Assistant Attorney General (Martin T. Baldwin, special attorney, of counsel), for the United States.

Comstock & Washburn (Albert H. Washburn of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Barber, judge, delivered the opinion of the court:

The merchandise here is lithographically printed decalcomanias, not in ceramic colors, backed with metal leaf. They were assessed for duty at 65 cents per pound under the provisions of paragraph 412 of the tariff act of 1909, and by the importers claimed to be properly dutiable thereunder at the rate of 40 cents per pound.

The pertinent provisions of the paragraph are as follows:

"412. * * * Decalcomanias in ceramic colors, weighing not over one hundred pounds per thousand sheets on the basis of twenty by thirty inches in dimensions, seventy cents per pound and fifteen per centum ad valorem; weighing over one hundred pounds per thousand sheets on the basis of twenty by thirty inches in dimensions, twenty-two cents per pound and fifteen per centum ad valorem; if backed with metal leaf, sixty-five cents per pound; all other decalcomanias, except toy decalcomanias, forty cents per pound; * * * ."

The Board of General Appraisers sustained the protests.

The only question is, whether the phrase "if backed with metal leaf" in the next to the last clause of the quoted portion of the paragraph applies to decalcomanias

backed with metal leaf or whether it only applies to decalcomanias in ceramic colors backed with metal leaf.

The Government contends for the former and the importers for the latter construction.

The quoted part of the paragraph, after providing for two classes of decalcomanias in ceramic colors, one weighing not over 100 pounds per thousand sheets on the basis of 20 by 30 inches in dimensions and the other weighing more than 100 pounds per thousand sheets on the same basis of size, the provisions for which are separated by semicolons, then proceeds to declare "if backed with metal leaf" the duty shall be at another rate, and that all other decalcomanias, except toy decalcomanias, shall take a still different, rate of duty.

We think the punctuation and grammatical construction both plainly indicate that the words "if backed with metal leaf" relate to the same subject matter as the two preceding clauses, namely, "decalcomanias in ceramic colors," and that this conclusion is strengthened by the last provision, "all other decalcomanias, except toy decalcomanias."

But the Government claims that the first two provisions for decalcomanias in ceramic colors are sufficient to exhaust the whole class of ceramic-color decalcomanias, and, so assuming, that therefore the provision "if backed with metal leaf" must relate to decalcomanias not in ceramic colors, and bases a very ingenious and somewhat, at first blush, convincing argument in support of its contention on the history of the legislative proceedings in the enactment of this paragraph. The board, however, found that decalcomanias in ceramic colors backed with metal leaf are produced in commercial quantities. We think the evidence supports this finding of the board, and therefore the Government's contention falls because the assumed basis does not exist.

The rule that ordinarily the statute itself furnishes the best and safest guide to its interpretation and that the legislature will be presumed to have intended to mean what it has plainly expressed is so well settled that the citation of authorities is unnecessary.

It is equally well settled that when results flowing from an apparently plain meaning of a statute are ridiculous, absurd, or manifestly unjust, or will have the effect of rendering some other plain provision of the statute nugatory, it will not be presumed that the lawmaking body so intended, and further inquiry may be had. But the conditions which warrant such inquiry are not present here, and we think it must be presumed that Congress intended what it has so plainly expressed, namely, that decalcomanias in ceramic colors if backed with metal leaf shall pay a specific duty of 65 cents per pound. The merchandise here, however, is not such decalcomanias, but appropriately falls under the last classification in the paragraph as other decalcomanias not toys, and is dutiable as claimed by the importers.

The judgment of the Board of General Appraisers is affirmed.

EXHIBIT 29.—(T. D. 32569.)—*Scalloped articles.*

SIMPSON *v.* UNITED STATES (No. 842).

SCALLOPED ARTICLES—WHEN NOT EMBROIDERED.—Something more than stitches, utilitarian in character, are needed to bring the scalloped articles of the importation within the term "Embroidered articles;" there should be stitches superimposed with the purpose of producing an ornamental effect. The articles themselves and the testimony here go to show they were dutiable under paragraph 346, tariff act of 1897.

United States Court of Customs Appeals, May 17, 1912.

Appeal from Board of United States General Appraisers, Abstract 27399 (T. D. 32089).

[Decision reversed.]

Comstock & Washburn (Albert H. Washburn and George J. Puckhafer of counsel) for appellant.

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel; Thomas J. Doherty, special attorney, on the brief) for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Montgomery, presiding judge, delivered the opinion of the court:

The merchandise the subject matter of the importation here involved consists of articles of flax, such as doilies, towels, cloths, covers, etc., with scalloped edges.

Duty was assessed thereon at the rate of 60 per cent under that portion of paragraph 339 of the tariff act of 1897 reading as follows:

"Wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise."

It is claimed to be dutiable under paragraph 346 of said act at the appropriate rate according to its weight, thread, count, and value. The pertinent portion of said paragraph reads:

"Woven fabrics or articles not specially provided for in this act, composed of flax, hemp, or ramie, or of which these substances or either of them is the component material of chief value. * * *"

The testimony before the board consisted of that of one witness produced by the importer and samples of the merchandise in controversy. The Board of General Appraisers found that the stitching on the articles amounted to embroidery in that the stitching was ornamental, and overruled the protest. The appellant contends that an examination of the samples shows the goods to be scalloped articles and that the needlework constituting the scalloping thereon is not ornamental.

It was said by this court in Gardner *v.* United States (2 Ct. Cust. Appls., 477; T. D. 32228), in dealing with scalloped articles under the act of 1909, that under the law of 1897 the rule had been laid down that scalloped articles were dutiable as embroidered articles under paragraph 339 of the act of 1897 when the needlework thereon was ornamental, and that articles having a plain scalloped edge were not dutiable under that paragraph. This epitomizes the previous decisions of the board and of the courts as found in the Solinger case (T. D. 24243), in which case the board said:

"Both ends of the towels are finished with fancy scalloped edges, a cord being laid with the raw edge of the towel and attached to it by being stitched with what is known as the overstitch, the same being done on a machine. * * * This stitching is not done on an embroidery machine, but is stitched with the ordinary sewing machine equipped with a buttonhole attachment or a special attachment for making this stitch."

See also the case, T. D. 26030, and United States *v.* Waentig (168 Fed. Rep., 570).

The question involved here is therefore mainly a question of fact, which is, Were these articles embroidered by other process than by scalloped ends or edges? That there is some ornamental effect from the mere fact of scalloping articles is apparent. But we think that, in order to bring an importation within the term "embroidered articles," something more must be done to a scalloped article than to employ stitches which are essential to a utilitarian purpose. Undoubtedly, if in addition to the stitch employed for maintaining the edges and holding the cord which was present in the cases cited, there had been superimposed stitches designed for an ornamental effect, the articles might be held to be embroidered within the meaning of the paragraph of the act of 1897 in question. We are all convinced, however, from the testimony in this case, that these articles have no such superimposed stitches and that upon the testimony afforded by the articles themselves and the examination of the one witness in the case, the articles were dutiable under paragraph 346.

The decision of the Board of General Appraisers is reversed.

EXHIBIT 30.—(T. D. 32531.)—*Rotten fruit.*

UNITED STATES *v.* ZITO (No. 591).

1. NONIMPORTATION.—Subsection 22 of section 28, tariff act of 1909, relating to allowances on nonimportations was not founded upon any previous tariff act, but originated in the absence of any express statute levying duty upon the described commodities.—Lawder *v.* Stone (187 U. S., 281).
2. GOODS CONDEMNED IN IMPORTER'S HANDS.—No allowance can be made for goods that have gone into the possession of the importer and that are later condemned by a board of health.
3. ALLOWANCE FOR NONIMPORTATION.—What allowance, if any, should be made on an importation is primarily a question of fact to be determined like any other relevant fact in the case.—United States *v.* Shallus (2 Ct. Cust. Appls., 332; T. D. 32074).

United States Court of Customs Appeals, May 8, 1912.

Appeal from Board of United States General Appraisers, Abstract 24556 (T. D. 31207)

[Decision modified.]

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel; Frank L. Lawrence, special attorney, on the brief), for the United States.

Brown & Gerry for appellee.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

De Vries, judge, delivered the opinion of the court:

This appeal involves the proper allowance to be made for nonimportation of part of a cargo of lemons by reason of decay existing at the time of importation under the tariff act of 1897.

In United States *v.* Shallus (2 Ct. Cust. Appls., 332; T. D. 32074) we discussed fully the principles of law applying to such cases. We there held that duty attaches in accordance with the condition of the merchandise as it arrives within the limits of the customs district; that the determination of the amount of the nonimportation by reason of decay existing in a cargo of fruit is one of fact to be established by evidence; that by reason of the impossibility to direct evidence to the condition of the fruit at the exact moment of importation resort must be had to proof as to its subsequent condition, judicial notice afforded by the course of nature, and such other relevant facts as are available; that the condition when picked, length of voyage, season, temperature during the voyage, manner of packing and storage on shipboard, promptness in entry, unloading, examination, and the particular kind, class, and grade of fruit, and numerous other facts, determine its condition when imported. In other words, it was, under that act, a question of fact to be determined as any other probative fact.

In this case the board appears to have made a finding of fact as to a part of the shipments, adopting as its finding of fact the results shown by the importer's testimony. An examination of the record discloses nothing therein indicating this finding not to be fairly sustained by the testimony. The allowances made by the board, while in some particulars mathematically inaccurate, do not seem inordinate for such cases, but on the contrary of comparatively small percentages. The testimony of the importer obviously bears internal evidence of a decided prejudice and warping in behalf of his own case, but not such as would warrant its entire rejection, and it is not in any satisfactory manner met, contradicted, or impeached by the Government. It is not, therefore, within the province of this court to set aside that finding.

In reaching its conclusion the board assigns a reason to our minds untenable. An untenable reason assigned for a decision or finding of fact, however, it is well settled, will not suffice as a ground for reversal if that decision or finding is well within and supported by the record.

The board states:

"In view of the enactment of subsection 22 of section 28 of the tariff act of August 5, 1909, we are of the opinion that an examination as to the percentage of decay in fruit would be sufficient if made within 10 days after arrival of the merchandise. Of course, it is difficult to draw any hard and fast line on this subject, but a fair inference of the legislative intent, we think, is found in the provisions of this section by throwing light upon the provisions of the previous tariff act, and we accordingly hold that an examination made within this period of time is sufficient."

As the right to recover for a nonimportation of fruit by reason of decay was not founded upon any "previous tariff act," but upon the absence of any express statute levying duty upon such (Lawder *v.* Stone, 187 U. S., 281), it can not be well said that the subsequent tariff act of 1909 could afford a fair inference of any such previous legislative intent. Again, as the question of the amount of the nonimportation is one of fact to be determined from all and many varying circumstances in each case dependent upon a great variety of different conditions and kinds of merchandise, certainly no accurate determination could be made by deferring examination 10 days in all cases, yet this is the latitude of the rule.

Moreover, the statute of 1909, in so far as the 10-day limitation is concerned, is a rule of limitation and not of evidence. It expresses the period within which the importer shall not only make his examination, but present his proof. The character of the examination and time in which the same may be made are not fixed by the terms of the act, but are probably made the subject of such reasonable regulation as may be promulgated by the Secretary of the Treasury. In this view it can not be

said that that act either prescribes or reflects a reasonable period within which such examinations shall be made.

For the reasons hereinbefore stated, however, we think the judgment of the board should, with certain modifications, be affirmed. There is no controversy that, as to the boxes condemned by the board of health—which was probably done after the goods passed from the customs custody and came into possession of the importer—and, as to those boxes and quantities wherein the board's schedules exceed those of the invoice, no allowance can be had. As thus modified, the judgment of the board is affirmed.

EXHIBIT 31.—(T. D. 32381.)—*Articles of carved limestone.*

STERN *v.* UNITED STATES (No. 663).

