

being the purchase price fixed by the military board, above mentioned. (2) If not allowed that sum, then that he be allowed rent from the time of his ouster by the treasury department. (3) If not allowed either amount, then that he be awarded the \$600 paid by him as purchase money on December 19, 1871, with interest at 6 per cent. per annum from that date. In its answer the government confesses that plaintiff is entitled to judgment for the amount paid for the property, with interest, but claims that petitioner is not entitled to any other relief asked for, because the sale was without authority of congress, in violation of the constitution of the United States, and therefore wholly void, and passed no title to plaintiff. The relief asked for in the first and second subdivisions, respectively, of the prayer could only be granted on the theory that the sale was a valid one, and that thereby the petitioner acquired, as against the United States, the full title to the property. No authority whatever has been produced, nor have I been able to find any law, which will support such a theory. The sale was not authorized nor ratified by congress, and I must therefore hold that it was void. Judgment, however, is given for petitioner for the amount confessed in the answer to be due, to-wit, the sum of \$600, with interest at 6 per cent. per annum from December 19, 1871, and the costs of the clerk of the court, after issue joined.

In re POPPER.

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

CUSTOMS DUTIES—MANUFACTURED ARTICLES—PIECES OF BEVELED GLASS.

A decision of the board of appraisers that small squares, triangles, and circles of glass, the squares from $2\frac{1}{2} \times 2\frac{1}{2}$ to 4×4 , and the circles from 5 to 6 inches in diameter, with edges beveled and polished, are dutiable at 45 per cent. *ad valorem* as "articles of glass cut," under Act Cong. March 3, 1883, (Tariff Ind. New, par. 135,) rather than at 3 cents per square foot, as "cast polished plate-glass, unsilvered," not exceeding 10×15 inches square, under Tariff Ind. New, par. 140, of said act, will not be disturbed, although the bevel was produced by abrasion, rather than by cutting with a sharp instrument, it appearing that in the trade of the glass cutter the word "cutting" is frequently used to denote a process which in popular language would more properly be styled "grinding" or "abrading."

At Law. Extract from the report of district attorney:

"The proceeding was an application by the importers for a review by the circuit court of a decision of the board of United States general appraisers, delivered on the 13th of February, 1891, affirming the decision of the collector on the classification of certain merchandise, * * * which merchandise was classified for duty by the collector as 'articles of glass cut,' and duty assessed thereon at the rate of 45 per cent. *ad valorem*, under the provisions of Tariff Ind. New, par. 135. (Tariff Act March 3, 1883.) Against this classification the importers protested, claiming that the merchandise was dutiable at three cents per square foot as 'cast polished plate-glass, unsilvered,' not exceeding 10×15 inches square, under Tariff Ind. New, par. 140, of said tariff act, and, if not so dutiable, then at four cents per square foot, under Tariff Ind. New, par. 141, of said act, as 'looking-glass plates.' The importers

abandoned their contention under the last head, and stood upon their claim that the merchandise was dutiable under Tariff Ind. New, par. 140. * * * It appeared that the merchandise in this present proceeding consisted of small squares, triangles, and circles, varying in size, the squares up to 4x4 inches, the half squares or triangles from $2\frac{1}{2} \times 2\frac{1}{2}$ up to 4x4, and the circles from 5 inches up to 6 inches in diameter. These articles were made from polished plate-glass, and all of them beveled as to their edges with a bevel of from 5-8 to one inch in width, polished. It appeared by the evidence that they were a finished article, as bought and sold in the trade of this country."

Comstock & Brown, for appellant.

James T. Van Rensselaer, for the United States.

LACOMBE, Circuit Judge. As to the proposition advanced that the articles in question are dutiable under paragraph 140, rather than under paragraph 135, for the reason that paragraph 140 is denominative and paragraph 135 descriptive, I am unable to assent to the views of the plaintiff, because it seems to me that paragraph 140 is not truly denominative, but in fact descriptive. Referring to glass in the form of plate which has been cast, which has been polished, and which has not been silvered, it is not, in my judgment, the equivalent of such a term as "handkerchiefs," which was found by the supreme court in the *Glendinning Case*, 10 Sup. Ct. Rep. 44, to be a denominative term, and to take precedence of the mere descriptive phrase. It is claimed by the collector that these are dutiable as articles of glass cut. The testimony here shows that the bevel upon the glass was produced by a process of abrasion. Such operation is not "cutting," in the ordinary sense of the word, as found in the dictionaries. There has been neither section nor incision by a cutting instrument,—a sharp-edged instrument. Still the board of appraisers have found and returned that the beveled edges were produced by cutting, and without going into a discussion of its details, I do not think that the testimony, as a whole, will warrant the court in reversing their decision, there being sufficient in it to warrant the inference that in the trade of the glass cutter the word "cutting" is frequently used as descriptive of a process which would be more accurately described in common speech as "grinding" or "abrading." For these reasons the decision of the board of appraisers is affirmed.

In re WERTHEIMER et al.

(Circuit Court, S. D. New York. April 20, 1892.)

1. CUSTOMS DUTIES—MEN'S LEATHER GLOVES.

Men's leather pique or prick seam gloves held to be dutiable at 50 per cent. *ad valorem*, with an additional duty of one dollar per dozen pairs.

2. SAME—PARAGRAPH 458, SCHEDULE N, TARIFF ACT OCT. 1, 1890.

The additional duties provided for in the said paragraph held to be alternative, and not cumulative.