

This joint resolution passed the house of representatives, but failed to pass the senate.

Edward Mitchell, U. S. Atty., and *Henry C. Platt*, Asst. U. S. Atty., for the collector.

W. Wickham Smith, for importers.

LACOMBE, Circuit Judge, (*orally*.) "Crude cocoa" is on the free-list, (paragraph 542.) "Cocoa manufactured," which is a very comprehensive term, apparently, is contained in paragraph 319. Cocoa, according to the testimony here, is manufactured into a substance known as "prepared cocoa;" also into a substance known as "chocolate;" and of chocolate we have information here of two varieties, "chocolate confectionery" and "sweetened chocolate." As manufactured cocoa, all these articles—prepared cocoa, chocolate, and its varieties—would be included. "Cocoa prepared" is expressly provided for in paragraph 319. "Chocolate confectionery" is expressly provided for in paragraph 238. "Chocolate" itself, excepting the confectionery and the sweetened chocolate, is specially provided for in paragraph 318. I find no provision in the tariff act for "sweetened chocolate," except in a parenthetical phrase, where it is excepted in the enumeration of chocolate, and therefore I think it should be classified under "cocoa manufactured," as covered by paragraph 319. But the court further determines in this case that, inasmuch as it appears by the protest that the importers did not call the collector's attention to paragraph 319 as being the one under which their goods should be classified, they cannot avail themselves of the provisions of that paragraph in the appeal that they have taken from the collector's decision. *Davies v. Arthur*, 96 U. S. 148. The importers must recover, if at all, only upon the grounds stated in their protest. *Chung Yume v. Kelly*, 14 Fed. Rep. 639. The decision of the board of general appraisers in this case is therefore reversed.

In re H. B. CLAFLIN CO.

(Circuit Court, S. D. New York. October 7, 1891.)

CUSTOMS DUTIES—CLASSIFICATION—"HEMSTITCHED HANDKERCHIEFS."

Hemstitched cotton handkerchiefs, known as such in trade and commerce at the time of the passage of the tariff act of March 3, 1885, having a hem of one inch or more in breadth, with several threads drawn out from the material at the head of the hem, and the hem stitched down by an open stitch, are not "hemmed handkerchiefs," within the provision of Schedule I (Tariff Ind. New, par. 325) of said tariff act, but are dutiable as "manufactures of cotton not specially enumerated or provided for" at 35 per cent. *ad valorem* under the same schedule of said tariff act, par. 324.

At Law.

This was an application by the importers under the provisions of section 15 of the act of congress entitled "An act to simplify the laws in re-

lation to the collection of the revenues," approved June 10, 1890, for a review by the United States circuit court of a decision made in this matter by the board of United States general appraisers, affirming the decision of the collector of the port of New York in the classification for duty of certain merchandise entered at said port by different entries during the months of August and September, 1890. The merchandise was classified for duty by the collector as "hemmed cotton handkerchiefs," and duty was assessed thereon at the rate of 40 per cent. *ad valorem*, under the provisions of Schedule I (Tariff Ind. New, par. 325) of the tariff act of March 3, 1883. The importers protested, claiming that the goods were dutiable at 35 per cent. *ad valorem* under the same schedule (Tariff Ind. New, par. 324) of said tariff act, as "manufactures of cotton not specially enumerated or provided for." Testimony was taken on behalf of the importers under an order of court before one of said board of United States general appraisers pursuant to the provisions of the above cited act of June 10, 1890, and it was shown that the articles in question were cotton handkerchiefs having a border of one inch and more in width, which was turned down and stitched fast to the body of the handkerchief after a certain number of threads had been drawn out at the head of such fold or hem, the stitch used being an open stitch, and that the result was an article known to the trade and commerce of this country in March, 1883, and prior thereto, as a "hemstitched handkerchief;" and that the term "hemmed handkerchiefs" or "hemmed cotton handkerchiefs," as used in the trade at that time, did not include the articles in question, which were always designated as "hemstitched." It was admitted by the witnesses for the importers that the noun "hem," the verb "to hem," and the verb "to hemstitch," had no other or different meanings in trade and commerce at that time from the meanings of those words as given in the standard dictionary of the English language. The government was not able to contradict the trade testimony to the effect as given above, but contended that the commercial designation was not controlling in this case, but that the words "hemmed handkerchiefs" must be taken in their ordinary meaning, as understood in the English language; and that, upon all the testimony, the hemstitch was only an addition to or ornamentation at the head of a hem.

Comstock & Brown, for importers.

Edward Mitchell, U. S. Atty., and *James T. Van Rensselaer*, Asst. U. S. Atty., for collector of the port.

LACOMBE, Circuit Judge, (*orally*.) I am strongly inclined to the opinion that congress did not intend that these handkerchiefs should pay the lower, rather than the higher, rate of duty, for they are more elaborate and expensive, and further advanced, than ordinary hemmed handkerchiefs. It is quite probable that distinction was intended to be made between handkerchiefs in the piece, on the one hand, and handkerchiefs which had been advanced beyond handkerchiefs in the piece by a process of hemming, on the other. But I do not feel warranted in disposing of this case on my mere assumption as to what congress intended, in face