LIMESTONE ARTICLES—SCULPTURES.—The facts disclosed by the record are meager, but are deemed sufficient to bring the production of designated articles of the importation within the provisions of the law relating to sculptures; and in these designated instances the goods were dutiable as sculptures not specially provided for, under paragraph 470, tariff act of 1909.

United States Court of Customs Appeals, April 1, 1912.

Appeal from Board of United States General Appraisers, Abstract 25180 (T. D. 31450).

[Decision modified.]

Comstock & Washburn for appellant.

Wm. L. Wemple, Assistant Attorney General (Leland N. Wood on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

De Vries, judge, delivered the opinion of the court:

Appeal from a decision of the Board of General Appraisers involving the dutiable classification of a variety of stone jardinieres, vases, and figures.

The case involves the application of a very narrow line of distinction between what does and does not constitute a sculpture, as that term is used and modified in paragraph 470 of the traiff act of 1909.

The board as to the merchandise the subject of this appeal, which was but part of that covered by the invoice, overruled the protest of the importers.

While a number of such articles are the subject of this appeal, those concerning which, in our opinion, the same is well taken will be enumerated. As to all others, from the conceded description by appellant, the importer below, in their brief, we think the decision of the board correct.

Those enumerated are as follows:

1. Those jardinieres in cases 716 and 717, as designated upon the invoice, valued at $212.30 each, carved in semicircular shape out of a solid block of stone, each having carved upon it a head which is a composite design combining a human, lion's, and ram's head.

2. The single vase contained in case 718 of the invoice, with base therefor in case 730, 24 inches high by 15 inches in width, valued at $260.55, carved and surrounded or entwined by garlands of leaves chiseled out of stone.

3. Vases of like size to the foregoing in cases 721, 722, and 723, with covers and bases in cases 728 and 729, valued at $144.75 each, and each made of solid blocks of stone having carved on each a figure of a woman on one side and that of an alligator on the other.

4. The contents of cases 724 and 725, consisting of two carved balls of solid blocks of stone 2 feet in diameter, designed with tracery of rushes or other vegetation reaching up the sides, and each ball resting upon a carved boa constrictor or reptile.

The competing paragraphs of the tariff law involved in the issue here presented are as follows:

"114. Freestone, granite, sandstone, limestone, and all other monumental or building stone, except marble, breccia, and onyx, not specially provided for in this section, hewn, dressed, or polished, or otherwise manufactured, fifty per centum ad valorem; unmanufactured, or not dressed, hewn, or polished, ten cents per cubic foot.

"470. * * * And sculptures, not specially provided for in this section, * * * but the term 'sculptures' as used in this act shall be understood to include only such as are cut, carved, or otherwise wrought by hand from a solid block or mass of marble,

stone, or alabaster, or from metal, and as are the professional production of a sculptor only. * * *."

It will be noted that the articles not being of marble, breccia, onyx, alabaster, or jet, paragraph 112 of the act providing for such manufactured wholly or partly in monuments, benches, and vases, and into other articles, is not invoked, and the sole competing paragraph is the one of lesser specifications, 114, supra.

The crucial point in the case, however, is whether or not the articles are within the terms of paragraph 470, as disclosed by this record and the proofs therein contained, including the photographs of the articles accompanying the same.

In order to be included within the terms of paragraph 470, it is obvious that the importation must be, first, in character, design, and merit of artistic production per se a "sculpture"; and, secondly, being deemed such by reason of its intrinsic artistic character, that it must be "the professional production of a sculptor only." The protestant, in cases such as these where the articles have been returned for duty by the collector as not such, has thereby imposed upon him the duty of proving by convincing evidence the affirmative of these two propositions.

The Board of General Appraisers did not consider or decide whether or not it was shown by the record that these articles were the professional production of a sculptor only, but seems to have rested decision upon the proposition that such articles were not "sculptures."

While the enumerated articles may be of an inferior class of sculptures, we think they fairly come within the accepted legal and lexicographic definition of that term. Of course, not every product of a professional sculptor would be classed as a sculpture. Limitations of this kind were defined by this court in the recent case of Lazarus, Rosenfeld & Lehman *v.* United States (2 Ct. Cust. Appls., 508; T. D. 32247). An instructive discussion of the subject is found in the opinion of the Board of General Appraisers in that case, G. A. 7174 (T. D. 31331). The board, speaking through Judge Waite, said:

"We do not conceive that every piece of carving which is made under the supervision of a professional sculptor or by his hand is brought within the meaning of the term 'sculptures' in this act. We conceive it to mean that which is cut or carved into some artistic design deserving a place in the higher order of art objects. Indeed, we think we are authorized in saying, having in mind the definitions of 'sculptures' given in the dictionaries and by the various writers upon the subject, that the term 'sculptures' in this act is intended to cover only those works of art which portray objects representing human or animal forms, as distinguished from architectural specimens and conventional designs. We are unable to find that it was the intention of the lawmakers to include within the terms of this paragraph all forms of carving in marble made in the *atelier* of a professional sculptor by artisans, with or without the aid of mechanical devices, including such articles as are in question in this case.

"The dividing line between what is intended to be covered by the word 'sculptures' in the law and that which is excluded may well be, we think, where the representations of human or animal forms end."

We are not prepared to assent to the doctrine that sculpture is confined to a representation of human or animal figures or statues alone. It is notably true that some of the most magnificent productions of professional sculptors which have attracted the attention and admiration of the world were found in the buildings and museums of countries the beliefs of which teach it a sacrilege to portray human forms.

The history of sculpture teaches us that the influence of the various ages and times upon the arts of the day varied the character of the contemporary sculpture. Thus, because it partook of idolatry, sculpture in the round during the fourth and fifth centuries was indeed rare. In the sixth century Byzantine art confined itself to, we are told, splendor and sumptuousness rather than monumental imagery. In the Encyclopedia Britannica, eleventh edition, article "Sculpture," wherein the history is treated, it is stated:

"Sculpture in the round, with its suggestion of idol worship which was offensive to the Christian spirit, was practically nonexistent during this and the succeeding centuries, although there are a few notable exceptions, like the large bronze statue of St. Peter in the nave of St. Peter's in Rome, which is probably of fifth century workmanship and has much of the repose, dignity, and force of antique sculpture.

* * * * * * *

"In the sixth century, under the Byzantine influence of Justinian, a new class of decorative sculpture was produced, especially at Ravenna. Subject reliefs do not often occur, but large slabs of marble, forming screens, altars, pulpits, and the like, were ornamented in a very skillful and original way with low reliefs *of graceful vine plants*, with peacocks and other birds drinking out of chalices, all treated in a very able and highly decorative manner * * *. The school of sculpture which arose

at Byzantium in the fifth or sixth century was therefore essentially decorative and not monumental, and the skill of the sculptors was most successfully applied to work in metals and ivory, and *the carving of foliage* on capitals and bands of ornaments, possessed of the very highest decorative power and executed with unrivaled spirit and vigor. The early Byzantine treatment of the acanthus or thistle, as seen in the capitals of S. Sophia at Constantinople, the Golden Gate at Jerusalem, and many other buildings in the East, has never since been surpassed in any purely decorative sculpture * * *."

The enumerated articles are not beyond these definitions which confine "sculptures" to those "in the round" or "in relief." It is sufficient for this case to say of the enumerated articles they are all in part in the round and in relief, and, with the single exception noted above, are portrayals in stone of human and animal figures. In this respect they are not unlike in intrinsic character the vase the subject of decision by this court in the recent case of United States *v.* Baumgarten & Co. (2 Ct. Cust. Appls., 321; T. D. 32052). The exception is a portrayal in the round and in relief of figures of the vegetable kingdom, flowers, and wreaths.

What constitutes the professional production of a sculptor only has been the subject of consideration by the Supreme Court, and the following rule was announced in Tutton *v.* Viti (108 U. S., 312, 313):

"There is nothing in the acts of Congress to limit the professional productions of a statuary or sculptor to those executed by a sculptor with his own chisel from models of his own creation, and to exclude those made by him, or his assistants under his direction, from models or from completed statues of another sculptor, or from works of art, the original author of which is unknown. An artist's copies of antique masterpieces are works of art of as high a grade as those executed by the same hand from original models of modern sculptors."

The facts disclosed by this record, while meager, are sufficient, we think, to bring the production of these articles fairly within the provisions of the statute as thus interpreted by the Supreme Court.

The invoice covered a variety of articles. Part of these were admitted by the collector under the provisions of paragraph 470 as the professional production of a sculptor only. Part, including the subjects of this appeal, were denied such admission. The evidence before the collector on this point was the certificate of the sculptor himself, attached to the invoice. That certificate recited in this particular as follows:

"I, J. Visseaux * * *, Paris, France, do hereby declare that I am the sculptor of certain works of art * * * (including all those covered by these invoices); that the said sculptures constitute the professional production of myself and my sculptors and were produced at my studio on or about the months of April to October, 1909, * * * and I further declare that I had same specially carved for Mr. Benjamin Stern, of New York."

In his report to the collector concerning a part of the same invoice the appraiser recites that they were "returned for duty at 15 per cent ad valorem under paragraph 470, in view of the certificate of the professional sculptor attached to the entry." The same certificate being attached to the same entry accompanied that part of this importation which constitutes the subject of this appeal.

At the hearing the importer testifies that "the merchandise was ordered from designs made by an architect in Paris," that "they first sent us the designs on paper, and then when we went abroad we had the models made in his place and from those models we ordered the statuary involved," that the person that produced or carved these articles was named "J. Visseaux," that he was "a French artist of very good standing, as far as I know," and that he "did not personally see any of the work done" on these articles

While this evidence is not what might be desired, we think it fairly shows, in the absence of contradiction in the record, and in the absence of a contrary finding thereupon by the Board of General Appraisers, that these articles were produced by the professional sculptor in his studio, either by himself or by professional sculptors employed by him and acting under his directions and supervision.

We are of the opinion, therefore, that the articles above enumerated should be assessed for duty at the rate of 15 per cent ad valorem under the provisions of paragraph 470.

The decision of the Board of General Appraisers is accordingly modified.

EXHIBIT 32.—(T. D. 32910.)—*Leather.*

SPALDING & BROS. and WORSDELL & CO. *v.* UNITED STATES (No. 939).

GRAIN LEATHER.—It would appear that the proviso to paragraph 451, tariff act of 1909, was intended to be limited in its application to the articles described in that paragraph, and it would be to force the construction to extend it to cover the merchandise here. The leather of the importation, with a natural and an artificial grain, is properly dutiable under paragraph 450, tariff act of 1909.

United States Court of Customs Appeals, October 28, 1912.

Appeal from Board of United States General Appraisers, Abstracts 28479, 28480 (T. D. 32507), and Abstract 29095 (T. D. 32681).

[Reversed.]

Brown & Gerry for appellants.

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

De Vries, judge, delivered the opinion of the court:

This appeal concerns certain finished leathers. They were made from the upper or hair side of split cowhide. They have the natural grain of the hide upon the surface, and in addition are embellished with an artificial grain, the importations and varieties differing in the design of the artificial grain alone. For all material purposes they are alike. They were in part assessed for duty by the collector at 15 per cent ad valorem under paragraph 451 of the tariff act of 1909, as "leathers not specially provided for," and in the remaining part as "leathers not specially provided for" at the rate of 15 per cent ad valorem under the same paragraph, and in addition thereto subjected to a duty of 10 per cent ad valorem under the proviso to said paragraph upon the ground that those portions of the importations were "gauffre" leather. The Board of General Appraisers held all the leather dutiable at 15 per cent ad valorem as "leathers not specially provided for," plus 10 per cent ad valorem as such "leather not specially provided for" that had been gauffred.

