nished to the navy and marine service of the United States according to specifications as to quantity and quality, or the furnishing under contract with the government of the United States of lumber and brick to be used in building quarters at Mt. Vernon barracks for officers or soldiers or any other public use, according to specifications as to kind, quality, and quantity. It would hardly be contended that the mining of such coal, the sawing of the lumber, or making the bricks, would be public works in contemplation of the act of congress, or that the laborers engaged in the work of mining and in making the lumber and bricks were the laborers whose services and employment congress has undertaken to regulate and limit. I fail to see any difference in principle in the cases mentioned and that under consideration.

Furthermore, the act of congress provides that it shall be unlawful for any such contractor—not a contractor to do work for the United States, but a contractor upon any of the public works of the United States—whose duty it shall be to employ, direct, or control the services of such laborers or mechanics, to require or permit them to work more than eight hours in any calendar day; manifestly referring to laborers and mechanics employed upon such public works of the United States. There was no duty expressly or impliedly imposed on the defendant by his contract to employ, direct, or control any laborer or mechanic on the work of building the barges. It does not appear that the defendant employed any laborers or mechanics on the work. It appears that he had men who worked, but whether as employes or subcontractors does not clearly appear. If he employed them as laborers and mechanics, he did so for his own benefit, and not because of any duty on him arising out of his contract with the government. It is clear, I think, that the defendant was not a contractor within the purview of the act of congress. In view of the previous legislation on the subject by congress, in view of the limited power of congress to legislate on the subject, which power can only be exercised as applying to laborers and mechanics who may be employed by or on behalf of the government of the United States, I am satisfied that it never was the legislative understanding and intent that the act should apply to a case like the one at bar.

The defendant should be discharged, and it is so ordered.

THOMAS v. BLYTHE.

(Circuit Court of Appeals, Fourth Circuit. May 23, 1893.)

No. 39.

BANKRUPTCY—LIMITATION OF ACTIONS.

Rev. St. § 5057, which bars suits between an assignee in bankruptcy and any person claiming an adverse interest in property transferable to or vested in the assignee, does not apply to a proceeding by the assignee against the bankrupt himself, to secure a fund withheld by him, and omitted from his schedules, in fraud of the assignee's rights. 45 Fed. Rep. 784, affirmed.

Appeal from the District Court of the United States for the District of South Carolina.

In Bankruptcy.

For report of the decision of the court below, see 45 Fed. Rep. 784.

J. P. K. Bryan, for appellant.

William E. Earle, for appellee.

Before FULLER, Circuit Justice, GOFF, Circuit Judge, and DICK, District Judge.

GOFF, Circuit Judge. William M. Thomas was on February 3, 1871, on his own petition, adjudged a bankrupt in the district court of the United States for the district of South Carolina. He has not, as yet, been discharged as such. At the time he was so adjudicated, a suit was pending in the court of common pleas, Greenville county, S. C., in his name, as plaintiff, against Mary Raymond, defendant, the object of which was to foreclose a mortgage on a lot of land in Greenville, executed by the said Mary Raymond to secure the payment of a note given by her to William M. Thomas for $7,000, dated August 25, 1863. Such proceedings were had in that cause that, after the crediting of the proceeds of the sale of the mortgaged property, there was still due said Thomas on such claim the sum of $3,421.04, for which a judgment was rendered on the 17th day of November, 1873. On the 28th day of July, 1871, an order was entered in the case, reciting the bankruptcy of William M. Thomas, and authorizing his assignee to continue the prosecution of the suit. The judgment rendered in Greenville county was transferred and recorded in Charleston county, where property of the judgment debtor was situated, and the clerk of the court was notified by Blythe, assignee, in writing, (of which record was made,) that he, as such representative of the bankrupt, was the owner of such judgment. On the 19th of January, 1876, John D. Warren instituted a suit against Henry M. Raymond (the heir at law of Mary Raymond, then deceased) and other parties, creditors of her estate, the object of which was to ascertain the debts and their priorities of said Mary and Henry M. Raymond, and satisfy the same by sale of the property held by the said Mary at the time of her death. William M. Thomas, bankrupt, and Absalom Blythe, his assignee, were parties defendant to that suit. The former, in his answer, repudiated the claim of his assignee to any interest in the Raymond judgment, while the latter, by his answer, insisted that the proceeds of the same were due him, and were the subject-matter of an issue pending in the United States district court for the district of South Carolina. This controversy the state court did not decide, but it ordered that, from the proceeds of the property sold, the full amount due on the judgment should be paid into the registry of the said district court to the credit of the bankruptcy proceedings mentioned, which was done on the 29th day of June, 1882. The assignee in bankruptcy then filed his petition

