

praisers by the importers to overthrow the same, and that the presumption was also that the turning down of the edge and the basting of the goods in question was done by hand, in the absence of proof that it was accomplished by machinery; also, that the report of the local appraiser to the collector showed that the merchandise was commercially known and sold as "Astrakhan trimmings," which fact remained uncontradicted, and was sufficient to sustain the collector's classification under paragraph 398.

Edward Mitchell, U. S. Atty., and James T. Van Rensselaer, Asst. U. S. Atty., for the government.

Hess, Townsend & McClelland, for the importers.

LACOMBE, Circuit Judge. The failure to return any evidence whatever, except the samples, makes this case somewhat difficult of determination. Of the facts returned by the board, some are entirely unsupported by the proof; others may find sufficient warrant in an inspection of the samples themselves. For the purpose of determining this appeal it may be assumed that the articles here were invoiced as worsted Astrakhan trimmings; that they are manufactured from goat hair and cotton,—goat hair being the component material of chief value; that they are commercially known and sold as "Astrakhan trimmings;" that they are black, white, and gray; that upon the foundation of the fabrics there is a nap or pile, except at the edges, where the foundation contains only cotton, and is turned under and basted down. The appearance of the basting may also be taken as indicating that the work was done by hand, and not by machinery. That they were woven in the loom in wide pieces, as the board returns, there is no evidence. That they were, thereafter, cut into strips of various widths, there is no evidence. This statement enumerates all the facts which are before this court for determining the case.

From an inspection of the goods themselves, and without any testimony one way or the other as to the commercial meaning of the term "pile fabrics," they may fairly be classed as falling within that category, under the definition given in the dictionary. They would therefore, under that section, be dutiable, unless they also fall under some specific designation which is found in the act. It is claimed by the collector that such designation is found in paragraph 398, which provides for the duty on webbings, beltings, bindings, and dress trimmings wrought by hand, or braided by machinery. There is no evidence in the case of any hand work put upon these articles, save the turning down of the hem, and the basting thereof. In my opinion, such an operation is not sufficient to entitle the articles to be described, in the language of the statute, as "dress trimmings wrought by hand." As to their being braided by machinery, there is no testimony whatever. If it were not apparent from the face of the fabrics that there had been this basting of the hem,—an operation performed by hand,—I should be inclined to concur with the district attorney that the return of the appraiser of these goods as coming within the description of the 398th paragraph might be taken as a statement by him (which, under the act, might be considered proof by the board, in

the absence of anything to the contrary) that the articles were wrought by hand,—that is, as a whole,—but inasmuch as there is sufficient evidence, in the turning down of the seam, to warrant the conclusion that it was classified by the appraiser upon an interpretation of the statute which, in his judgment, would require the classification of articles thus manipulated as to the hem as being “wrought by hand,” I do not think there is sufficient in that to warrant the finding that the article, as a whole, was wrought by hand.

I shall therefore affirm the decision of the board of appraisers.

In re FOPPES et al.

(Circuit Court, S. D. New York. June 28, 1893.)

CUSTOMS DUTIES—CLASSIFICATION—MANUFACTURES FROM RATTANS AND REEDS.

Partly-manufactured whipstocks, fishing poles, and canes, being made from rattans and malacca, having the outer rind or enamel removed, and being tapered, turned, sandpapered, and varnished, are properly dutiable as “manufactures of wood,” at 35 per cent. ad valorem, under paragraph 230, Schedule D, of the tariff act of October 1, 1890, and section 5 (the similitude clause) of that act, and not as “reeds manufactured from rattans or reeds,” under paragraph 229 of said schedule and act, at 10 per cent. ad valorem, as claimed by the importers.

At Law.

Appeal by the importers from a 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 duty of certain goods, consisting of partially-manufactured whipstocks, fishing poles, and canes, classified for duty as “manufactures of wood,” at 35 per cent. ad valorem, under paragraph 230 of the tariff act of October 1, 1890, and section 5 (the similitude clause) of said act. The importers protested, claiming their goods to be “reeds manufactured from rattans,” and dutiable at 10 per cent. ad valorem, under paragraph 229 of said schedule and act, which provision is as follows: “229. Chair cane, or reeds wrought or manufactured from rattans or reeds, and whether round, square, or in any other shape, 10 per centum ad valorem.”

On appeal to the board of general appraisers that board overruled the protests of the importers, deciding that the goods were rattans for use as whip handles, fishing poles, etc., polished, varnished, turned, and otherwise manufactured. As matter of law, the board found that the reeds described in paragraph 229 were chair reeds, and that the merchandise in the present case was not chair reeds. The importers having appealed the case into the circuit court, the board of general appraisers filed their return in that court as above; and an order having been obtained from the court by the United States attorney, requiring the board to make a further return, that board did so, under the order of the court, finding that the merchandise was not in fact, or commercially, reeds of any kind. In the circuit court, testimony was taken on both sides which was somewhat contradictory, as to whether at the time of the passage of the tariff act of October 1, 1890, the articles in question were commercially known as reeds or whip reeds, etc.; the weight of evidence being produced in behalf of the collector, that the articles in question, being partially manufactured, were not known in trade and commerce by the name of “reeds” of any kind; that the “reeds” known to the trade were not the reeds of common speech, namely, hollow, jointed grasses, but were rattans or malacca growth, from which the outer bark or enamel had been removed, leaving a product either round, square, oval, or flat, according to the process, but never further finished than by the mere removal