The importers, who are appellants here, made claim that the importations were properly dutiable at 7½ per cent ad valorem under the provisions of paragraph 450 of the said tariff act as "grain" leather.

The provisions of law under which the controversy arises are as follows:

"450. Hides of cattle, * * * : *Provided*, That on and after October first, nineteen hundred and nine, grain, buff, and split leather shall pay a duty of seven and one-half per centum ad valorem; * * *.

"451. Band, * * * ; dressed upper and all other leather, * * *, fifteen per centum ad valorem; * * * : *Provided*, That leather cut into shoe uppers or vamps or other forms, suitable for conversion into manufactured articles, and gauffre leather, shall pay a duty of ten per centum ad valorem in addition to the duty imposed by this paragraph on leather of the same character as that from which they are cut."

The character of the merchandise in question seems conceded to be as above stated. The controversy therefore becomes one of law.

In United States *v.* White (2 Ct. Cust. Appls., 80; T. D. 31632) we held that the term "gauffre leather" as used in paragraph 451 of the tariff act of 1909 had no commercial signification attached thereto, but was used in its descriptive sense; and that while there was no leather known to the trade as "gauffre leather," as a distinctive class of leather, that the descriptive force of the phrase applied to such leathers as were gauffred or embossed.

The additional rate of duty levied upon gauffred leather was, therefore, applied by the court to the merchandise the subject of that importation, for the reason that it was primarily dutiable within the purview of paragraph 451 as "all other leathers not specially provided for."

This record presents a different issue. Merchandise similar to this was the subject of consideration by this court in Worsdell & Company *v.* United States (2 Ct. Cust. Appls., 270; T. D. 31977). In that case similar merchandise was held properly dutiable as "grain" leather.

The determinative point in this case is whether or not the merchandise is primarily dutiable within the provisions of the purview of paragraph 451, for, concededly, the proviso thereto is by the terms of its own limitation applicable alone to such merchandise. Our inquiry, therefore, is addressed, in the first instance, to the determination

of the question whether, or not, these importations are primarily dutiable under the purview of paragraph 451 or some other paragraph of the tariff act. We think, as we held in the Worsdell case, that such merchandise is most specifically provided for in paragraph 450 as "grain" leather. That conclusion seems to be reenforced by the testimony of the witnesses in this case, as well as by the natural signification of the legislative terms employed. It seems clearly apparent that Congress adjusted the additional rate of duty provided in the proviso to paragraph 451, quoted, to the primary rates of duty levied by the purview of that paragraph, and not to those levied by other paragraphs of the tariff law. It would seem by the express limitations of the proviso itself that the Congress at the time of its adoption measured the rate of additional duty therein prescribed as additional to rates previously provided in the purview of the paragraph only, and that Congress did not have in mind at that time rates of duty levied in other paragraphs of the tariff act and an adjustment thereto of this additional rate of duty. Violence, therefore, would undoubtedly be done the congressional purpose of this court would proceed to hold this additional rate of duty applicable not alone to the primary rates of paragraph 451 but to other rates levied outside of the purview of that paragraph and by virtue of other provisions of the tariff law. This would be extending the application of the proviso not alone contrary to the ordinary rule in such cases (Tilge *v.* United States, 2 Ct. Cust. Appls., 129 (T. D. 31662); Woolworth *v.* United States, 1 Ct. Cust. Appls., 120 (T. D. 31119), but in contravention of the expressed language of the proviso which limits its application to "this paragraph."

In view of the foregoing, we find it unnecessary to consider the additional point of whether or not grain leather being so specifically provided for in paragraph 450 it would in any case be subject to other, though additional, rates of duty than therein prescribed.

The decision of the Board of General Appraisers is reversed.

EXHIBIT 33.—(T. D. 33197.)—*Manufactures of carbon.*

STEGEMANN *v.* UNITED STATES (No. 962).

BATTERY RODS MADE OF CARBON.—The rods of the importation, when fitted with brass caps, make poles of a galvanic battery of a kind, though not completed poles. Reviewing the legislative history of paragraph 95, tariff act of 1909, and the construction it has received by the courts, the intention is manifest that articles like those described are not subject to the duties imposed by that paragraph upon articles and wares composed of earthy or mineral substances. The merchandise is a manufacture of carbon and is classifiable and dutiable as a nonenumerated manufacture under paragraph 480, tariff act of 1909.

United States Court of Customs Appeals, February 12, 1913.

Appeal from Board of United States General Appraisers, Abstract 28757 (T. D. 32584).

[Reversed.]

Comstock & Washburn (J. Stuart Tompkins of counsel) for appellant.

William L. Wemple, Assistant Attorney General (Charles Duane Baker, special attorney, of counsel), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Smith, judge, delivered the opinion of the court:

The collector of customs at the port of New York classified certain carbon battery rods as articles not decorated, composed in chief value of earthy or mineral substances and not specially provided for. The goods were accordingly assessed for duty at 35 per cent ad valorem under that part of paragraph 95 of the tariff act of 1909, which reads as follows:

"95. Articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for in this section, whether susceptible of decoration or not, if not decorated in any manner, thirty-five per centum ad valorem; * * *"

The importers protested that the goods were dutiable at 20 per cent ad valorem either as carbon not specially provided for under paragraph 95 or as nonenumerated manufactured articles under paragraph 480, and that if not dutiable at 20 per cent ad valorem they were dutiable at 30 per cent ad valorem under the last clause of

paragraph 95. The parts of paragraph 95 and of 480 upon which the importers rely are as follows:

"95. * * * Carbon, not specially provided for in this section, twenty per centum ad valorem: electrodes, * * * composed wholly or in chief value of carbon, thirty per centum ad valorem.

"480. That there shall be levied, collected, and paid on the importation of all * * * articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem."

The Board of General Appraisers overruled the protest and the importers appealed.

As appears from the evidence in the case, the goods in question are rods or sticks of carbon made from an amorphous carbon produced from coal in retorts used for the manufacture of illuminating gas. This carbon, after being removed from the gas retorts, is first ground and then made up into round rods or sticks, such as those imported. The carbon rods or sticks are designed to form part of an appliance for the generation of electricity, and when fitted with a brass cap they are ready for use as one of the poles of a dry battery. It is not claimed and there is no evidence in the case showing that the importation is similar in material, quality, texture, or use to carbons for electric lighting.

The Government contends that the goods are articles or wares composed of earthy or mineral substances and therefore dutiable under the express provisions of the first clause of paragraph 95. We can not agree with this contention, and do not think that any such interpretation of paragraph 95 can be fairly deduced either from the wording of the paragraph or from the history of the legislation.

Prior to the passage of the tariff act of 1894 there was no provision for articles or wares composed of earthy or mineral substances. Paragraph 86 of that act, however, provided specifically for "articles composed of earthen or mineral substances, * * * not specially provided for," and levied on them a duty of 40 per cent ad valorem if decorated and 30 per cent ad valorem if not decorated. Under this provision customs officials classified carbon points, sticks or pencils made of lampblack, natural graphite, or other carbon products as articles composed of earthen or mineral substances and charged them with the duties which that classification required. In time a ruling to that effect by the collector of customs at New York was protested by Dingelstedt & Co., who claimed that carbon points were not properly classifiable as articles composed of earthen or mineral substances and that such goods, notwithstanding the language of paragraph 86, were still dutiable as nonenumerated manufactured articles. The protests were overruled by the board, but subsequently on appeal to the Circuit Court of Appeals that decision was reversed and the contention of Dingelstedt & Co. sustained. Judge Lacombe, speaking for the Circuit Court of Appeals, said:

"The phrase, 'all articles composed of mineral substances,' standing alone, is one of great breadth, and would cover a great multitude of articles of the most diverse character. But in the tariff act now before us the phrase does not stand alone, and it is a familiar rule of interpretation that general descriptive terms are often restricted in their meaning by reason of their collocation with other words and phrases.

"* * * The collocation of paragraph 86 would seem to indicate most strongly that the phrase, 'all articles composed of * * * mineral substances,' was not used in its broadest sense, but restricted to articles composed of mineral substances similar to those enumerated in the schedule, if not in the subdivision.

"* * * If the phrase relied on were to be given the broad construction contended for, it would be wholly unnecessary to provide specially for lava tips; they would be included in the general phrase. Evidently Congress understood that this general phrase was used by it in such a restricted sense that it would not cover the lava tips, and therefore they were specially provided for. Construed as above indicated, the paragraph would not cover the carbons now before the court. (Dingelstedt & Company *v.* United States, 91 Fed., 112.)"

From that language it would seem that the Circuit Court of Appeals intended to decide and did decide definitely that a provision for "articles composed of earthen or mineral substances" was not broad enough to cover articles of carbon. Moreover, that there was a distinction between articles of carbon and articles composed of earthen or mineral substances was recognized by Congress itself when it passed paragraph 97 of the tariff act of 1897 and therein made specific provision for articles of carbon. Paragraph 97 was amendatory of paragraph 86 of the tariff act of 1894 and was as follows:

"97. Articles and wares composed wholly or in chief value of earthy or mineral substances, *or carbon*, not specially provided for in this act, if not decorated in any manner, thirty-five per centum ad valorem; if decorated, forty-five per centum ad valorem."

Apparently under the impression that the change accomplished in existing law by paragraph 97 was intended to meet the Dingelstedt case and taking no account of Judge Lacombe's intimation therein that the laying of a higher rate of duty on articles if decorated and a lower rate if undecorated indicated an intention on the part of Congress to impose the duty prescribed only on wares susceptible of decoration, collectors of customs were led to classify sticks or rods of carbon for electric lighting as articles of carbon within the meaning of paragraph 97 of the tariff act of 1897. The Supreme Court, however, in the Downing case, held that carbon sticks, points, or rods, made for electric lamps, but not ready for use, were not articles of carbon within the intention of paragraph 97, inasmuch as they were not susceptible of decoration. United States *v.* Downing (201 U. S., 354–358). That decision removed articles of carbon not specially provided for and not susceptible of decoration from the operation of paragraph 97 and, save such as could be classified by similitude to carbons for electric lighting, returned them all to the classification which they had borne under the tariff act of 1894, namely, nonenumerated articles, manufactured in whole or in part.

From all this it seems clear that prior to the passage of the present tariff act the following propositions had been expressly settled by the courts:

First. That articles of carbon, whatever their nature or use might be, were not covered by a provision for "articles composed of earthen or mineral substances."

Second. That a provision for "articles * * * of * * * carbon, * * * if not decorated in any manner, thirty-five per centum ad valorem; if decorated, forty-five per centum ad valorem," did not embrace articles of carbon which were not susceptible of decoration.

Third. That unless specially provided for, articles of carbon, not susceptible of decoration, and not similar to carbons for electric lighting, were properly classified and dutiable under the tariff act of 1897 as nonenumerated manufactured articles.

When the tariff act of 1909 was in the making, the interpretation which had been placed by the courts on paragraph 86 of the tariff act of 1894 and on paragraph 97 of the tariff act of 1897 was in the mind of Congress, and if there had been any intention to impose on articles of carbon not specially provided for the duties prescribed for articles composed of earthy or mineral substances, nothing more was necessary than to amend paragraph 97 of the tariff act of 1897 by inserting after the enumeration the phrase "whether susceptible of decoration or not." Congress did insert that phrase, but at the same time it dropped articles of carbon from the enumeration, and that left the law just where it was in 1894 so far as articles of carbon not specially provided for were concerned. The fact that the provision for articles of carbon was omitted from paragraph 95 of the present tariff act can not be construed into a legislative intention to do away with the well-established tariff distinction which had therefore prevailed between articles of carbon and articles of earthy or mineral substances. Dropping the enumeration did not drop the distinction, especially as the distinction was recognized by Congress itself in the tariff act of 1897. Garrison *v.* United States (121 Fed., 149); United States *v.* Beierle (1 Ct. Cust. Appls., 457–461; T. D. 31506); Robertson *v.* Rosenthal (132 U. S., 460–464).