in the district court, praying that the fund be decreed to be a part of the estate of the bankrupt, and subject to distribution among his creditors. The contention of the assignee was that at the time of the adjudication of the bankruptcy of Thomas the said bankrupt was the owner of the Raymond claim, while, on the other hand, Thomas insisted that he had, previous to his bankruptcy, assigned the same for a valuable consideration to one Peter Thomas. The matter was referred by the court to a master, and a number of witnesses were examined, the said William M. Thomas among them. It appears that the Raymond claim had been assigned by William M. Thomas on several occasions to different persons, and the assignments afterwards canceled. Considerable feeling has been engendered during the progress of this suit, which has been earnestly prosecuted, and determinedly defended. The evidence is conflicting. We do not deem it necessary to set out the testimony of the different witnesses. It is voluminous, and, to say the least, it discloses a peculiar state of affairs, relative to the assets of the bankrupt estate. The assignee claimed that the evidence demonstrated that an effort had been made by the bankrupt to prevent the application of the fund realized from the Raymond judgment to the benefit of his creditors. The court below, in effect, so found. In this finding of the district court that William M. Thomas was, at the time he was adjudged a bankrupt, the owner of the Raymond judgment, and that title to it passed to his assignee, we concur. Sustaining, as we do, the court below in this conclusion, which in fact disposes of the entire controversy, we necessarily thereby disagree with the appellant in all his exceptions to the decree appealed from, save the one relating to the statute of limitations. Appellant contends that the district court erred in not holding that the proceeding by the assignee, asking the court to decree the proceeds of the Raymond judgment to be assets of the bankrupt's estate, was barred by the statute, because the petition having that object in view was not filed within two years after the adjudication of bankruptcy. The litigation in the state court in connection with this claim was not adverse to the assignee down to the time that William M. Thomas filed his answer in the Warren suit, in which he denied that his assignee had any right or interest in the same. From that time to the 29th of June, 1882, when the fund was transferred to the district court, this controversy was continued between the bankrupt and his assignee; and certainly it cannot be maintained that the statute was running against the latter when the litigation concerning the claim was so pending. When the transfer was made to the district court, the formal petition of the assignee was tendered, asking that the distribution of the fund be made, and the decree entered in connection therewith is the one appealed from, now under consideration. The appellant relies on section 5057 of the Revised Statutes of the United States, which reads as follows:

"No suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy and a person claiming an adverse interest,

touching any property or rights of property transferable to or vested in such assignee, unless brought within two years from the time when the cause of action accrued for or against such assignee; and this provision shall not in any case revive a right of action barred at the time when an assignee is appointed."

We hold that this provision of the bankrupt law does not apply to funds recovered in litigation to which the assignee, as well as the adversary claimant, were parties, and where the court holds the same for years pending proceedings to ascertain its proper disposition. The supreme court of the United States has held that this section of the Revised Statutes relates to suits by or against the assignee with respect to parties other than the bankrupt. Phelps v. McDonald, 99 U. S. 298. It has no application to a case like this, where the proceeding is against the bankrupt himself, and the object is to secure to his creditors certain funds withheld by him, and omitted from his schedules, in fraud of the rights of his assignee. The bankrupt cannot plead the statute of limitations against his assignee.

