

HARRISON AND OTHERS V. MERRITT.

Circuit Court, S. D. New York.

May 8, 1885.

CUSTOMS DUTIES—BONE—BLACK—REV. ST. § 2504.

Bone—black is not included in the clause, “bones crude, and not manufactured, burned, calcined, ground, or steamed,” in the free—list of section 2504 of the Revised Statutes.

At Law.

Henry E. Davies, for plaintiffs.

Elihu Root, *U. S. Atty.*, and *Sam'l B. Clark*, *Asst. U. S. Atty.*, for defendant.

WHEELER, J. The question in this case is whether bone—black is included in the clause, “bones crude, and not manufactured, burned, calcined, ground, or steamed,” in the free—list of section 2504 of the Revised Statutes. The evidence showed that it is made by subjecting bones, after being steamed and cleaned, to destructive distillation by heat in close vessels, until all is expelled but the carbon, and then crushing that, and assorting the pieces into proper sizes for clarifying sugar. The jury has found thereupon that bones so treated, are not manufactured more than by being burned, calcined, ground, or steamed. The defendant has moved for a new trial, principally upon the ground that this finding is not supported by, and is contrary to, the evidence. Bones are understood to be calcined when they are subjected to heat in open vessels so as to produce bone—ash, by being made friable; and to be burned when subjected to the direct action of fire. This distillation appears to be different from either. And the crushing and assorting is an important part of the process. By the whole a new article is made from bones. They are not treated thus for the purpose of securing them, or making them portable, as grass is made into hay, without becoming manufactured, as

was held in *Frazer v. Moffitt*, 20 Blatchf. 267; S. C. 18 FED. REP. 584; or as apples are cut and dried, as in that case mentioned. The bones are manufactured into bone-black by processes of several steps. *Schriefer v. Wood*, 5 Blatchf. 215; *Peters v. Robertson*, 20 FED. REP. 818. These steps amount to more than either of those allowed by the statute without making the result dutiable. The verdict for these reasons appears to be contrary to the weight of the evidence, and ought, therefore, to be set aside.

Verdict set aside, and new trial granted.

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