The judgment of the court, therefore, is that the parties herein charged are guilty of willful contempt in violating the previous orders of the court, and they are so adjudged. In view of the fact, however, that time has been asked this morning in which to file further answer, attachment will not issue at once, but 10 days will be allowed the parties in which to purge themselves of contempt, if they desire to do so. Contempt, however, being a criminal action, and personal service being required in each case, Mr. Deming, being the only individual who has been personally served, is the only one against whom attachment can issue at present.

---

## *In re* HERRMAN *et al.*

(*Circuit Court, S. D. New York.* June, 1892.)

1. CUSTOMS DUTIES—CLASSIFICATION—"ASTRACHANS."
   So-called "astrachans," being a woven material consisting of a cotton foundation or weft, and a rough and more or less curled pile warp composed of goat hair, in which, in some of the samples, the loops of the pile were cut and in others remained uncut, the goat hair being the material of chief value, *held*, that the merchandise was dutiable as a manufacture in whole or in part of goat hair, under Schedule K, par. 392 of the tariff act of October 1, 1890, at the rate of 44 cents a pound and 50 per cent. *ad valorem*, and not, as claimed by the collector and the government, as "pile fabrics," under paragraph 396 of the same schedule and act, at 49½ cents a pound and 60 per cent. *ad valorem*.
2. SAME—CONSTRUCTION OF ACTS—UNDERSTANDING OF MANUFACTURERS.
   The fact that congress, before framing the tariff acts, advises with manufacturing experts, does not give rise to any rule of construction whereby words used therein may be interpreted according to the technical understanding of manufacturers.
3. SAME—TRADE MEANING.
   A word used in a tariff act may be susceptible of a trade meaning as designating a special group of articles, although each article in the group is always bought and sold by its specific name, whereby it happens that no articles are bought and sold by the group designation.

At Law. This was an application by the importers under the provisions of section 15 of the so-called "Customs Administrative Act" of June 10, 1890, for a review by the circuit court of the decision of the board of United States general appraisers affirming the decision of the collector of the port of New York in the classification for customs duties of certain merchandise entered at that port October 27, and November 17, 1890, which consisted of goods commonly known as "astrachans," or "astrachan cloth," which were returned by the United States appraiser as "manufactures, goat hair and cotton, goat hair chief value, as pile fabrics," and duty was accordingly assessed thereon by the collector at 49½ cents per pound and 60 per cent. additional *ad valorem*, under the provisions of paragraph 396 of Schedule K of the tariff act of October 1, 1890, which, omitting immaterial portions, is as follows:

"396. On * * * and plushes and other pile fabrics, all the foregoing composed wholly or in part of * * * the hair of the camel, goat, alpaca,

or other animals, the duty per pound shall be four and one half times the duty imposed by this act on a pound of unwashed wool of the first class, and, in addition thereto, sixty per centum *ad valorem*."

The importers protested that the goods, being manufactures of hair, valued at over 40 cents per pound, were dutiable only at the rate of 44 cents per pound and 50 per cent. additional *ad valorem*, under paragraph 392 of the same schedule and act, which, omitting immaterial portions, is as follows:

"392. On * * * all manufactures of every description made wholly or in part of * * * the hair of the camel, goat, alpaca, or other animals, not specially provided for in this act, * * * valued at above forty cents per pound, the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and, in addition thereto, fifty per centum *ad valorem*."

The board of United States general appraisers, sitting at the port of New York, proceeded to take voluminous testimony offered on behalf of the importers and of the government; the former producing the evidence of a large number of importers and merchants dealing at wholesale in the fabrics in question, whose testimony tended to show that at the date of the passage of the tariff act of October 1, 1890, and prior thereto, the term "pile fabrics" had in trade and commerce a restricted meaning, which comprised and included only a group of fabrics such as velvets, plushes, etc., in which the pile was uniformly cut in the process of weaving and stood erect, the surface of the fabrics consisting of the ends of the piles; and that in this class or group of fabrics the trade did not include the astrachans in question, which were always bought and sold by the specific term of "astrachans," and were never included within the group of "pile fabrics" as known to the trade.