The only remaining exception is one relating to certain allowances made by the district court for fees and expenses. The court in which services are rendered and expenses incurred, where all the circumstances transpire, where the parties are known and the record is made, is, as a general rule, better qualified to determine such matters than is the appellate court. With the action of the court below in the matter of the allowances complained of we find no error. The decree appealed from is affirmed.

LYON et al. v. MARINE, Collector of Customs.

(Circuit Court of Appeals, Fourth Circuit. May 23, 1893.)

No. 43.

1. EVIDENCE — JUDICIAL NOTICE — FACTS OF NATURAL HISTORY—CUSTOMS DUTIES.

   In customs duties cases the court will take judicial notice of the general facts of natural history, including the fact that the unimproved native sheep of all countries produce fleeces whose value is depreciated more or less by the undue quantity of hair growing on the belly, flanks, and parts of the thighs and arms of the animals.

2. CUSTOMS DUTIES—CLASSIFICATION—EVIDENCE—APPEAL.

   Certain bales of merchandise purporting to be the fleeces of the unimproved North China sheep were imported from Shanghai, the papers being regular, and free from all question of fraud. The goods consisted of very low grade wool, containing a large mixture of coarse, short hair, and cost three cents a pound in Shanghai, and were worth but nine cents in Baltimore. The importer testified that he had lived in China, and had dealt in the fleeces of the China sheep, and that the importation consisted of such fleeces. A customhouse expert, however, testified that the hair in the fleeces was goat's hair, and on this evidence the collector and board of appraisers placed the importation in class 2, par. 377, Act Oct. 1, 1890, and assessed a duty of 12 cents a pound, and this conclusion was sustained by the circuit court. *Held*, that an appellate court, taking judicial notice of the fact that a large proportion of hair grows on the bodies of unimproved sheep, would find that the whole importation consisted of the fleece of the sheep, and therefore belonged to class 3, (paragraph 378,) and was dutiable at 32 per cent. ad valorem.

Appeal from the Circuit Court of the United States for the District of Maryland.

This is an appeal from a decision of the board of general appraisers at the port of New York upon an appeal to them from the classification by the collector of the port of Baltimore, and from the rate of duty imposed by him upon certain merchandise imported by Lyon, Hall & Co., from Shanghai, China, by way of London, per steamship British Crown, September 26, 1891. Reversed.

John F. Preston, for appellants.
John T. Ensor, U. S. Atty., for appellee.

Before GOFF, Circuit Judge, and DICK and HUGHES, District Judges.

HUGHES, District Judge. Under the existing tariff act imported wools and hairs are divided into three classes. 26 Stat. 594. In the first class are placed the wools of the merino and of the various downs sheep of English breed, and wools from Australia and other countries, named in the clause. These are all wools of fine fiber. Upon these wools a duty of 11 cents per pound is levied. This class of fine wools does not come under consideration in the case at bar. See paragraphs 376, 384. In the second class are placed the wools of improved sheep, including long combing wools, and the hairs of higher breeds of camels, of the alpaca, and the better breeds of goats, and of other animals producing the better grades of hair. On these a duty of 12 cents per pound is imposed. See paragraphs 377, 384. In the third class are placed the coarse fleeces of the unimproved sheep of certain South American states, Smyrna, and Russian camel's hair, and such coarse wools as have been usually imported from Turkey, Greece, Egypt, Syria, and elsewhere, excepting improved wools. The duty imposed on these inferior and cheap substances is 32 per cent. ad valorem. See clauses 378, 385.

The appellants, Lyon, Hall & Co., of Baltimore, importers of wools and merchandise, received in that city on the 26th of September, 1891, from Shanghai, China, by the steamship British Crown, an invoice of various goods, embracing eight bales of the fleeces of North China unimproved sheep, composed of both wool and hair. The shipping papers relating to those bales, the bill of lading, invoice, declaration, and shipping certificate were regular, and free from all question of fraud, and those from Shanghai were authenticated by the deputy consul general of the United States at that port.