Taking into consideration the legislative history of paragraph 95 and the construction put upon its prototypes by the tribunals charged with the interpretation of tariff acts, we can come to no other conclusion than that Congress deliberately intended that such articles should not be subjected to the duties imposed upon articles and wares composed of earthy or mineral substances.

It is claimed by the importers that the goods under discussion are carbon within the meaning of paragraph 95. About all that we can find in support of that contention is evidence to the effect that the articles are sometimes called "carbons." That designation of them, however, would hardly justify their classification as carbon, which is the material out of which the articles are made. In our opinion, they are not carbon, but manufactures of carbon, that is, things made out of carbon. As appears from the evidence, the rods, when fitted with brass caps, constitute one of the poles of a kind of galvanic battery. As the rods in the condition in which imported are not provided with brass caps they can hardly be regarded as completed poles, ready for use, and therefore we think that they are not classifiable as electrodes.

As the merchandise is clearly a manufacture of carbon not otherwise provided for, we think it should be classified as a nonenumerated manufacture and subjected to the duty of 20 per cent ad valorem prescribed by paragraph 480.

The decision of the Board of General Appraisers is reversed.

EXHIBIT 34.—(T. D. 32570.)—*Allowance for rotten fruit.*

HARRIS & CO. ET AL. *v.* UNITED STATES (No. 852).

GRAPES IN BARRELS.—Subsection 22 of section 28, tariff act of 1909, was intended to provide and does provide for an allowance in the estimation and liquidation of duties upon fruit when, by reason of decay, destruction, or injury during transportation, a shortage occurs, resulting, in fact, in a nonimportation, the commercial value of a designated and reasonably ascertainable quantity of the goods having been destroyed.

United States Court of Customs Appeals, May 17, 1912.

Appeal from Board of United States General Appraisers, G. A. 7310 (T. D. 32108).

[Decision affirmed as to part and reversed as to part.]

Searle & Pillsbury (William E. Waterhouse of counsel) for appellants.

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Barber, judge, delivered the opinion of the court:

This case involves a considerable number of importations of Almeria grapes entered by appellants at the port of Boston, all concededly dutiable under paragraph 276 of the tariff act of 1909, which is as follows:

"276. Grapes in barrels or other packages, twenty-five cents per cubic foot of capacity of barrels or packages."

The grapes were assessed for duty on the basis of the number of cubic feet of capacity of the barrels in which the same were contained without allowance being made for any rotten grapes found therein. The inspector reported that "the merchandise in question was to all outward appearances landed from the steamer in good condition."

The protest before us relates to one importation of 44 barrels, but it appears to be regarded as a test case and controlling as to the importations involved in the other protests. The appraiser reported these 44 barrels to be in the following condition:

"Twenty-nine barrels 5 per cent worthless, 15 barrels sound."

The importers protested the assessment, claiming that under subsection 22 of section 28 of the same act and by virtue of T. D. 30023, they were entitled to an allowance for the depreciation in value of the grapes and for all loss by reason of decay thereof.

The Board of General Appraisers upon hearing the protests overruled the same. We insert here the essential part of the opinion:

"The duty imposed under said paragraph 276 seems to be a duty upon the capacity of the barrels or packages and not upon the quantity of grapes contained therein. It seems to have been assumed by Congress that importers would import grapes in standard packages of a certain size and that they would fill these packages to their average capacity. Hence, if a barrel of grapes should arrive with 25 per cent loss in transitu before arrival at the port of New York, it is clear that no allowance could be made for this shortage, because, as we have said, the assessment is made upon the package and not upon the quantity of grapes. We can see no difference between that case and the present one, where a quantity of the merchandise has been lost by decay or rot."

United States *v.* Mayer (71 Fed. Rep., 501), which we will later refer to, is then discussed and the opinion closes with the following:

"We find no regulations of the Secretary of the Treasury which seem to be applicable to a case of this particular character, and are of opinion that the collector acted within his province in refusing to make any allowance."

Subsection 22 of section 28 is as follows:

"SEC. 22. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee. Nor shall any allowance

be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to ten per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares or merchandise have been damaged or not, or whether or not the same have any commercial value: *Provided, further*, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. All merchandise abandoned to the Government by the importers shall be delivered by the importers thereof at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importers to comply with the direction of the collector or the chief officer of customs, as the case may be, the abandoned merchandise shall be disposed of by the customs authorities under such regulations as the Secretary of the Treasury may prescribe, at the expense of such importers. Where imported fruit or perishable goods have been condemned at the port of original entry within ten days after landing, by health officers or other legally constituted authorities, the importers or their agents shall, within twenty-four hours after such condemnation, lodge with the collector, or the person acting as collector, of said port, notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location, and the name of the vessel in which imported. Upon receipt of said notice the collector, or person acting as collector, shall at once cause an investigation and a report to be made in writing by at least two customs officers touching the identity and quantity of fruit or perishable goods condemned, and unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required, or if the importer or his agent fails to notify the collector of such condemnation proceedings as herein provided, proof of such shortage or nonimportation shall not be deemed established and no allowance shall be made in the liquidation of duties chargeable thereon."

The material part of T. D. 30023, which is a regulation of the Treasury Department, is as follows:

"1. In order to obtain an allowance on account of shortage or nonimportation caused by decay, destruction, or injury to imported fruit, under the said provisions of law, the importers shall, within 48 hours after the arrival of the importing vessel, give notice in writing to the collector of customs of their intention to claim such allowance, which notice shall be in the following form:"

Here follows an appropriate form of notice:

"Upon receipt of such notice the collector will at once direct the appraiser to detail one or more examiners to make an examination of such fruit to determine the percentage of decay therein. Such examiner shall proceed promptly to select and set aside representative packages consisting of at least 5 per cent of each lot or mark, and will open and examine the same to determine the percentage of decay in the fruit contained therein. The appraiser shall make a return of such examination to the collector within 10 days after the landing of the merchandise, specifying the number of packages examined, the marks and numbers thereof, and the percentage of rotten and worthless fruit contained therein. The percentage of rotten and worthless fruit returned by the appraiser, as found in the packages so examined, shall be considered as the percentage of such fruit contained in the entire importation, and an allowance will be made accordingly in the liquidation of the entry."

The only issue in this case is whether the importers are entitled to the benefit of the provisions made in said subsection 22. Except as hereinafter stated, the importers sufficiently complied with the foregoing regulations.

It is claimed in argument by importers' counsel, and is not denied, that after the promulgation of the foregoing regulations until about November, 1910, the collector at the port of Boston had treated importations of grapes in barrels or other packages as within the scope of the regulations, while at New York the practice contended for by the Government had obtained.

The Treasury Department issued instructions to the collector at the port of New York, under date of November 1, 1910, of the following tenor:

"The department concurs in the opinion (previously expressed by the collector) that inasmuch as grapes in barrels or other packages are subject to a duty based upon the capacity of the containers thereof no allowance for damage because of decay can be allowed thereon."

And upon the authority thereof the collector at the port of Boston refused the allowance claimed here.

It is contended on behalf of the Government that the law in plain terms imposes duty upon these grapes according to the cubical capacity of the packages and not upon the quantity imported, and in support of this position it is urged that similar provisions in prior tariff laws have been construed to impose duty upon the capacity of the containers irrespective of contents.

The importers, on the other hand, contend that the provisions of said subsection 22 clearly apply to the merchandise at bar, and, among other things, urge in support of their contention that where duty is based on the capacity of a standard commercial package it presupposes a normal shipment of sound merchandise; that it is the merchantable portion thereof only that enters into commerce and in contemplation of law is dutiable; that the regulations of the Treasury Department, above quoted, are as clearly applicable to these grapes as to any other fruit; and in addition, urge that the doctrine of the Supreme Court in Lawder *v.* Stone (187 U. S., 281), as well as that of other cases cited is applicable.

It may be observed in passing that no provision of law similar to that found in subsection 22 seems to have existed in prior tariff laws.

It is necessary to the proper understanding of the issue to inquire somewhat into previous legislation. Under paragraph 299, act of 1890, grapes were made dutiable at 60 cents per barrel of 3 cubic feet capacity or fractional part thereof; under paragraph 301, oranges and certain other fruits were also dutiable at a specific rate based upon the cubical capacity of the packages containing the same, and if imported in bulk at the rate of $1.50 per thousand.

Under paragraph 214, act of 1894, grapes were made dutiable at 20 per cent ad valorem; under paragraph 216, oranges and certain other fruits paid a specific duty if in packages, based upon the cubical capacity of the containers, and if in bulk, at the same rate as under the act of 1890; and by paragraph 213½ pineapples were dutiable at an ad valorem rate.

Under paragraph 265, act of 1897, grapes were dutiable at 20 cents per cubic foot of the capacity of barrels or packages in which they were imported; under paragraph 266 oranges and certain other fruits were dutiable at 1 cent per pound; and under paragraph 268 pineapples in barrels and other packages were dutiable by the cubical capacity of their containers, and if in bulk, at a specific rate per thousand.

Under the provisions of paragraphs 276, 277, and 279, act of 1909, the last above-named methods of assessing duty on like merchandise are preserved.

In the case of Lawder *v.* Stone, supra, decided in 1902, the Supreme Court had before it the above provision of the act of 1894 for the assessment of duty upon pineapples, and in connection therewith section 23 of the customs administrative act of 1890, which provided, in effect, that no allowance for damage to imported goods, wares, or merchandise should be made in the estimation and liquidation of duties thereon, but that abandonment might be made of any portion thereof included in the invoice, and the payment of duties thereon be thereby relieved, provided the portion so abandoned amounted to 10 per cent of the total value or quantity of the invoice. The pineapples in that case were invoiced by the dozen. Upon the discharge of the cargo the number of sound fruit was ascertained by estimation and there remained in the hold of the steamer a quantity of what was described as "slush," consisting of decomposed vegetable matter mixed with bilge water, and other débris, some in a liquid condition. This slush was brought up from the hold in baskets and was included by the inspectors in their estimation. The number of pineapples alleged to be contained in the slush was uncountable, but was roughly estimated by counting the pineapple tops and butts contained in a number of baskets of the slush, striking an average of these baskets, and then calculating the number contained in the whole quantity of slush according to that average. The number of pineapples in the slush thus ascertained was commercially valueless, and under sanitary regulations was dumped overboard. Such number was less than 10 per cent of the total invoice of the shipment, and the question was whether duty was assessable on that part of the cargo. The Supreme Court held it was not, saying, in effect, that the provisions of section 23 should not be construed as referring to an article, case, or package which, though in the semblance of merchandise, had become absolutely valueless because of natural causes or casualty occurring thereto while the article, case, or package was in transit to the United States, and that therefore the pineapples which had rotted and had become a part of the slush mentioned were outside of the category of imported goods, wares, or merchandise mentioned in this section and not liable to assessment for duty.

It will be noticed that duty was assessable under the law upon these pineapples at an ad valorem rate.

Subsequent to this decision of the Supreme Court there was considerable litigation on the subject of rotten fruit, to which this court has had occasion to refer in other opinions and which it is not deemed necessary to recite in full here.

In Stone *v.* Shallus (143 Fed. Rep., 486), decided in 1906, the Circuit Court of Appeals for the Fourth Circuit considered section 23 of the customs administrative act of 1890, and held that certain rotten oranges which were separated from the consignment of some 700 barrels, dutiable by the pound, which had been opened and repacked in the presence of custom officers and under Treasury regulations, and which were not equal to 10 per cent of the weight of the entire shipment, were not dutiable under the doctrine of Lawder *v.* Stone. The Circuit Court of Appeals saying that it was not the box of oranges which was the unit of importation, but it was the pound, and that the rotten slush, formerly oranges, was not oranges within the meaning of the statute.

