posed by the latter part of the paragraph. The result which would happen if a certain style of gloves should be included in more than one class was not the subject of this paragraph. Although gloves might be included in two or more classes, the language of the paragraph does not imply that they were to pay two or more rates, but the question of the dutiable rate under such circumstances is solvable by reference to section 5, which provides that, if two or more rates of duty are applicable to an imported article, it shall pay duty at the highest of such rates. The construction which imposes cumulative duties is one which seems strained and unnatural, in the absence of a more clearly expressed intention on the part of the legislature to assess duties upon a cumulative system. The judgment of the circuit court is affirmed.

In re CROWLEY et al.

(Circuit Court of Appeals, Second Circuit. April 18, 1893.)

1. CUSTOMS DUTIES—EFFECT OF PROTEST.
When an importer protests that his invoices are dutiable under a certain paragraph of the tariff act, he is not thereby concluded, so as to prevent the board of appraisers from adjudging that a part of the invoices is dutiable under that paragraph, and a part under the classification adopted by the collector. Davies v. Arthur, 96 U. S. 148, distinguished.

2. SAME—ARTICLES IN SEPARATE PARTS—INVOICE.
The fact that articles in separate parts are invoiced as entireties is not controlling, and will not prevent a separate classification, when such classification is otherwise proper. 50 Fed. Rep. 465, affirmed.

3. SAME—CLASSIFICATION—EMBROIDERED DRESS PATTERNS.
Woolen dress patterns, embroidered with silk, or silk and metal, are not dutiable as woolen "embroideries," under paragraph 398 of the tariff act of 1890, but at 44 cents per pound and 50 per cent. ad valorem, under paragraph 395, as woolen dress goods. In re Schefer, 53 Fed. Rep. 1011, followed. 50 Fed. Rep. 465, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was a proceeding by H. C. Crowley & Co. for a review of the decision of the board of general appraisers in relation to the classification of certain imported dress goods. The circuit court affirmed the action of the board, and the United States appeal. Affirmed.

James T. Van Rensselaer, Asst. U. S. Dist. Atty.
W. Wickham Smith, for appellees.

Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. In May, 1891, H. C. Crowley & Co. imported into the port of New York four invoices of woolen dress patterns, each pattern consisting of two pieces of woolen goods; one being plain, and the other embroidered with silk, or silk and metal. The whole pattern consisted of ten meters, the embroidered part not exceeding two meters. The patterns were invoiced as entireties, and the pieces were not intended to be sold separately. The collector assessed duties on the importations at the rate

of 60 cents per pound, and 60 per cent. ad valorem, as woolen embroideries, under the provisions of paragraph 398 of Schedule K of the tariff act of October 1, 1890. The importers protested that they were dutiable under paragraph 395 of the same schedule, as woolen dress goods, at 44 cents per pound and 50 per cent. ad valorem. The board of appraisers sustained the decision of the collector, under paragraph 398, and the proviso in paragraph 373 of the same act, so far as the embroidered part of the patterns was concerned, and sustained the protest of the importers upon the plain parts. The importers thus succeeded before the general appraisers as to four fifths of the imported articles, and took no appeal. The collector appealed to the circuit court for the southern district of New York, and alleged that the general appraisers erred in three particulars: (1) In "going outside the protest of the importers," who protested that all the importations should be assessed under paragraph 395; (2) in segregating the value of the plain and embroidered parts, because the patterns were invoiced as entireties, and were valued for duty accordingly; (3) in holding that the embroidered parts are dutiable at 60 per cent. ad valorem and 60 cents per pound, under paragraph 398 of said act, and the plain parts at 44 cents per pound and 50 per cent. ad valorem, as manufactures of wool, under paragraph 392 of the same, instead of applying the rates imposed by said paragraph 398 to the entire article, as embroidery made of wool, or as embroidered robes of wool. The circuit court affirmed the decision of the board of appraisers, and declined to go into the question whether they correctly determined that the silk embroidery made the article upon which it was placed dutiable as if it had been embroidered in wool, because there had been no appeal, and no application for review, in that particular. The United States have appealed to this court from said judgment.

This court has already decided (In re Schefer, 53 Fed. Rep. 1011) that the ground of objection stated by the importers in their protest was well founded, and consequently that the entire importations should have been assessed for duty under the provisions of paragraph 395; but this appeal relates simply to the correctness of the decision of the circuit court upon the points which were specified in the collector's appeal from the decision of the board of general appraisers.