The testimony of J. Crawford Lyon, one of the appellants, was that he was a dealer in the products of North China; that he had been so for two years; that he had been a resident of China, and had had experience there as a dealer in the fleeces of China sheep; that the cost at Shanghai of the contents of the eight bales that have been named was three cents a pound; that the stuff was worth not more than nine cents in Baltimore; that it was

ordered from and shipped by one of the most responsible firms in Shanghai; that it was taken from the pelts of China sheep, and the hair embraced in the fleeces was of the lowest possible value, being assimilated with the hair of slaughterhouses and tanyards.

The question of what duty should be required on these bales was referred by the collector at Baltimore to a board of appraisers. Under the influence of the testimony of an expert employed in and sent from the customhouse in New York, the board of appraisers at Baltimore decided that the duty on the cheap, inferior, and offensive stuff contained in these bales should be the same as on the highest grade of improved wools and hairs described in class 2, par. 378, of the tariff act of 1890; that duty being 12 cents per pound. The value of the stuff being not more than 9 cents a pound, this duty would be 133 per cent. ad valorem, instead of the 32 per cent. imposed by the act on inferior wools and hairs, and would be prohibitive. Appeal was taken from this ruling of the board of appraisers to the circuit court of the United States for the district of Maryland, which affirmed the decision of the appraisers. The case is here by appeal of the importing house from the decision of the circuit court of the Maryland district.

The United States attorney, who represents the appellee, avers that "the question in the case is—First, whether this merchandise is goat hair, or hair of other like animals, or is the hair of the North China sheep, which, the appellants claim, is not an animal like the goat; and, second, whether the packages contain goat hair mixed with the product of the China sheep." The honorable counsel then contends on behalf of the appellee that the sheep is an animal like a goat, and that the hair of the North China sheep is to be subjected, not only to the same tax as the hair of goats, but as that imposed upon the hair of the alpaca and superior species of goats contemplated by paragraph 377 of the act of 1890, class 2. The experts on whose testimony the decision below was based seem to assume that the fleeces of sheep do not contain hair. The writers on sheep, on the contrary, treat the hair which grows upon the bodies of unimproved sheep as the principal object to be removed by crosses with improved breeds. The native sheep of the United States, the native sheep of all countries, produce fleeces whose value is depreciated more or less by the undue quantity of hair contained in them, sneared from the belly, flanks, and parts of the thighs and arms of the animal. One of the aims in improving native sheep by judicious crossing is to reduce the percentage of this deleterious product. The native sheep of the United States and of all the countries named in paragraph 378, page 594, (class 3,) of the tariff act of 1890 have a moderate percentage of hair in their fleeces. This is common knowledge, taught by all text-books on sheep, and within the judicial cognizance of the courts. The general facts of natural history are also within the judicial cognizance.

The theory on which the experts testified in this case—a theory derived wholly from their own surmises and preconceptions—is

that unimproved sheep do not produce hair, and that, if hair is found in their fleeces, it is necessarily goats' hair; and, in this case, not only goat's hair, but goat's hair of the high grades contemplated by paragraph 377. Counsel for appellee insists that, though this may be a mistake, and though the hair in the packages under consideration be the hair of sheep, yet, inasmuch as the sheep is a "like animal" to a goat, therefore the hair of the North China sheep is subject to the high tax imposed upon the high-grade hair of the Arabian camel, and the alpaca, and their like.