Reference may also be had to Courtin *v.* United States (143 Fed. Rep., 551) and Villari *v.* United States (147 Fed. Rep., 767) as showing the trend of judicial decisions on the subject.

It will be observed that these cases relate to fruits imported which under the applicable statutes were dutiable at ad valorem rates either by the pound or by treating the individual fruit as a unit.

In the case of United States *v.* Mayer (71 Fed. Rep., 501), decided in 1896 in the Circuit Court of Appeals for the Second Circuit, the merchandise was Malaga grapes, packed in cork dust, in half barrels containing about 2 cubic feet. The average capacity of 6 barrels which were measured was 2.078 feet. Paragraph 299, act of 1890, was in question. The average weight of the half barrels with contents was about 65 pounds. The grapes were assessed as if the barrels contained 3 cubic feet capacity or fractional part thereof. The importers claimed that from the cubical capacity of the containers an allowance should be made for the cork dust with which the grapes were packed. The court said there was no dispute as to the facts; that the grapes were as a rule packed in barrels containing about 3 cubic feet, often packed in half barrels, always packed in sawdust or cork dust for the purpose of protection in transportation, always sold by the barrel, the selling price including the barrel, cork dust, and grapes, and were sold at auction in large quantities as soon as the importations reached this country. Referring to paragraph 301, same act, the court said it was obvious duty upon oranges was imposed by the package, so also the grapes were made dutiable by the standard commercial package, as they were bought and sold in the imported package, which the importer and the purchaser both uniformly recognized as the commercial unit. The court reversed the Circuit Court which had sustained the importers' contention that nothing but the grapes should be considered. No question relating to the decay in the fruit was presented or considered.

The Government relies upon this case and others not necessary to cite upon the proposition that it is the cubic foot of the container that is the unit of grape importations upon which duty is by statute assessed.

It may be granted that this case is authority for saying that the substance in which the grapes are packed to keep them from crushing or otherwise suffering damage in the containers shall not be deducted from the cubic-foot capacity of the container which is the unit upon which duty is assessed.

Said subsection 22 was considered by this court in Vandegrift *v.* United States (3 Ct. Cust. Appls., 198; T. D. 32470), and it was there in substance held that Congress thereby intended to make provision for an allowance in the estimation and liquidation of duties upon fruit when by reason of decay, destruction, or injury during transportation there was a shortage therein, or in fact a nonimportation thereof, as a result of which its commercial value was destroyed.

The language of the subsection is equally applicable to grapes as to other fruit. Congress, of course, had in mind the provisions of the respective duty paragraphs, and knew that grapes with other fruits were liable to decay in transit. It did not see fit by express language to exclude grapes from the benefit of the provision relating to fruits, nor was the same limited to fruit alone, but was extended to other perishable articles. The limitation is to be found in the fact that the Secretary of the Treasury is to prescribe regulations appropriate to the ascertainment of the allowance and that the subsection itself fixes the time within which the evidence showing decay, loss, or damage shall be taken.

The regulations upon their face do not indicate that grapes are to be excluded therefrom, but seem to contain provisions applicable thereto.

From what has been said it is clear that we must adopt either the narrow technical rule that, because the unit for the assessment of duty is the cubic foot, if any grapes therein are sound, all are legally presumed so to be, although contrary to the fact, or, the broader one, that it is the intent of the law as a whole to impose duty upon such grapes as are, when imported, of commercial value and not upon a decayed,

rotten substance of no commercial value and of no use, whatever may be the unit for assessment, provided the proportion decayed may reasonably be ascertained.

We think the latter is the wiser and sounder rule and is in accord with the authorities.

It is not urged here, and indeed the record shows to the contrary, that there is any physical difficulty in determining what part of these grapes are decayed and worthless.

It is not intended hereby to disturb the rule of United States *v.* Mayer, supra. Thereunder no allowance can be had for the usual packing material placed with the grapes in the containers and hence the allowance to which importers are entitled here is not to be computed upon the percentage which the decayed grapes bear to the entire quantity of grapes in the container, but to the percentage which such decayed part bears to the cubical capacity of the container. We are prompted to this observation because to us the record is not entirely clear in this respect.

The contention of the Government that if in a given package but a few grapes were placed and all were when imported free from decay, the few would pay duty based upon the entire cubical capacity of the container does not impress us as making against our conclusion. It is commercially unlikely, and whether so or not does not touch the question of what ought to be done when grapes actually shipped are rendered worthless by decay before entry.

As one reason, which strongly appeals to us, why the contention of the Government ought not to be sustained, it may be observed that pineapples are now dutiable by cubical capacity of containers when therein imported in the same manner as grapes, or, if imported in bulk, at a specific rate per thousand. If the Government prevails, it would follow that a like contention as to pineapples imported in containers must be upheld, while as to those in bulk the contrary rule would obtain; that is, in the one case the rotten pineapples would pay a duty, while in the other they would not. We think if Congress intended to make this distinction it should have expressed such intent in language clear and certain.

While the various statutes to which we have referred imposing duties upon fruit, including grapes, have treated the cubical capacity in feet of the containers thereof when so imported, as the unit for assessment of duty, yet such has not always been, and is not now, the invariable rule.

To illustrate, under the tariff act of 1890 grapes were dutiable by the cubic foot capacity of containers, under the act of 1894 they were dutiable at ad valorem rates, while by the acts of 1897 and 1909 the cubical foot capacity unit was restored and preserved. Under the first two statutes oranges and certain other fruits were dutiable by cubical foot capacity of containers, when so imported, and by the thousand when imported in bulk, while under the last two acts duty was fixed by the pound alone. Pineapples were dutiable at ad valorem rates when first referred to, while the acts of 1897 and 1909 fix duties thereon by both methods.

We do not think from this it can be concluded that Congress intended to establish a discrimination against or in favor of either method of importation, or to declare by subsection 22 that one unit of assessment might have the benefit of an allowance for rot and that the other should be excluded therefrom. No reason for such a discrimination appears, and none is claimed. It is more reasonable to suppose that the distinction as to duty between fruits in containers and in bulk arose from an effort on the part of Congress to adapt the rates to the methods of shipment in use, thereby facilitating the examination of importations and the determination of amounts of duty. Upon this theory the different statutes are harmonious and the cited decisions do not conflict. Not only this, but an unfounded discrimination between like fruits contemporaneously shipped by the two methods and suffering equal relative damage by decay is thereby avoided, and the principle underlying the decisions that merchandise shipped for importation, but which is destroyed in transit and is never in fact imported or becomes the subject of commerce here should not be taxed unless Congress has plainly so declared is recognized and applied.

The several cases referred to by the Government involving duty upon fish in tins do not seem to be opposed to the conclusion we reach.

The record shows that evidence as to the method of examining the importations in question was received by the board subject to the objection of the Government that the board had no jurisdiction of the case. Neither party has discussed the question of jurisdiction in this court, and it is not considered.

We understand it to be agreed that as to the protests numbered 487021-3523, 493466-3624, and 493462-3621 the above regulations of the Secretary of the Treasury were not complied with, and therefore hold as to them the judgment of the Board of General Appraisers should be affirmed.

As to the other protests, it is adjudged that the judgment of the board be reversed, and reliquidation thereof is ordered pursuant to the views herein expressed.

EXHIBIT 35.—(T. D. 32458.)—*Allowance on nonimportation.*

UNITED STATES *v.* PASTENE & CO. (No. 745).

DECAYED MACARONI.—It is not contended by either party that macaroni is a perishable article within the meaning of the first part of subsection 22 of section 28, tariff act of 1909. The evidence disclosed by the record justifies the conclusion that the macaroni for which allowance was made was, before arrival in port, not merely damaged, but destroyed, and that therefore as to the destroyed portion there was no importation.

United States Court of Customs Appeals, April 17, 1912.

Appeal from Board of United States General Appraisers, Abstract 26203 (T. D. 31788).

[Decision affirmed.]

William L. Wemple, Assistant Attorney General (Leland N. Wood, assistant attorney, on the brief), for the United States.

Searle & Pillsbury (William E. Waterhouse of counsel) for appellees.

Before Montgomery, Smith, Barber, De Vries and Martin, judges.

Smith, judge, delivered the opinion of the court:

On November 18, 1909, the steamship *Cairnstrath* left Naples, Italy, carrying under the forward hatch some 30,000 boxes of macaroni, 20,500 of which were consigned to P. Pastene & Co. (Inc.), at Boston, Mass. In the ordinary course of events the *Cairnstrath* should have completed her voyage in 18 days, but she encountered such stormy weather that she did not make her port of destination until January 4, 1910, 47 days after her departure. Due to the fact that the bow of the vessel was badly injured by heavy seas her forepeak was flooded on November 24 and in consequence 5,500 boxes of the macaroni stowed under hatch No. 1 were injured by sea water, some of the boxes being completely saturated. The vessel was discharged within 3 or 4 days after her arrival and the Government examiner reported that the contents of 2,584 boxes of macaroni were damaged 75 per cent, the contents of 102 boxes 50 per cent, and the contents of 116 boxes 100 per cent. The collector of customs assessed full duty on the merchandise and against this action the importers protested, claiming that that part of the macaroni which had absorbed moisture or which had been soaked with salt water was at the time of the importation no longer macaroni, and that the same was not subject to duty or that if subject to duty an allowance should be made for the depreciation in the value thereof caused by the absorption of water and the resulting decay. The Board of General Appraisers sustained the protest as to that part of the merchandise which was reported "damaged" by the examiner and held that from the duties assessed thereon should be deducted the percentage of damage officially found. From this decision of the board the Government appealed, and now argues that full duties were properly assessed, first, because the macaroni was not a perishable article within the meaning of subsection 22 of section 28, and, second, because the goods were not abandoned to the United States within 10 days after entry as required by the latter part of the subsection just mentioned. The following is the part of subsection 22 of section 28 which we think it material to consider:

"SEC. 22. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction, or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee. Nor shall any allowance be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares, or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to ten per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares, or merchandise have been damaged or not, or whether or not the same have any commercial value: *Provided further*, That section twenty-eight hundred and ninety-nine

of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. * * *."

It is not contended by either party to the litigation that macaroni is a perishable article within the meaning of the first part of subsection 22 of section 28 and, therefore, there seems to be but one real issue raised by the appeal, and that is, Was the macaroni which was relieved of duty by the board imported? If the merchandise came within the customs jurisdiction damaged only, that is to say injured in its quality, although still retaining its identity and characteristic nature, then it seems clear that an importation of the goods can not be successfully denied. On the other hand, if the goods, consequent upon the wetting received, became decomposed and practically worthless as merchandise prior to their arrival within the limits of the port, it can not be said that they were imported into the United States within the meaning of the tariff laws, particularly as Congress seems to have expressly recognized in the second proviso to the subsection that "total destruction" may result in a "nonimportation in whole or in part."

An article is damaged when its value, its usefulness, or its efficiency is only impaired. It is destroyed when its value, usefulness, and that which makes it what it is are completely lost. We think that the evidence disclosed by the record justifies the conclusion in this case that the merchandise for which allowance was made was, before arrival in port, not merely damaged but destroyed, and that therefore it was not imported.