On behalf of the government the testimony of a number of merchants and dealers was produced, tending to show that in trade and commerce in the United States at the time of the passage of the tariff act there were no fabrics bought and sold in trade by the name or designation of "pile fabrics;" and there was some testimony tending to show that "pile fabrics" was not a term or designation known or used in the trade, as applied to any goods. On behalf of the collector and the government the testimony was further produced of several manufacturers in the United States of merchandise identical with or similar to the plaintiffs' importations, which manufacturers testified that in their trade the term "pile fabrics," as technically understood, included the entire class of fabrics which were woven with a pile, namely, where the pile threads—usually the warp threads—were "thrown up" from the warp; and that, then the loops of the "pile," so-called, were either cut by a system of wires and knives following the process of weaving, or in some cases were left uncut, pile fabrics including with them all fabrics where the pile was either cut or uncut, and that it made no difference whether the pile remained standing straight or was cut or steamed or crushed in the process of finishing. The testimony of these manufacturers likewise tended to show that, as

they understood commercial terms as used in the wholesale trade with which they came in contact, "pile fabrics" had no special or restricted meaning different from the technical or common signification of the term as applied to all fabrics having a pile, whether cut or uncut, and whether curled or straight.

The board of United States general appraisers, in deciding the case, delivered a very elaborate opinion, going over the question of manufacture, and finding in substance, among other things, that the words of the statute, "other pile fabrics," could not refer to plushes, that article being enumerated in paragraph 396, and that, therefore, the words must be taken as descriptively covering fabrics which in some respects differed from, but were akin or allied to, the only fabric named. The board also cited the definition of "pile fabrics" as given in the Encyclopedia Britannica, which covered looped or uncut pile and cut pile; also the Century Dictionary definition of "astrachan" as a "rough fabric, with a long, closely curled pile in imitation of the fur;" and also the definition in Webster's and Worcester's Dictionaries of the word "pile." The board further held that the testimony of manufacturers should be admitted to explain the meaning of words used in the tariff act, inasmuch as manufacturers appeared before the committees of congress and gave testimony concerning the goods made by them, and the rates of duty to be imposed thereon. The board further found as follows:

"From the inspection of other protests concerning the same subject-matter now before us, it appears that a number of the witnesses who testify in this case to the effect that 'pile fabrics' is a term understood in the trade to embrace only fabrics similar to velvets and plushes in which the pile threads stand erect, presenting a smooth surface, are pecuniarily interested in maintaining the claims of these protests. A considerable number of disinterested merchants, both in and outside of New York, whose testimony we have taken, concur in saying that the term 'pile fabrics' was not, prior to October 1, 1890, a term in commercial use, by which goods were bought or sold; that all such fabrics are specially designated in the trade; indeed, the claim is made by merchants in a case now before us from San Francisco that certain astrachans, classified as trimmings, are pile fabrics."

The board of United States general appraisers made the following findings of fact:

"(1) That the protestants, H. Herrman, Sternbach & Co., imported into the port of New York, in October and November, 1890, certain fabrics, which the collector classified for duty as 'pile fabrics,' and levied duty upon the same at the rate of 49½ cents per pound, and, in addition thereto, 60 per cent. *ad valorem*, in accordance with the provisions of paragraph 396 of the act of October 1, 1890. (2) That the fabrics so imported were in fact pile fabrics, and on the 1st day of October, 1890, and prior thereto, were bought and sold and exclusively known in trade by the name of 'astrachans.' (3) That the so-called 'astrachan' is a fabric composed of cotton and goat hair similar in texture to plush, but different therefrom generally in the length of its pile and the style of its finish, both fabrics being often made to imitate furs, and both are largely used for similar purposes. (4) That the term 'pile fabrics' was not at the time of the passage of the act aforesaid a term of commercial designation in the United States for the purchase and sale of any fabrics made wholly or in part of wool, worsted, or goat hair. (5) That at the time last

mentioned there was no established, well-known, certain, and uniform general usage or custom in trade and commerce in the United States in relation to 'astrachans,' excluding them from or including them within the term 'pile fabrics.'"

And found the final conclusion of law as follows:

"In our opinion, the words 'other pile fabrics,' contained in the paragraph above mentioned, are generic and descriptive; and, believing that the claim of the protestants is not well founded, we overrule these protests, and affirm the action of the collector."

The record, including the evidence taken by the board, together with their certified statement of the facts involved and their decision thereon, was returned to the circuit court on the application of the importers, pursuant to section 15 of the above-cited "Customs Administrative Act" of June 10, 1890, and thereupon the circuit court proceeded to hear and determine the questions of law and fact involved in such decision, and, after an elaborate examination and presentation of the record and arguments by counsel in behalf of the importers for reversal and by the United States attorney in behalf of the government for affirmance of the decision of the board of United States general appraisers, the circuit court decided the case in favor of the importers' contention, delivering an opinion, which is given below.