But the sheep, in respect to its fleece, is not a "like animal" to the goat. In respect to its fleece, the sheep is almost sui generis. In that respect it differs wholly from the goat, and from almost every other known animal. In respect to their coats, the horse, the ox, the hog, the dog, the cat, the deer, the fox, the donkey, and the monkey are each and all more like the goat than the sheep. When experts undertake to assimilate the fleeces of sheep to the all-hair coatings of the goat, they abandon fact, and resort to mere surmise. The substance which is the subject of this suit is the lowest grade of sheep's fleeces, combined of mean wool and coarse, short sheep's hair; and yet the experts whose theories induced the decision of the board of appraisers appealed from have persuaded them that this wretched substance is liable to be taxed at the same rate with the highest qualities of the wools of improved sheep, and of combing wools, and of the fine hairs of the Asiatic camel, and of the alpaca and the finely coated goats. Such a decision is contrary to the reason of the law and the justice of the case. The policy of congress was as simple as obvious. The finest grades of wool of short fiber, represented by the fleeces of the merino sheep and the sheep bred originally on the several downs of England, and the sheep of the other countries named in paragraph 376, are taxed 11 cents a pound. Wools of long fiber, from improved Cotswolds and like highly-bred sheep, and the fine hairs of camels, alpacas, and goats of high breed, most of them exceeding in value the fine wools of the merino class, are subjected to the higher duty of 12 cents. Finally, wools and hairs from the sheep described in paragraph 378, all more or less inferior in value to those of classes 1 and 2, most of them known commercially to be almost as cheap in value and inferior in quality as the repulsive stuff filed as exhibits in this case, are subjected to an ad valorem duty equal to one-third their market value, whatever that may be. In accordance with this obvious policy of the tariff act of 1890, we are of opinion that the cheap stuff which is the subject of this litigation is not liable to the tax imposed upon the most valuable wools and hairs known to commerce; but is liable to the duty of 32 per cent. ad valorem imposed upon all inferior wools and hairs sold in the markets at the lowest range of prices.

A decree will be entered to that effect, and reversing the decree below.

ERHARDT, Collector, v. BALLIN et al.

(Circuit Court of Appeals, Second Circuit. May 23, 1893.)

1. CUSTOMS DUTIES—CLASSIFICATION—EXPERTS—COMPETENCY.
In an action to recover duties illegally exacted, where the issue was whether certain articles were within the commercial designation "hemmed handkerchiefs," defendant offered a witness who for many years had been engaged in the manufacture of cotton handkerchiefs and articles similar to those in question, but who had never bought or sold imported handkerchiefs, or been present when they were bought or sold. *Held*, that he was nevertheless competent to testify by what name the imported articles in question were known at the time the tariff act was passed, for his want of personal experience in handling the imported goods only affects the weight of his testimony.

2. SAME.
Though one of the witnesses was at the time of the trial engaged in the handkerchief business, and had been prior to 1881, it was proper to exclude the question what was included in the term "hemmed handkerchiefs" in 1883, where it was shown that from 1881 to 1885 he was wholly engaged in a different business.

In Error to the Circuit Court of the United States for the Southern District of New York.

At Law. Action by William Ballin and others against Joel Erhardt, as collector of the port of New York, to recover duties paid under protest. There was judgment for plaintiffs, and defendant brought error. Reversed.

Chas. D. Baker, Asst. U. S. Atty., for plaintiff in error.
Everit Brown, for defendants in error.

Before WALLACE and SHIPMAN, Circuit Judges, and WHEELER, District Judge.

WALLACE, Circuit Judge. The plaintiff in error was defendant in the court below. The suit was brought against him to recover duties alleged to have been illegally exacted by him, as collector of the port of New York, upon the importation by the plaintiffs, during the year 1889, of certain cotton goods, which goods he classified as "hemmed handkerchiefs," dutiable at 40 per cent. ad valorem, under one of the clauses of Schedule I of the tariff act of March 3, 1883. The plaintiffs insisted that the importations were articles which at the date of the passage of the act were commercially known as "mufflers," and not "handkerchiefs," and as such should have been classified under another clause of the same schedule, as "manufactures of cotton not specially enumerated," and subjected to duty at only 35 per cent. ad valorem. The issue litigated upon the trial was whether the imported articles were "hemmed handkerchiefs," according to the commercial understanding of the term prevailing in this country at the time of the passage of the tariff act. The plaintiffs gave testimony to show that they were not, but that they were always bought and sold as "mufflers," and that they were used for neckwear only, and that in commercial signification the term "handkerchief" did not include