Macaroni is a paste made from the flour of hard, glutinous wheat mixed with water. This paste is pressed into slender tubes through the bottom of a perforated vessel and then dried in the sun or at a low temperature. The testimony shows that if stored in bulk and not in separate wrappers macaroni will sour and spoil in three or four weeks. If, however, it is wrapped in paper and packed in boxes, it will keep as long as six or seven months, provided it be stored in a dry, ventilated place. If it is stored in a damp cellar, it will not last at all. The macaroni here involved was packed in boxes and stowed in the hold of a vessel, which was flooded with water to the extent that some of the boxes were dripping wet when discharged and all of them were exposed to damp and moisture for some 40 days before arrival. Considering the nature of the merchandise and the results which would naturally follow a wetting or exposure to moisture in a damp, badly ventilated hold, it was certainly to be expected that some considerable portion, if not all, of the macaroni in the boxes so exposed would be absolutely ruined. And that such was the outcome is borne out by Ernest El de Feo, traffic manager for the importers, who testified that the contents of the boxes which were opened and examined were a mass of mold, varying in percentage according to the amount of moisture absorbed. Of course, in those boxes which were exposed to nothing more than dampness, or which were not completely covered with water, or from which the water was quickly removed by the pumping out of the vessel, there was a percentage of macaroni which was either not exposed at all or so slightly exposed that it still retained the characteristic features of macaroni. We think, therefore, that the appraiser's report that 2,584 boxes were 75 per cent damaged, 102 boxes 50 per cent damaged, and 116 boxes 100 per cent damaged can not be construed to mean that the macaroni in the boxes was only impaired in value and that none of it was destroyed. In our opinion, the appraiser took the boxes as the unit of his calculation, and when he speaks of so many boxes 75 per cent damaged he means nothing more nor less than that 75 per cent of the contents were spoiled. This conclusion seems to be sustained by that part of the report which states that 116 boxes were 100 per cent *damaged.* To argue that the case is one of damage and not destruction, because the contents of the boxes were ruined in part only, appears to us wholly untenable, especially as the United States Supreme Court in Lawder *v.* Stone (187 U. S., 281) declined to hold that some sound pineapples mixed with a slush of putrid ones made the whole mass dutiable as pineapples. The fact that 800 boxes of the macaroni on which an allowance was made were sold for $50 as fuel, or as food for horses, is no proof whatever, in our opinion, that the macaroni for which duties were deducted had some commercial value. With the exception of 116 boxes "damaged" 100 per cent, all of the boxes contained from 25 to 50 per cent of undestroyed macaroni, and for that rather than for the destroyed macaroni we think it fair to assume the purchase price of $50 was paid. Eight hundred boxes of macaroni, if sound, would have been worth in the market $1,200, and the fact that they brought only $50, far from establishing the contention of the Government, is very strong evidence that even that part of the marcaroni held by the board to be dutiable was so far contaminated by contact with the spoiled macaroni that it also was well-nigh commercially valueless.

The cases cited on the issue of nonimportation by counsel for the Government are not in point, some of them because they involved articles damaged but not destroyed, some of them because the destruction occurred subsequent to importation, and still others because the importer raised no question of nonimportation but, assuming that the goods were damaged, stood upon his right to abandon them. Even if the cases had been in point, all of them were decided prior to Lawder *v.* Stone, and they must now yield to the doctrine laid down in that case, especially as there appears to be nothing in subsection 22 of section 28 indicating any intention on the part of Congress to alter, modify, or change the law as there interpreted. Indeed, as already stated, the subsection expressly recognizes that there may be a nonimportation in whole or in part by reason of total destruction, and to that extent at least approves the conclusion reached by the Supreme Court in the case just mentioned. If any deduction is to be drawn from the changes accomplished by the subsection in the then existing law, it is that the legislature did not intend to impose additional hardships on the importer, but rather to relieve him of some of those which he was then enduring. By the subsection importers are now expressly authorized to secure allowances for shortage or nonimportation caused by "decay, destruction, or injury to fruit or other perishable articles." More than that, by the subsection it is now made practicable for the importer to ascertain promptly whether his goods have been damaged or destroyed without violating the provisions of section 2899 of the Revised Statutes.

If there be any power in Congress to levy duties on goods which have been destroyed before their arrival within the tariff jurisdiction of the United States, the intention to exercise that power should be clearly and unmistakably expressed. In the absence of any such expression we are not disposed to infer that Congress intended to add to the misfortunes of the importer by augmenting his losses and compelling him to pay duty on that which prior to importation had become commercially valueless.

The decision of the Board of General Appraisers is affirmed.

EXHIBIT 36.—(T. D. 33035.)—*Weight of silk.*

SEARS, ROEBUCK & CO. *v.* UNITED STATES (No. 898).

ASSESSMENT OF SILK BY WEIGHT.—The examiner weighed but one piece of the silk goods, though these were contained in two separate cases, the silks differing in color and in weight. The evidence clearly rebuts the presumption of correctness attaching to this official's finding, and shows, too, that the weight as stated in the importer's invoice to have been more fairly and justly determined.

United States Court of Customs Appeals, December 16, 1912.

Appeal from Board of United States General Appraisers, Abstract 27934 (T. D. 32333).

[Reversed.]

Lester C. Childs for appellants.

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The appellants imported into this country two cases of silk chiffon muslin, which was assessed with duty at $3.50 per pound under paragraph 399 of the tariff act of 1909. The examiner reported the weight of the merchandise to be greater than that shown upon the official invoice, and the gross amount of the assessment was thus materially increased. The importers duly protested against the increase, claiming the invoice weight to be correct. The protest was heard upon evidence by the Board of General Appraisers and was overruled, from which decision the importers now appeal to this court.

In the invoice the two cases of goods were numbered 6476 and 6477, respectively. The contents of the first case were stated at 100 pieces, measuring 3,138.90 meters in length, and weighing 49 kilograms net. The second case was invoiced at 108 pieces, measuring 3,397.80 meters in length, and weighing 53 kilograms net. The invoice did not specify the different colors or separate weights of the individual bolts of goods, but simply stated the entire number of pieces in each case, together with the combined length and weight of the same.

The examiner attempted to verify the reported weight of the merchandise, and for that purpose he took a single piece of goods from case 6477, taking none at all from

case 6476, and weighed the selected piece. The piece thus examined was 32.3 meters in length, and weighed 19.9 ounces net. Thereupon the examiner computed the weight of the entire importation upon the assumption that each meter thereof was of the same weight as every other meter. That calculation produced a result considerably in excess of the weight stated in the invoice and furnished the sole basis for the report of the examiner upon the weight of the merchandise.

It now plainly appears from the evidence that the assumption upon which the examiner acted was mistaken; and that his computation was incorrect. Case 6477, from which the sample piece was taken, in fact contained goods of two different colors, and the several colors differed also in weight per meter. This variation was caused by the dyes used in coloring the goods, which are extremely light in weight. It furthermore appears that case 6476, from which, however, no piece at all was examined, contained goods of three entirely different colors, varying likewise in weight. The examiner's calculation was, therefore, necessarily inaccurate.

After the entry was liquidated the importers selected two pieces from each of the five colors composing the importation, and accurately weighed the same. A computation based upon those weights established a result substantially equal to the weight stated in the invoice. The importers thereupon filed their protest with the collector, claiming that the statement in the invoice was correct, and requesting a return of the duty exacted upon the excess weight. The importers filed with their protest a paper showing in detail the steps taken by them to verify the invoice weight.

The entry was liquidated on February 1; the selected pieces were weighed by the importers on the 6th, which was the day after their receipt at the importers' store; the protest was dated the 8th and filed on the 9th, all of the same month.

The appraiser made a report to the collector upon the protest, and the same is copied below. It will be observed that in the report the appraiser makes no mention at all of case 6476, containing 100 pieces of the merchandise. As stated above, no examination was made of the contents of that case, nevertheless an addition was made to its invoice weight because of the examination of the single piece taken from the other case.

"The COLLECTOR OF CUSTOMS, *Chicago*.

"SIR: Regarding protest 38240, of Sears, Roebuck & Co., entry 21667, I have to report as follows:

"The merchandise in question is 3,397.80 meters of silk chiffon muslin, 103 cms. wide, invoiced as weighing 53 kilos net, at a unit price of 1.15 fcs. per meter less 2 and 1 per cent. The case contained 108 pieces and was apparently all one kind of merchandise; consequently only one piece was weighed to verify the weights on the invoice. This piece of 32.3 meters weighed 19.9 ounces net. The importer now protests against the weight, claiming that the different pieces varied in weight, and furnishes a series of questions asked Mr. Cole, an employee of the importer, by Mr. Bonheim, in charge of the importer's foreign division, showing that the weights found by the importer differed from the weights returned by the appraiser. I have no reason to doubt the truth of these statements, but the merchandise was invoiced as one kind and was not separated, and was treated as such at the time of examination. The muslin was packed so that all one color appeared at the top of the case, and as the case was not unpacked, it was not discovered that there were other colors which might have weighed less. When merchandise of this character is invoiced by colors, showing different weights each color is verified, but it was not done in this case, as the muslin was supposed to be of one color.

"No sample was submitted and none retained."

The foregoing statement sufficiently explains the discrepancy between the invoice weight and that adopted for liquidation. The record does not show the exact amount of this difference. However, by extending the figures above given, it appears that the examiner's report added about 12 kilograms to the weight reported in the invoice, and duty was taken upon that addition at the rate of $3.50 per pound. The court is convinced that this charge was excessive, and that the entry should be reliquidated upon the basis of the invoice weight.

It should be noted, however, that the record is very uncertain concerning one fact which the importers should have distinctly proven as part of their case, and that is the exact number of pieces severally composing the different colors of the importation. This uncertainty was the principal reason which inclined the board to overrule the protest. The importers proceeded upon the assumption that the entire importation was equally divided into the five several colors; they therefore weighed 10 pieces, two of each color, and cited the result as conclusive in support of the invoice weight. This should have been supplemented by direct proof of the number of pieces of each color contained in the importation. The record, however, is not satisfactory upon this subject.

But, nevertheless, it fairly appears from the record that the invoice weight should control in the case. It is true that the presumption favors the correctness of the examiner's report; but that presumption is not conclusive, and it is effectually rebutted by the evidence in the case. This leaves the statement contained in the official invoice, together with the corroboration furnished by the importers' weights, as the only authority remaining in the case upon the subject. And again, it seems to be implied by the questions put to witness, Abel Cole, and by his answers, that the importation was in fact composed equally of the five several colors. And this implication, vague as it undoubtedly is, was probably understood and accepted by the Government at the hearing, for no cross-examination was directed to that aspect of the case.

The court therefore concludes that the assessment was excessive, and the decision of the board sustaining it is reversed.

Reliquidation is ordered upon the basis of the invoice weight as above stated.

EXHIBIT 37.—(T. D. 33163.)—*Post cards.*

RAPHAEL TUCK & SONS CO. *v.* UNITED STATES (No. 899).

1. VIEWS OF AMERICAN SCENERY OR OBJECTS.—Views covered by paragraph 412, tariff act of 1909, are such as present actual places, buildings, landscapes, or scenes within the United States.
2. GEORGE WASHINGTON SERIES OF POST CARDS.—Pictures that imaginatively portray events in the life of Washington are not views of American scenery or objects. They do not profess to represent any real locality or actual scene or scenery within the United States. They were properly dutiable as cards lithographically printed under paragraph 412, tariff act of 1909.

United States Court of Customs Appeals, February 1, 1913.

Appeal from Board of United States General Appraisers, G. A. 7340 (T. D. 32331).

[Reversed.]

Curie, Smith & Maxwell (Thomas M. Lane of counsel) for appellant.

William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney of counsel; Thomas J. Doherty, special attorney, on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Martin, judge, delivered the opinion of the court:

The merchandise involved in this case was imported under the tariff act of 1909 and consists of certain pictured postal cards which are severally advertised on their margins as numbers of the "George Washington Series of Post Cards." Each picture portrays in rather legendary fashion some event in the life of Washington and bears a brief inscription identifying it. The following subjects are thus treated: Washington and Lafayette at Mount Vernon, Washington Crossing the Delaware, Washington's Reception at New York, Washington Taking Command of the Army, Washington Taking Leave of His Officers, and Washington's Inauguration as President of the United States. The pictures are somewhat crude in execution; they treat their respective subjects in rather heroic style and with vivid coloring. In some instances the pictures follow certain well-known oil paintings in their principal features.

