

ores of different mines can be lawfully commingled by the importer for the purpose of giving the mixture created a high content of silver, and thus make the importation dutiable on the lead contained instead of on its gross weight as lead ore, thereby avoiding the force and effect of the laws of the United States, and reducing the revenue of the United States. The question before the board of general appraisers was apparently as to the amount of duties exigible on certain aggregates of mixed ores, but the real question necessarily decided was whether or not the importer had the right to so mix ores from different mines as to give the ore a high content of silver, and thus make the importation dutiable only on the lead contained, instead of on its gross weight as lead ore. The anomaly is thus presented of the board of general appraisers taking jurisdiction in a cause pending in a court of the United States for a forfeiture of goods, and deciding, as it were, finally the issues involved; for, in the language of the statute under which the jurisdiction is claimed, "their decision, or that of a majority of them, shall be final and conclusive upon all persons interested therein. And the record shall be transmitted to the proper collector, or person acting as such, who shall liquidate the entry accordingly, except," etc. The question of jurisdiction thus becomes exceedingly important, for, if maintained, the jurisdiction of the courts in suits for forfeiture is clearly affected, if not decidedly curtailed. The board of general appraisers was established by act of congress approved June 10, 1890, entitled "An act to simplify the laws in relation to the collection of the revenues." 26 St. at Large, p. 131. The first eleven sections of the act provide the mode and manner of entering imported goods for the payment and collection of revenue duties thereon; for the entry, the invoice, the declaration, and the ascertainment of value. The twelfth section of the act provides for the appointment of nine general appraisers:

"They shall be employed at such ports, and within such territorial limits, as the secretary of the treasury may from time to time prescribe, and are hereby authorized to exercise the powers and duties devolved upon them by this act, and to exercise, under the general jurisdiction of the secretary of the treasury, such other supervision over appraisements and classifications, for duty, of imported merchandise, as may be needful to secure lawful and uniform appraisements and classifications at the several ports. Three of the general appraisers shall be on duty as a board of general appraisers daily at the port of New York, during the business hours prescribed by the secretary of the treasury. * * *

The thirteenth section provides for the revision of the reports of assistant appraisers as to value; the report of the appraisers as to value; the reappraisalment by a general appraiser, if called for; and, in case of dissatisfaction by the importer or by the government, for an appeal to the board of three general appraisers, which shall be on duty at the port of New York, or to a board of three general appraisers who may be designated by the secretary of the treasury, which shall be on duty at that port or any other port; and the decision of the board of general appraisers is made final and conclusive as to the dutiable value of such merchandise against all parties interested therein.

The dutiable value having been ascertained as provided in section 13, section 14 provides for the ascertainment of the amount of duties chargeable, as follows:

"That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character, (except duties on tonnage,) shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within ten days after, 'but not before,' such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within ten days after the payment of such fees, charges, and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and, if the merchandise is entered for consumption, shall pay the full amount of the duties and charges ascertained to be due thereon. Upon such notice and payment, the collector shall transmit the invoice, and all the papers and exhibits connected therewith, to the board of three general appraisers, which shall be on duty at the port of New York, or to a board of three general appraisers, who may be designated by the secretary of the treasury for such duty at that port, or at any other port; which board shall examine and decide the case thus submitted, and their decision, or that of a majority of them, shall be final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except," etc.

An examination of the foregoing provisions of the act shows clearly that the invoice or the verified statement, in form of invoice, and the consular declaration prescribed and required by the act, presuppose an original lawful entry. The declaration required of the owner, agent, importer, consignee, or manufacturer, in terms, is based upon both entry and invoice. The appraisal provided for presupposes an entry and invoice, and the assignment of the dutiable charges is based upon and presupposes an entry, invoice, and appraisal. In short, all the duties of customs officers prescribed in these sections, and, for that matter, in the whole act, relate to dealings with imported merchandise, in the regular course of passing the same through the custom-house. It therefore seems clear that the decision of the collector as to the rate and the amount of duties upon imported merchandise provided for in the fourteenth section, and which decision is made under certain circumstances reviewable by the board of general appraisers, is a decision as to the rate and amount of duties on imported merchandise lawfully entered, regularly invoiced, and regularly appraised; and that a decision of the collector as to the rate and amount of duties on goods seized for forfeiture, and as if said goods had been legally entered, but in fact not entered, not invoiced, and not appraised, is not such a decision as is contemplated in said fourteenth section. This view as to the proper construction of the fourteenth section is strengthened by the language of the section itself, wherein it is provided "that the decision of the board shall be final and conclusive upon all persons interested, and the record shall be transmitted to the proper collector, or person acting as such, who shall liquidate the entry accord-