of the language used, which, when read with the light we have from the mercantile testimony, (testimony which, under the decisions of the supreme court, we are to take as our head-light in all interpretations of tariff statutes,) has a very plain and unmistakable meaning. A duty is laid on "hemmed handkerchiefs." Now, undoubtedly, as to the popular meaning of that term,—the meaning that is given in the dictionaries,—the board of appraisers is entirely right; these handkerchiefs are hemmed. In addition to the hem, there is also a stitching made in the process of making the hem,—an ornamentation to the articles which makes them hemstitched handkerchiefs; but they are none the less popularly, and in the ordinary meaning of the term, "hemmed handkerchiefs." But we have testimony in the case, which apparently was not before the board of appraisers, and which, it seems to me, under the rule which has been laid down for the guidance of the circuit courts by the supreme court as to the credit which is to be given to the commercial meaning of terms, must be conclusive here. It is immaterial whether or not the trade do or do not give the same meaning to the verb "hem" or to the noun "hem" that the dictionary does. It may be that they have never had any occasion to use those words commercially or to give them any trade meaning. But it does appear, by testimony which is absolutely uncontradicted, that the particular phrase "hemmed handkerchiefs" has been wrenched, as we may say, from its ordinary meaning as given in the dictionary, and expressly confined by the entire trade and commerce of this country to a particular variety of hemmed handkerchiefs, to-wit, those illustrated by Exhibit B, and that this was the condition of affairs long before the tariff of 1883 was passed. It does not merely appear that these articles are known by a special trade name as "hemstitched handkerchiefs," because that might very well be, and still they would come within the general heading of "hemmed handkerchiefs;" but the importers here have gone further, and shown that the general term "hemmed handkerchiefs" has been restricted by trade, no longer used as a family name, under which there are various subheadings, but confined to a particular and special class of articles. In other words, they have come within the rule which was laid down in this circuit in *Morrison v. Miller*, 37 Fed. Rep. 82. The testimony is particularly strong in this case, because there is no conflict about it. No witness has been produced on the part of the government to controvert in any way the importers' claim that the general trade and commerce of this country had, before the passage of the act, given a special and peculiar trade meaning to the words "hemmed handkerchiefs," which, but for that trade usage, would have had a different meaning; and we must assume that it was with a knowledge of that meaning that congress used the words. Under these circumstances, I feel constrained to reverse the decision of the appraisers, and direct that the goods be classified under paragraph 324.

UNITED STATES v. CHONG SAM.

(District Court, E. D. Michigan. November, 1891.)

1. CHINESE EXCLUSION ACT—UNLAWFUL ENTRY—APPEAL FROM COMMISSIONER'S DECISION.

Act Cong. Sept. 13, 1888, amending the acts excluding Chinese laborers, (22 St. 58, and 23 St. 115,) provides, in section 1, that after the date of the exchange of ratifications of the "pending treaty" between the United States and the emperor of China it shall be unlawful for "any Chinese person" to enter the United States, "except as hereinafter provided;" and sections 2 and 4 except Chinese officials, teachers, students, merchants, and travelers for pleasure or curiosity. Sections 5, 6, and 7 provide that "on and after the passage of this act certain new conditions shall be imposed upon returning Chinese laborers," and restrict the classes of those who shall be entitled to return at all. Section 13 provides that any Chinese person convicted before a United States commissioner of being unlawfully in this country may appeal to the district court. *Held* that, while the restrictions of sections 1, 2, and 4 were postponed until the treaty should be ratified, the other provisions went into effect immediately, and hence the right of appeal now exists, although ratifications have not been exchanged.

2. SAME—WHERE TO BE RETURNED—"COUNTRY WHENCE HE CAME"—DOMICILE.

The original act of 1882 provides, in section 12, that any Chinese person convicted of unlawfully being in the United States shall be removed to the "country whence he came," and the same expression is used in all the amendments. Section 15 of the amendment of 1884, as well as section 1 of the act of September 13, 1888, declares that the provisions of this act shall apply to all "subjects" of China, and Chinese "whether subjects of China or any other foreign power." *Held*, that the latter expressions do not qualify the former, so as to require a convicted Chinaman to be returned to the country of which he is a "subject;" and one who acquired a domicile in Canada before coming into the United States must be returned to that country, and not to China.

3. SAME—EVIDENCE OF DOMICILE.

That a Chinaman carried on a laundry at a town in Canada for four months, that he had been in the same province for a considerable period before that, and that he possessed a return certificate, issued by the Canadian officials at Vancouver, is sufficient to show that he acquired a domicile in Canada, when there is nothing to show that he left China with the ulterior purpose of coming to the United States, except the fact that he had recently made attempts to enter.

4. SAME—ABANDONMENT OF DOMICILE—EVIDENCE—CERTIFICATE OF RETURN.

That a Chinese person who has acquired a domicile in Canada, and who is convicted of having recently entered the United States contrary to law, possesses a certificate of leave to return to Canada, is sufficient evidence of intention to return there to show *prima facie* that he has not lost his domicile.

At Law.

The appellant was arrested at Port Huron, July 9, 1891, while attempting to enter the United States, and brought before United States Commissioner Harris, who found that he was unlawfully in the United States, and ordered that he be removed to China. Appellant was remanded to jail to await deportation, and within 10 days from his conviction took this appeal to the judge of this court, under the provisions of section 13 of the act of congress of September 13, 1888, entitled "An act to prohibit the coming of Chinese laborers into the United States." The commissioner made no return of the testimony taken before him, but simply transmitted his finding with the order for the removal of appellant to China. Upon the hearing before the district judge it was admitted that appellant was unlawfully in this country, but it was insisted that the order for his deportation to China was erroneous, and without support in the evidence. There was put in evidence on the hearing a certificate issued by the comptroller of customs at Vancouver, B. C.,