The merchandise was returned by the appraiser as lithographs of American views, between eight and twenty one-thousandths of an inch in thickness and having less than 35 square inches of surface. Duty was accordingly assessed by the collector at 15 cents per pound and 25 per cent ad valorem, under the provisions of paragraph 416 of this act.

The importers duly filed their protest against that assessment, claiming that the articles were properly dutiable at 8½ cents per pound as cards lithographically printed, plus one-half of 1 cent per pound as embossed, under the provisions of paragraph 412 of the act.

The protest included various alternative claims, which do not require specific mention.

The protest was tried before the Board of General Appraisers and was overruled, from which decision the importers now appeal.

The following parts of paragraphs 412 and 416 set out those provisions of the act which govern the issues above defined.

"412. * * * Cards * * * lithographically printed in whole or in part * * * (except * * * views of American scenery or objects, * * *) * * * exceeding eight and not exceeding twenty one-thousandths of an inch in thickness, and less than thirty-five square inches cutting size in dimensions, eight and one-half cents per pound; * * * and in addition thereto * * * if either die cut or embossed, one-half of one cent per pound; * * *.

"416. * * * Views of any landscape, scene, building, place or locality in the United States, on cardboard or paper, not thinner than eight one-thousandths of one inch, by whatever process printed or produced, * * * occupying thirty-five square inches or less of surface per view, * * * fifteen cents per pound and twenty-five per centum ad valorem. * * *."

As is stated above, the collector assessed the importation under the latter of the two paragraphs above given, and the importers contend for assessment under the former one.

The record therefore, presents the question whether or not the pictures above described are "views of any landscape, scene, building, place, or locality in the United States." If so, they are properly classified and assessed by the collector; otherwise the claim of the importers should be sustained.

It is evident that the pictures in question are not views of any landscape, building, place, or locality in the United States; and, indeed, they do not profess to be such views. The remaining question is whether or not the pictures present views of any "scene" in the United States. It may be conceded that this word is capable of such a definition as would include the pictures in question, but if it be construed together with the associate words of the provision it must be given a narrower and more limited interpretation. As so construed the scenes intended by the provision are such only as belong to the same general class with landscapes, buildings, places, or localities. The court is not inclined to place the pictures at bar within such a classification. The pictures do not profess to represent with accuracy any real locality or actual scene or scenery within the United States; and, indeed, such a representation is obviously impossible in the treatment of their respective subjects.

It may be observed that in paragraph 412 Congress has established a general classification which would include certain of the cards named in paragraph 416, if the first paragraph contained no exception to modify its general terms. However, paragraph 412 contains such an exception, and this was placed in the paragraph for the manifest purpose of making it consistent with the correlative provisions of paragraph 416 now under review. The language of that exception is as follows: "Except * * * views of American scenery or objects * * *." It thus appears from this cognate provision that the word "scene" as used in the one paragraph was intended to be synonymous with the word "scenery" as used in the other. This tends to confirm the court in the conclusion that the views covered by paragraph 412 are only such views as present actual places, buildings, landscapes, or scenes within the United States and not such as are almost entirely produced from the imagination of the artist.

In this view of the case the court holds the decision of the board sustaining the assessment to be erroneous. The same is accordingly reversed, and reliquidation is ordered as above defined.

EXHIBIT 38.—(T. D. 33169.)—*Sawed talc.*

AMERICAN LAVA CO. ET AL. *v.* UNITED STATES (No. 999).

TALC SAWED TO FORM AND SIZE.—Talc and French chalk are not treated in the decisions as being the same substance. Under these decisions the classification of talc is a question of fact rather than of law, the classification to be determined by the evidence in the particular case. The evidence here on review would make it appear there are two varieties of talc, one crystalline and the other massive—that is, French chalk—and that these commercially are different articles with different uses. The talc of the importation at the port of New York had been sawed to a form and size convenient for the economical manufacture of gas burners and electric insulators, and being a mineral advanced in value and condition was dutiable at 20 per cent ad valorem as articles partly manufactured and not provided for under section 6, tariff act of 1897, and paragraph 480, tariff act of 1909. There was no evidence to support the protest of the American Lava Co., and the collector's finding is sustained.

United States Court of Customs Appeals, February 1, 1913.

Appeal from Board of United States General Appraisers, Abstracts 29454 and 29500 (T. D. 32760).

[Reversed as to part, affirmed as to part.]
Brown & Gerry for appellants.
William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Smith, judge, delivered the opinion of the court:

Talc sawed into pieces of different sizes was imported by the American Lava Co. at the port of Chattanooga and by Kraemer & Foster and L. Blanc Walther at the port of New York. With the exception of some consignments imported under the tariff act of 1897 by L. Blanc Walther and the American Lava Co., all of the importations came into the country subsequent to the passage of the tariff act of 1909. The talc imported by Kraemer & Foster and L. Blanc Walther was classified by the collector of customs at New York as French chalk and assessed for duty at 1 cent per pound either under paragraph 13 of the tariff act of 1897 or under paragraph 13 of the tariff act of 1909, as the date of importation might determine. The talc imported by the American Lava Co. was classified by the collector at Chattanooga as steatite blanks or soapstone and assessed for duty at 35 per cent ad valorem under the provisions of paragraph 95 of tariff the act of 1909. The paragraphs underwhich the collector made his classification and assessment of the goods read as follows:

"*Tariff act of 1897.*

"13. Chalk (not medicinal nor prepared for toilet purposes), when ground, precipitated naturally or artificially, or otherwise prepared, whether in the form of cubes, blocks, sticks or disks, or otherwise, including tailors', billiard, red, or French chalk, one cent per pound. Manufactures of chalk not specially provided for in this act, twenty-five per centum ad valorem.

"*Tariff act of 1909.*

"13. Chalk, when ground, bolted, precipitated naturally or artificially, or otherwise prepared, whether in the form of cubes, blocks, sticks or disks, or otherwise, including tailors', billiard, red, or French chalk, one cent per pound; manufactures of chalk not specially provided for in this section, twenty-five per centum ad valorem.

"95. Articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for in this section, whether susceptible of decoration or not, if not decorated in any manner, thirty-five per centum ad valorem; if decorated, forty-five per centum ad valorem; carbon, not specially provided for in this section, twenty per centum ad valorem; electrodes, brushes, plates, and disks, all the foregoing composed wholly or in chief value of carbon, thirty per centum ad valorem."

The official classification of the goods and the duties imposed thereon did not meet with the approval of the importers and accordingly they filed formal protests in which

various grounds of objection were offered to the collector's action. L. Blanc Walther and Kraemer & Foster claimed, among other things, that the merchandise was dutiable as a crude mineral or as a nonenumerated article manufactured in whole or in part. The American Lava Co. confined its protest to the claim that the goods were dutiable at 20 per cent ad valorem as articles manufactured in whole or in part and not provided for.

The protests upon which the several importers really relied were based on the following provisions of the tariff acts of 1897 and 1909:

"Tariff act of 1897.

"614. Minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for in this act. (Free list.)

"SEC. 6. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this act, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this act, a duty of twenty per centum ad valorem.

"Tariff act of 1909.

"480. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this section, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem.

"626. Minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for in this section. (Free list.)"

The Board of General Appraisers overruled all of the protests, and the importers appealed.

The merchandise imported by L. Blanc Walther and by Kraemer & Foster was returned by the appraiser at the port of New York as French chalk, and this return was confirmed by the deputy appraiser, who reported that the importation consisted of pieces of French chalk sawed to regular sizes and dutiable at 1 cent per pound under paragraph 13. The goods imported by the American Lava Co. were returned by the appraiser at the port of Chattanooga as steatite blanks or soapstone, dutiable at 35 per cent ad valorem under paragraph 95.

The classification of talc is not a new question. Indeed, it is one which has been frequently considered by the Board of General Appraisers and by the courts, but apparently without much uniformity of result. Sometimes such merchandise has been classified as French chalk, sometimes as a nonenumerated article manufactured in whole or in part, and sometimes as an undecorated ware composed of mineral substances.

In the matter of the protest of Geo. W. McNear (T. D. 24864, decided Dec. 30, 1903), ground talc was classified by the collector as "ground French chalk," and duty was accordingly assessed on the merchandise at 1 cent per pound under the provisions of paragraph 13 of the tariff act of 1897. In that case the importer claimed that merchandise was dutiable at 20 per cent ad valorem as a nonenumerated manufactured article under the provisions of section 6 of said act. The merchandise was analyzed by the Government chemist at San Francisco and was returned by him as "ground French chalk." The Government chemist at the port of New York reported that it was "steatite (talc) powdered," and that the term "French chalk," as used in technical works, was synonymous with steatite or soapstone and signified, without limiting or qualifying words, French chalk in pieces suitable for marking clothing. The board approved the findings of the chemist at the port of New York and, deciding that the restriction of the term to the article used by tailors for marking clothing was borne out by the language of paragraph 13, sustained the protest on the ground that the merchandise was a nonenumerated manufactured article dutiable at 20 per cent ad valorem under section 6.

In Abstract 14620 (T. D. 27968) the D. M. Stewart Manufacturing Co. protested that pieces of talc sawed to uniform size and used for the manufacture of gas tips or burners were dutiable under section 6 of the tariff act of 1897 as nonenumerated manufactured articles not provided for, and that the merchandise was improperly classified as undecorated wares composed wholly or in chief value of mineral substances, dutiable under paragraph 97 of said act. The protest of the company was sustained by the board.

In Abstract 15932 (T. D. 28300) the Illinois Central Railroad claimed that soapstone cut into the form of half cubes with smooth surfaces and classified as "articles" com-

posed of mineral substances was lava, free of duty as a crude mineral under paragraph 614 of the tariff act of 1897. The board decided that as the goods had been advanced in value and condition they did not come within the free-list provision. As the importer made no other claim, the classification of the collector was sustained.

The same decision was made in Abstract 16038 (T. D. 28300), on the protest of M. Kirschberger & Co.

These decisions of the board were followed by the ruling in Doggett's case, which was made on September 19, 1907, and reported in T. D. 28425. In that case the goods imported were irregular pieces of sawed talc, about 5 inches long, varying in width and thickness, and used by ironworkers to mark iron. The collector of customs classified the goods as undecorated articles or wares composed of mineral substances, dutiable at 35 per cent ad valorem under the provisions of paragragh 97 of the tariff act of 1897. Stanley Doggett, the importer, claimed that the goods were either free of duty under paragraph 614 as a crude mineral not advanced in condition, or dutiable at 20 per cent ad valorem as a nonenumerated manufactured article under section 6, or at 1 cent per pound as French chalk under paragraph 13. The uncontradicted testimony in that case was to the effect that the talc in the form in which is was imported was the same as French chalk and that in fact there was no difference between the article imported and French chalk. On this state of the record the board sustained the protest and directed the collector to assess duty on the merchandise as "French chalk" at 1 cent per pound under paragraph 13.

In December, 1907, only a few months later, the board was again called upon to classify sawed pieces of talc, imported by Kirschberger & Co., which had been assessed for duty under paragraph 97 of the tariff act of 1897 as undecorated wares composed of mineral substances. In that case the collector submitted to the board a letter expressing his willingness to reliquidate the entries and to classify the merchandise under section 6 in accordance with the ruling in Stewart's case. The board expressed some doubt as to whether Stewart's case or Doggett's case should be followed, but in the end resolved to follow the collector's recommendation, inasmuch as it had no expert knowledge of the merchandise, and accordingly the talc was assessed as a nonenumerated manufactured article. Abstract 17628 (T. D. 28597).