ingly. * * *” And when section 14 is considered in connection with sections 934 and 938 of the Revised Statutes, both of which are undoubtedly in full force, there is no ground left for giving the board of general appraisers any jurisdiction in cases where goods are seized and libeled for forfeiture in the courts of the United States. Section 934 provides “that all property taken or detained by any officer or other person under authority of any revenue law of the United States shall be irrepleviable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof.” Section 938 provides for delivery to claimants, by rule or order of court, goods seized under customs laws, on complying with the rules therein contained as to appraisement of the goods, payment of estimated duties, and execution of delivery bond, all under the direction of the court. The requirement therein of payment of duties, “in like manner as if the same had been legally entered,” means no more and no less than that the claimant shall, as a condition precedent to obtaining the goods, pay the duties as claimed by the United States, to be summarily estimated and determined by the collector on the theory of a lawful entry of the goods, taking it for granted that such lawful entry could have been made. In the case of seized goods, and particularly in case of goods liable for forfeiture, sections 934 and 938 leave nothing for customs officers to decide or control in the regular line of the duties imposed upon them as such officers. For the foregoing reasons this court holds that on the protest and appeal of claimant, Chichester, in the matter of protest and payment of estimated duties on certain lead and silver ores libeled for forfeiture in the district court for the western district of Texas, the board of general appraisers was without jurisdiction, and the proceedings and decision therein should be reversed and vacated. This decision will leave the questions raised in the suit for forfeiture to be passed upon in due course by a court of competent jurisdiction. In case it shall be held that no ground of forfeiture existed, and there shall be judgment in favor of the claimant canceling his bond, he will not be remediless with regard to any claim he may have for the payment of more duties on the ores in question than were exigible under the law, as he can apparently obtain relief under section 24 of the act of June 10, 1890.

MAXEY, J., concurred.

In re SALOMON et al.

(Circuit Court, S. D. New York. October 13, 1891.)

1. CUSTOMS DUTIES—CLASSIFICATION—CONSTRUCTION OF STATUTE—COMMERCIAL DESIGNATION.

Where it appears that a word used in the tariff law had at the time of the passage of the tariff act a special and technical trade meaning, but the language of the section or paragraph in which the word is used in the act shows clearly that such technical meaning could not have been the one which congress placed upon the word, such technical trade meaning cannot be adopted by the court in construing the statute.

2. SAME—CORDOVAN LEATHER.

Cordovan leather cut during the process of dressing into a shape suitable for re-cutting into shoe-vamps was, under the tariff act of March 3, 1883, properly dutiable as "dressed upper leather," under the provision therefor in Schedule N, par. 461, at 20 per cent. *ad valorem*, and not as a "manufacture or article of leather," under paragraph 463 of the same schedule, at 30 per cent. *ad valorem*.

At Law.

Application under section 15 of the act of June 10, 1890, entitled "An act to simplify the laws in relation to the collection of the revenue," (26 U. S. St. at Large, 131,) by Salomon and Phillips, importers, for a review of the decision of the United States general appraisers, affirming the decision of the collector of the port of New York, as to the rate and amount of duty assessable upon certain merchandise imported by them per steamship Wieland, August 23, 1890. The merchandise in question consisted of certain pieces of Cordovan leather. The leather was made by tanning, dressing, and currying skin or hide taken from the back part or hips of the horse. The leather was designed to be made into shoe-vamps. The board of general appraisers had held that the goods in question were in fact vamps in the condition in which they were imported, but the undisputed testimony taken by the court showed that a further process of cutting and shaping was necessary to transform them into the articles commercially called "vamps," and that the shape in which they had been imported was one given to them in the process of dressing. The goods in question had been classified by the collector as "manufactures of leather," and assessed for duty at 30 per cent. *ad valorem*, under paragraph 463, Schedule N, Act March 3, 1883. They were claimed by the importers to be dutiable at 20 per cent. *ad valorem* as "dressed upper leather," under paragraph 461 of the same act and schedule. A number of witnesses called on behalf of the collector testified that the term "upper leather" had in the leather trade a special, technical meaning, and was confined to waxed cowhide. These witnesses, as well as witnesses called on behalf of the importers, stated that in a general sense all leather used for the upper part of a shoe was called "upper leather."

Curie, Smith & Mackie, (W. Wickham Smith, of counsel,) for importers.
Edward Mitchell, U. S. Atty., and James T. Van Rensselaer, Asst. U. S. Atty., for collector.