*Stanley, Clarke & Smith*, (*Stephen G. Clarke*, of counsel,) for importers.

*Edward Mitchell*, U. S. Atty, and *James T. Van Rensselaer*, Asst. U. S. Atty.

LACOMBE, Circuit Judge. It is not necessary to add anything to the remarks which have been made from time to time in the course of the argument, as indicating why it seems to me right in this case to reverse the decision of the board of general appraisers. In so doing I do not understand that I am at all departing from the rule laid down in the *Muser Case*, (41 Fed. Rep. 877,) I think it was, as to the fact that they sit as experts, and gather testimony from all quarters. In the first place, they have here very plainly indicated by their own expressions on the face of their return that they have reached the conclusion in this case from the evidence which they return here. And it further appears quite plainly from their opinion that to their conclusions they were influenced by a mistaken belief or understanding as to the rules of law as laid down by the supreme court; that is, they seem to consider that these terms in tariff acts may be interpreted according to the technical understanding of them by manufacturers. Now, I know of no such rule. Some words are to be taken in their popular and ordinary signification, as they would be understood by all the world. Failing that, there is the well-known rule, reiterated over and over again, that, if words have a special meaning in trade and commerce, they are to be given that special meaning when we find them in tariff statutes. I know of no third rule that, because congress frames its statutes after advising with manufacturing experts, words should in some instances be given the technical meaning which the manufacturers give to them.

Again, the board seems to have the understanding that a term used in the tariff act is not susceptible of a trade meaning, unless some one or more articles are bought and sold specifically by that name. In that, again, I think they are in error. I think the contrary is very plainly shown in the case of *Pickhardt* v. *Merritt*, 132 U. S. 252, 10 Sup. Ct. Rep. 80, which I referred to before. An article may be bought and sold by the specific name which indicates that precise article, and still a group of such articles may be known to trade and commerce by a commercial term, which includes them in a special group, and which still never appears on the face of an invoice or bill of the goods when the articles are described, because they are always described by the same specific name which refers to the particular article. Inasmuch as it is apparent, to my mind at least, that the conclusion which the board reached in this case was influenced by these views, which seem to me not in accordance with those heretofore expressed and laid down by the supreme court, I shall set their decision aside, and direct that the article be classified as manufactures of wool, etc., under section 392.

---

## BRUSH ELECTRIC CO. *v.* CALIFORNIA ELECTRIC LIGHT CO. *et al.*

(*Circuit Court of Appeals, Ninth Circuit.* October 6, 1892.)

No. 54.

1. PATENTS FOR INVENTIONS—LICENSE—RIGHTS OF LICENSEE.
   A grant by the owner of a patent of an exclusive license to sell the patented article in a specified territory carries with it an implied authority to join the owner, even against his will, as a party plaintiff, in suits against infringers. *Brush-Swan Electric Light Co.* v. *Thompson-Houston Electric Co.*, 48 Fed. Rep. 224, approved. 49 Fed. Rep. 73, affirmed.
2. SAME—ASSIGNMENT OF LICENSE.
   A licensee cannot divide up his license and assign to third parties all his rights in certain portions of his territory, unless a manifest intent to confer such rights appears in the contract of license; and such intent cannot be inferred merely from the grant to him and his "assigns."
3. SAME.
   An attempted assignment by a licensee, without authority, of all his rights in part of his territory, causes no forfeiture of the rights which he acquired by his license, and, as it passes nothing to his assignee, he may still sue for an infringement committed in the assigned territory, and may join his licensor as a party complainant therein.
4. SAME.
   The right to so join the licensor is not affected by the fact that the licensee has also joined as a party plaintiff a corporation which is merely its agent, and which is therefore not a necessary party.
5. SAME—ESTOPPEL.
   A patent may be assigned before it is actually issued, and where the assignee grants to a third person an exclusive right to sell the patented article in a specified territory, and, after obtaining the patent, treats such grantee as having a valid license, and allows it to acquire an extensive business, he is estopped to deny the validity of the license.
6. SAME—NATURE OF LICENSEE'S RIGHTS.
   A grant by the owner of a patent of an exclusive right to sell the patented article within a specified territory excludes the grantor from such territory, and con-