There seems to have been no further trouble touching the classification of sawed talc until November 28, 1908, when the board was once more required to determine the tariff status of small pieces of "soapstone," cut into regular sizes and used for the manufacture of gas burners. These goods were assessed for duty at 35 per cent ad valorem under the provisions of paragraph 97 of the tariff act of 1897 as undecorated articles or wares composed of mineral substances. Kirschberger & Co., the importers, claimed among other things that the merchandise should be classified as a nonenumerated manufactured article, dutiable at 20 per cent ad valorem under section 6 of said act. The board overruled the protest and the importer appealed. On appeal, Judge Martin, sitting in the Circuit Court for the Southern District of New York, reversed the decision of the board and held the goods to be dutiable at 20 per cent ad valorem under section 6 as manufactured articles not provided for (T. D. 29391).

Following the decision of Judge Martin came Abstract 21245 (T. D. 29763), in which the board held, on May 13, 1909, that talc sawed into pieces of convenient form for the manufacture of gas burners and electric insulation was substantially the same merchandise as the pieces of sawed talc in the Doggett case, and that it was therefore dutiable as "French chalk." The decision in this case was affirmed by the Circuit Court for the Southern District of New York in Kraemer & Foster *v.* United States (180 Fed., 639). An appeal from the decision of the Circuit Court was subsequently taken to this court, but before the appeal was heard a stipulation was made between the parties, as a result of which an order of reversal was entered and the merchandise held dutiable at 20 per cent ad valorem as a nonenumerated manufactured article.

A careful examination of these cases leads us to conclude that the classification of sawed talc was determined in each instance by the particular evidence submitted and that there was no intention on the part of the board or courts to lay down a general rule which would classify all talc as French chalk. In fact, we think that French chalk can not be regarded as another name for talc without bringing the decisions cited into hopeless conflict. In our opinion, if the adjudicated cases are to be reconciled at all it must be on the theory that French chalk is a special kind of talc, and that special kind of talc, by the way, which is used by tailors for marking clothing. Salamon *v.* United States (2 Ct. Cust. Appls., 92, 94; T. D. 31635). As it has not been judicially determined that talc and French chalk are equivalent designations for the same thing, it follows that the classification of talc in this case is more a question of fact than of law, and that the tariff status of the importations here in controversy must be settled by evidence rather than precedent.

On the hearing of the issues raised by the protests of Walther and Kraemer & Foster no original testimony was submitted by the importers or presented on behalf of the Government. In lieu of such testimony the declarations under oath of Clarence Starr Steward, a witness on the trial of a previous protest of Kraemer & Foster (Abstract 21245, T. D. 29763), was, with the consent of the Government, offered and received in evidence in support of the contentions of the protestants. The testimony of Steward was not offered on the hearing of the protests of the American Lava Co., and, so far as the record discloses, those protests were submitted on the official samples and the return of the appraiser. Whether the merchandise to which the witness Steward directed his testimony was the same as that now involved in the appeals of Walther and Kraemer & Foster is not made as clear by the record as it might be. Taking into consideration, however, that the merchandise was found by the board to be identical in both cases; that that finding is borne out by the appearance of the samples; that the Government consented to the admission of Steward's testimony; and that no question is raised by either side as to the relevancy or materiality of the evidence we assume, for the purposes of this appeal, that the merchandise put in controversy by the protests of Walther and Kraemer & Foster is identical with that to which Steward testified in Abstract 21245 (T. D. 29763). From the testimony of Steward, as set out in the record, it appears that the merchandise is talc, which in its natural state is found between walls of dolomite or serpentine rock. After displacement the talc is subjected to a sawing process which has for its purpose not only a saving in the cost of transportation by separating the talc from the adhering pieces of country rock, but also the cutting of the talc to a form and size best suited and most convenient and economical for use in the manufacture of gas burners and electric insulaion.

Steward also stated that the talc used for the manufacture of gas burners and electric insulation has a crystalline structure, which makes it commercially unfit for marking purposes or for the making of articles which would serve the uses of French chalk; that crystalline talc wears rapidly when brought in contact with rough surfaces; and that it is easily broken and must be repointed frequently, even when made up into a pencil a quarter inch round. Steward further declared that French chalk is a variety of talc which is massive, not crystalline, and which when made up into pencils for marking purposes does not require frequent pointing and is not readily broken. According to Steward a talc which is not massive is not French chalk and can not be commercially used for the purposes of a French chalk. If the testimony of the witness is to be accepted as true, crystalline talc and French chalk differ not only in structure but in other physical qualities as well. Pulverized French chalk makes a white powder, while that secured from crystalline talc is darker in color. French chalk hardens uniformly at the same degree of heat, and articles made from it do not require rebaking. Crystalline talc does not harden so evenly, and frequently, wares made out of it must be given a second firing in order to bring them to the requisite degree of hardness. We infer from the statements of the witness that French chalk is the superior article. At all events it commands a very much higher price than crystalline talc.

The credibility of Steward as a witness was not impeached on the hearing before the board, and so far as we can find his testimony was not questioned or contradicted. We must therefore conclude, on the evidence submitted, that there are two varieties of talc, one crystalline and the other massive, and that commercially they are different articles with different uses. As the tariff act provides for French chalk and not for talc and manufactures thereof, and as French chalk is a distinct kind of talc suitable for uses for which the crystalline varieties are not fitted, we must hold that the importation can not be classified either eo nomine or by similitude as French chalk.

The talc imported by Walther and by Kraemer & Foster is not a crude mineral. It has been sawed to a form and size convenient for the economical manufacture of gas burners and electric insulation, and consequently must be classed not as a crude mineral, but as a mineral advanced in value and condition.

The goods are dutiable at 20 per cent ad valorem as articles partly manufactured and not provided for. The decision of the Board of General Appraisers overruling the protests of L. Blanc Walther and Kraemer & Foster is therefore reversed.

As no evidence was introduced in support of the protests of the American Lava Co. we must accept the classification of the collector of customs as correct, and as to those protests the decision of the Board of General Appraisers is affirmed.

EXHIBIT 39.—(T. D. 33371.)—*Ladder tapes.*

UNITED STATES *v.* WALTER ET AL. (No. 1058).

1. CONSTRUCTION.—In tariff statutes words describing merchandise are to be taken as used in their commercial sense, but the common and the commercial meanings are presumed to be the same. If a difference in meaning is attempted to be shown, the party seeking to show a difference has the burden of proof.
2. TAPES AND LADDER TAPES.—To bring these articles within the commercial designation of "tapes" it would be necessary to show that they are known as such. This is not here shown. On the contrary, the evidence discloses that, instead of being known commercially as tapes, they are commercially known as ladder tapes. Tapes and ladder tapes are not the same thing.

United States Court of Customs Appeals, April 22, 1913.

Appeal from Board of United States General Appraisers, G. A. 7396 (T. D. 32871).

[Affirmed.]
William L. Wemple, Assistant Attorney General (Charles E. McNabb, assistant attorney, of counsel), for the United States.
Brown & Gerry for appellees.

Before Montgomery, Smith, Barber, De Vries, and Martin, judges.

Barber, judge, delivered the opinion of the court:

The merchandise here is known as ladder tapes, and is identical with that before this court in Burlington Venetian Blind Co. *v.* United States (1 Ct. Cust. Appls., 374; T. D. 31456), and United States *v.* Burlington Venetian Blind Co. (3 Ct. Cust. Appls., 378; T. D. 32967).

In the earlier of these cases the issue as to the classification of the merchandise was between the provisions of paragraph 349 and paragraph 332 of the tariff act of 1909. The importer claimed that the articles were dutiable as manufactures of cotton under paragraph 332; that under the doctrine of noscitur a sociis it should be held that paragraph 349 related entirely to articles of personal or household use, ornamental in character; and that the ladder tapes, not being ejusdem generis with the merchandise named in the paragraph, should therefore be excluded from classification thereunder. It was not claimed that the articles were not in fact tapes, nor was there any claim of commercial designation. The merchandise had been assessed under paragraph 349, and the action of the board sustaining the collector's assessment was affirmed.

In the later case the same paragraphs were involved as in the former and the claim relied upon by the importer was that the merchandise was not in fact tapes within the meaning of that word as used in the paragraph. Although it was claimed by the Government that its evidence of commercial designation brought the articles within the meaning of the word "tapes" as used in the paragraph, this contention was not upheld, and the judgment of the Board of General Appraisers ordering its assessment under paragraph 332, as a manufacture of cotton not specially provided for, was affirmed.

In the case at bar the evidence in the other cases has been imported into the record, and it also contains the evidence of one additional witness whose testimony seems to be wholly directed to an effort to show that these articles are commercially known as "ladder tapes."

The Government here contends in substance that if it shall be found that the trade knows and refers to this merchandise under the name of "ladder tapes" it is thereby brought within the meaning of the word "tapes" as used in paragraph 349.

We assume for the purposes of this decision that the trade and commerce dealing with this commodity designate it as "ladder tapes."

It is established that the use of these ladder tapes is confined to the manufacture and repairing of venetian blinds, to which they are attached, and by means of which the blind slats are turned, or raised and lowered.

It may here be stated that a ladder tape consists of two strips of woven fabric of indefinite length, about 1½ inches wide, connected at regular distances by lighter woven fabrics about 2½ inches long and ⅜ inch wide, produced by the loom from cotton threads of suitable sizes. After coming from the loom certain small connecting threads are cut by hand, resulting in the product assuming the ladder-like shape which its name indicates.

For further information as to the production of the merchandise and discussion of the questions raised therein reference is made to the decisions above mentioned.

The collector assessed the merchandise in this case as tapes under said paragraph 349, while the importer here claims that it is dutiable as a manufacture of cotton not otherwise provided for under paragraph 332. The board sustained the protest.

The learned counsel for the Government strenuously contends that having established that the merchandise is known commercially as "ladder tapes" it is thereby embraced within the commercial meaning of the word "tapes" as used in paragraph 349.

Nothing has occurred to change our opinion, as expressed in the later of the cited cases, that these articles are not in fact tapes within the common meaning of the word.

While if the respective parts had been produced separately and had become a separate entity before being combined, as in the ladder tapes, they might perhaps with propriety be said to be manufactures of tapes, the truth is that there has never in fact existed the entity, tapes, in these articles. As first produced from the cotton threads they appear substantially as we find them here. To bring these articles within the commercial designation of tapes we think it must be shown that they are commercially known as such; but it is not so shown. On the contrary, the evidence plainly shows that instead of being commercially known as "tapes" they are known commercially as "ladder tapes," which is not the same thing. To illustrate: The tomato in earlier days, if not now, was frequently referred to in common speech as a "love apple." Suppose a paragraph of the tariff law had imposed a duty upon "apples" without further descriptive language. Would it be urged or ought it to be held that if the tomato was shown to be designated in commerce as a "love apple" that tomatoes by reason thereof were placed within the commercial meaning of the word "apples" as it might be used in the supposed paragraph without any evidence whatever as to the commercial meaning of the word "apples" itself?

We are unable to glean from the authorities cited by the Government or to find upon principle that such a supposed classification could or ought to be upheld.

One of the elementary principles in the construction of tariff statutes is that words describing merchandise are used in their commerical sense, but the common and commercial meanings are presumed to be the same unless it is otherwise shown, and upon him who claims a different commerical sense devolves the burden of making good his contention. To do that it is incumbent to show that the given word or term has a definite, uniform, and general meaning among those who are wholesale dealers therein which is different from its ordinary meaning. United States *v.* Kwong Yuen Shing (1 Ct. Cust. Appls., 14; T. D. 30773); Acker *v.* United States (1 Ct. Cust. Appls., 328; T. D. 31431).

As pointed out in the decision of the board in the case, no effort has been made to conform to this rule, the Government contenting itself by showing that the merchandise is commercially known as "ladder tapes" without showing that the word "tapes" itself is used in commerce as referring to the merchandise in question, or that the commercial meaning of the word "tapes" is other than its ordinary meaning.

The judgment of the Board of General Appraisers is affirmed.

○