The collector's first point was that, inasmuch as the importer protested that all the articles contained in the invoices were dutiable under paragraph 395, it was not competent for the board of general appraisers to adjudge that a part of the articles was dutiable under that paragraph, and that the residue had been assessed for duty at the proper rate. This contention carries the principle that the importer is concluded by his protest to an unjust extreme. The importer claimed that all his articles should have been assessed under a certain paragraph, and the board find that his protest was well founded, as to a part of his articles. This has been the invariable practice when, in the opinion of the triors, the facts warranted such a finding. The case is not that

of Davies v. Arthur, 96 U. S. 148, in which it is held that the importer, having in his protest placed his objections to the payment of duties at the required rate upon one ground, cannot recover the amount upon another ground than the one so stated.

The second point is that because the articles were invoiced as entireties, and valued for duty accordingly, the board had no power to assess duty upon separate parts of the articles, although in their opinion separate rates were properly assessable. Each article was an entirety, and constituted one dress pattern, and should have been assessed for duty accordingly, by the board of general appraisers, at the rate named in the protest; but the alleged error which the circuit court was called to consider was not that the article was in fact an entirety; the assignment of error was confined to the impropriety of imposing separate rates upon separate parts of an article, if it was invoiced as an entirety, and was valued as such. The mere fact that it is called an entirety in the invoice is not controlling. The article may nevertheless not be an entirety, and may have been improperly, though honestly, invoiced. The theory of the collector makes the assessment of duties upon a certain class of articles to depend entirely upon the manner in which they are entered and valued in the invoice,—a theory which might result in placing the rate of duties at the will of the importer.

The third point was that the dress patterns should have been assessed at the rates imposed by paragraph 398 as embroideries. This position was declared unsound in Re Schefer, supra,—a decision which we have no occasion to alter.

The judgment of the circuit court is affirmed.

In re SALOMON et al.

(Circuit Court, S. D. New York. March 14, 1893.)

1. CUSTOMS DUTIES—RATE OF DUTY—GLASS BOTTLES.
   Under paragraph 104 of the tariff act of October 1, 1890, which provides that glass bottles filled with an article that pays an ad valorem duty shall pay the same duty as the contents, the dutiable value being ascertained by adding the value of the contents to the value of the bottles, "provided that no article manufactured from glass described in the preceding paragraph shall pay a less rate of duty than forty per centum ad valorem," glass bottles filled with blacking, dutiable at 25 per cent. ad valorem, under paragraph 11, are liable to duty at the rate of 40 per centum ad valorem.

2. SAME—CONSTRUCTION OF LAWS.
   The words "preceding paragraph," as used in such proviso, do not refer exclusively to paragraph 103; and, whether or not they include 103, they do apply to 104. Marine v. Packham, 52 Fed. Rep. 579, distinguished.

Appeal by Importers from the Decision of the United States Board of General Appraisers affirming a decision of the collector of the Port of New York. Affirmed.

W. Wickham Smith, for appellants.
Thomas Greenwood, Asst. U. S. Atty., for collector.

COXE, District Judge. In March, 1892, the appellants imported a quantity of merchandise consisting of green or colored, molded or pressed, flint or lime glass bottles filled with blacking. Duty was assessed upon the blacking at the rate of 25 per centum ad valorem (paragraph 11 of the act of October 1, 1890) and on the bottles at the rate of 40 per centum ad valorem under the proviso of paragraph 104 of the same act, which is as follows:

"All articles enumerated in the preceding paragraph, [among the articles so enumerated are glass bottles similar to those imported by the appellants,] if filled, and not otherwise provided for in this act, and the contents are subject to an ad valorem duty, or to a rate of duty based upon the value of the value of such bottles, vials, or other vessels shall be added to the value of the contents for the ascertainment of the dutiable value of the latter; but if filled, and not otherwise provided for in this act, and the contents are not subject to an ad valorem rate of duty, or to a rate of duty based upon the value, or are free of duty, such bottles, vials, or other vessels shall pay, in addition to the duty, if any, on their contents the rates of duty prescribed in the preceding paragraph: provided, that no article manufactured from glass described in the preceding paragraph shall pay a less rate of duty than forty per centum ad valorem."

