

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.

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*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.

At Law. Appeal from decision of board of United States general appraisers.

The merchandise in suit consisted of men's leather pique or prick seam gloves, imported by Wertheimer & Co. on October 15, 1890, upon which the collector of customs at the port of New York assessed a duty of 50 per cent. *ad valorem*, and also an additional duty of one dollar per dozen pairs as "men's gloves," and also an additional duty of 50 cents per dozen pairs as "pique or prick seam gloves," (making a total additional duty of \$1.50 per dozen pairs,) under the provisions of Schedule N, par. 458, of the act of October 1, 1890, viz.:

"458. Gloves of all descriptions, composed wholly or in part of kid or other leather, and whether wholly or partly manufactured, shall pay duty at the rates fixed in connection with the following specified kinds thereof, fourteen inches in extreme length when stretched to the full extent, being in each case hereby fixed as the standard, and one dozen pairs as the basis, namely: 'Ladies' and children's schmaschen of said length or under, one dollar and seventy-five cents per dozen; ladies' and children's lamb of said length or under, two dollars and twenty-five cents per dozen; ladies' and children's kid of said length or under, three dollars and twenty-five cents per dozen; ladies' and children's suedes of said length or under, fifty per centum *ad valorem*; all other ladies' and children's leather gloves, and all men's leather gloves, of said length or under, fifty per cent. *ad valorem*; all leather gloves over fourteen inches in length, fifty per centum *ad valorem*; and, in addition to the above rates, there shall be paid on all men's gloves, one dollar per dozen; on all lined gloves, one dollar per dozen; on all pique or prick seam gloves, fifty cents per dozen; on all embroidered gloves, with more than three single strands or cords, fifty cents per dozen pairs: provided, that all gloves represented to be of a kind or grade below their actual kind or grade shall pay an additional duty of five dollars per dozen pairs: provided, further, that none of the articles named in this paragraph shall pay a less rate of duty than fifty per cent. *ad valorem*."

The importers duly protested, claiming the gloves to be dutiable, under said paragraph, at 50 per cent. *ad valorem*, with an additional duty of 50 cents per dozen pairs only, as "pique or prick seam gloves." The board of general appraisers affirmed the decision of the collector, and held the additional duties to be cumulative, and, as the goods were concededly men's gloves, and also pique or prick seam gloves, the additional duties for both of said classes of gloves were properly assessed thereon. Appeal was duly taken by the importers to the United States circuit court, under the provisions of the act of June 10, 1890.

*Edward Mitchell*, U. S. Atty., and *Henry C. Platt*, Asst. U. S. Atty.  
*Curie, Smith & Mackie*, for importers.

LACOMBE, Circuit Judge. The case is hardly susceptible of argument unless upon the question of what the intent of congress was. That would involve going back of the face of the statute, which does not seem ambiguous, and entering upon a consideration of the relative rates of duty fixed upon different kinds of goods, and the reasonableness of such rates,—a speculation which, possibly, the modern doctrine as to statutory construction may require, but which I do not feel warranted in

embarking on in this case, where there is not apparent uncertainty to call for special construction. I am satisfied to take the paragraph as it reads, and interpret it according to the language which congress has used. In the first part of the section there are certain rates of duty fixed on different kinds and varieties of kid gloves; then there is a rate of duty of a dollar per dozen on all men's gloves assessable in addition to the rate of duty enumerated in the first part of the section, the language being, "in addition to the above rates." If it happens that the goods are pique or prick seam gloves, there is a duty of 50 cents a dozen assessable in addition to the rates specified in the first part of the section, but there is nothing in the paragraph to indicate that it is to be additional to any one of the rates named in the latter part of the section. I cannot see, therefore, that the phraseology following the words, "in addition to the above rates," contemplates a cumulative series of duties. They are alternative. Under whichever one or the other of the four classes the gloves may fall, they are to pay the duty prescribed for that class, in addition to the rate of duty which was fixed in the earlier part of the section. If they fall equally under two or more of the classes named in the latter part of the section, then they shall pay the rate of duty of the highest class within which they may properly be included. Section 5. These are concededly men's gloves. As men's gloves they are to pay one dollar a dozen extra. As pique gloves they would pay only fifty cents a dozen extra. They should therefore pay the larger of the two additional rates, viz., one dollar a dozen. The finding of the board of appraisers is reversed, and the goods will be classified at the regular rate specified by paragraph 458, with the additional rate of one dollar per dozen, prescribed for all men's gloves.

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BAUMGARTEN v. MAGONE.

(Circuit Court, S. D. New York. December 19, 1890.)

1. CUSTOMS DUTIES—CLASSIFICATION—MARBLE BLOCKS.

Small blocks of marble, about half an inch square, used for mosaics, mural decorations, and pavements in vestibules, are dutiable under the tariff act of 1888, either as "marble in block," or as "manufactures of marble," to the exclusion of the general clause, "all other manufactures not before enumerated."

2. SAME—TRADE SIGNIFICATION.

It is a question for the jury whether the words "marble in block" have a special trade meaning, limiting them to large, roughly-hewed blocks as they come from the quarry, so as to exclude marble blocks about half an inch square, used in mosaics.

3. SAME—WHAT CONSTITUTE "MANUFACTURES."

The mere fact of the application of labor to an article, either by hand or by mechanism, does not make it necessarily a "manufactured article," within the meaning of the tariff laws, unless the labor has been carried to such an extent that the article suffers a species of transformation, and is changed into a new and different article, having a distinctive name, character, or use. *U. S. v. Semmer*, 41 Fed. Rep. 324, followed.

At Law. Action to recover duties paid.