Paraphrased to fit the facts of this case, paragraph 104 would read as follows:

"Green, etc., glass bottles, when filled with something that pays an ad valorem duty, shall pay the same duty as the contents, the dutiable value being ascertained by adding the value of the contents to the value of the bottles: provided, that no glass bottle shall pay less than forty per centum ad valorem."

The appellants insist that their bottles should pay but 25 per centum because their blacking pays only at that rate. I do not so understand the law. Paragraph 103 describes well-known articles of glassware, and, when they are empty, imposes a specific duty upon them. Paragraph 104 deals with the same articles when filled. It is manifest that if filled with some substance paying a low rate of duty ad valorem the bottles described in 103 would come in under the same low rate. Designing men could thus evade the provisions of the law. To guard against this contingency congress inserted the proviso, intended to prevent importers from avoiding the payment of duties which should approximate those of 103 by filling the bottles and importing them under 104. It is as if the proviso read:

"Provided that no article described in paragraph 103 shall, under the provisions of 104, avoid the payment of adequate duties, for all such articles when assessed with an ad valorem duty shall pay at least forty per centum."

It is argued that the proviso applies exclusively to paragraph 103. What possible reason can be suggested for placing a proviso at the end of paragraph 104 which was only intended to apply to 103? Why was it not placed at the end of 103? I have examined Marine v. Packham, 52 Fed. Rep. 579. The precise question there was whether the proviso applies to 103. The majority of the court held that it does. Whether it does or not is a question not involved in this controversy. The sole question here is, does the proviso apply to paragraph 104, a question not involved in Marine v. Packham. I am clearly of the opinion that the proviso does apply to 104.

The decision of the board was right, and should be affirmed.

ADRIANCE, PLATT & CO. v. McCORMICK HARVESTING MACH. CO.

(Circuit Court, N. D. New York. October 13, 1892.)

1. PATENTS FOR INVENTIONS — SUITS FOR INFRINGEMENT — SUITS FOUNDED ON CONTRACT.
   The owners of certain patents granted to complainant the exclusive right to make, use, and vend the patented machines in specified territory of the United States, and also, "so far as they could control the same, the exclusive right to make the patented machines for sale in Europe, Australia, and South America." Thereafter the owners conveyed all their right in the patents to defendant, subject to the rights of the complainant, from which time complainant paid to defendant the royalties under its license. Subsequently complainant sued defendant to restrain it from manufacturing machines under the patent, for sale in Europe, Australia, and South America. *Held*, that under the conveyance to it defendant assumed no contract relation with complainant, and thereafter the suit was not founded upon the contract, but was an ordinary suit for infringement of a patent.
2. SAME—JURISDICTION OF FEDERAL COURTS—DISTRICTS.
   In a suit in which the jurisdiction of the circuit court is founded wholly or partly upon the patent laws of the United States, a corporation organized under the laws of another state cannot be sued in a state where it does business by a citizen of a third state. Shaw v. Mining Co., 12 Sup. Ct. Rep. 935, 145 U. S. 444, followed.

In Equity. Bill by Adriance, Platt & Co. against the McCormick Harvesting Machine Company for infringement of certain patents. On motion for preliminary injunction. Denied.

Geo. B. Selden, (Chambers & Boughton, of counsel,) for complainant.

John E. Brandeger, (R. L. Parkinson, of counsel,) for defendant.

WALLACE, Circuit Judge. The motion for a preliminary injunction must be denied, because, irrespective of any other considerations, the jurisdictional objection raised by the defendant is fatal to the suit. The bill alleges that certain letters patent of the United States for inventions in harvester and grain binding machines were granted to one Severance, the inventor; that Severance thereafter conveyed a two-thirds interest therein to Adsit and Baldwin; that thereafter Severance, Adsit, and Baldwin, being then the owners of all the patents, granted to the complainant, upon the condition of the payment of a royalty of five dollars on each machine, the exclusive right to make, use, and vend the patented machines in certain specified territory of the United States, and also, so far as they could control the same, the exclusive right to build the patented machines for sale in Europe, Australia, and South America; that thereafter the said Severance, Adsit, and Baldwin, being still the owners of the patents, transferred all their right, title, and interest therein to McCormick, subject to the rights of complainant under the license; that thereafter McCormick, being then the owner of the patents, granted and conveyed to the defendant the exclusive right to make, use, and vend the patented inventions throughout the United States, subject to the rights of the complainant; that since McCormick became the owner of the