in question were manufactures of glass, and were not manufactures of jet. The board accordingly overruled the importers' protests, and the importers appealed to the circuit court. On the trial in that court it was urged by importers' counsel that all the testimony showed that the articles imported were commercially known as jet or jet trimmings, although admittedly made of glass and iron, and consequently were within the statutory provision for manufactures of jet in paragraph 459 of the tariff act, according to the accepted rule that commercial designations govern in tariff classifications. On behalf of the collector and the United States it was urged that the tariff act had in itself defined the meaning of the word "jet" as used in the different provisions applicable thereto; that the provision of the free list, par. 620 of the act of 1890, "jet, unmanufactured," could refer only to the mineral jet, inasmuch as lumps or pieces of black glass, if not manufactured, could not be held to be unmanufactured jet, and that consequently the same meaning must be given to the provision for manufactures of jet in paragraph 459, which must be held to be manufactures of the same article, namely, the genuine mineral jet. The district attorney cited in support of this contention the provision in Schedule N, Tariff Ind., (paragraph 458 of the act of 1883,) providing for "jet, manufactures and imitations of," especially in view of the fact that the provision for imitations of jet had been omitted in the tariff act of October 1, 1890, so that articles which were in fact such imitations, but were made of glass, were relegated for duty to the appropriate provisions for manufactures of glass.

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

Stephen G. Clarke, for the importers.

LACOMBE, Circuit Judge. There seems to be a statutory meaning of the word "jet." Evidently the unmanufactured jet of paragraph 620 in the tariff act of 1890 is the material out of which the manufactures of jet provided for in paragraph 459 of the same act are made. This interpretation seems the only correct one, in view of the circumstance that the act of 1883 (paragraph 458) provided for manufactures of jet and for "imitations of jet." There can hardly be a doubt that congress used the word "jet" with the same meaning in the act of 1890 that it had in the act of 1883. I shall therefore affirm the decision of the board of appraisers.

In re FRITZSCHE et al.

(Circuit Court, S. D. New York. June 27, 1893.)

CUSTOMS DUTIES—CLASSIFICATION—CITRAL—OIL OF LEMON.

Citral, being a highly concentrated form of oil of lemon, from which nearly all the terpene elements had been extracted, imported in glass bottles, and sold by the importers under the name of "citral," the preparation being chemically a highly concentrated and refined oil of lemon, *held*, that it was properly free of duty as lemon oil, or oil of lemon, under paragraph 661 of the free list of the tariff act of October 1, 1890, and that it was not dutiable, as an essential oil, at 25 per cent. ad valorem, under paragraph 76 of Schedule A of same tariff act.

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 customs duties of certain "citral," which was classified by the said collector as an "essential oil," at 25 per cent. ad valorem.

under the provisions of paragraph 76, Schedule A, of the tariff act of October 1, 1890. The importers protested that the merchandise was free of duty, under paragraph 661 of the free list of said tariff act, as an oil of lemon, or lemon oil. The local appraiser reported to the collector that the article was not the oil of lemon of commerce. No other evidence was taken by the board of general appraisers, which board affirmed the decision of the collector. The importers appealed to the circuit court under the provisions of section 15 of the so-called "Customs Administrative Act" of June 10, 1890, and obtained from the circuit court an order for further evidence to be taken before one of the general appraisers as an officer of the court. On this reference, testimony was taken in behalf of the importers and also of the government, from which it appeared that the citral in question was manufactured by a branch of the importers' firm in Germany, and was called by them and sold under the name of "citral," and was advertised by their firm as possessing great virtues, being about 15 times the strength of lemon oil, and having the further advantage of not rendering turbid any of the liquids to which it might be applied. Its price was also shown to be about three or four times that of the ordinary oil of lemon of commerce. On behalf of the government, testimony was produced, showing that the oil of lemon, as generally known in trade and commerce, was the expressed oil of the ripe lemon fruit, made chiefly in Italy, and was imported in copper cans, containing from 25 to 50 pounds weight; that this commercial oil of lemon from Italy contained the terpene or turpentine elements in different degrees, running from almost nothing up to a very large percentage, and that it was liable, when exposed to the air, to turn into turpentine. The testimony showed, however, that the commercial oils of lemon varied through a very wide scale in the amount of turpentine elements contained therein, and that there was no arbitrary or fixed standard as particularly denoting the commercial oil of lemon. On behalf of the importers the evidence of a chemist was offered, tending to show that the citral in question was chemically a highly concentrated, refined oil of lemon or residue from lemon oil, in which only traces of the terpenes remained.

Edward Mitchell, U. S. Atty., and J. T. Van Rensselaer, Asst. U. S. Atty., for the collector.

Comstock & Brown, for the importers.

LACOMBE, Circuit Judge. There is not as much testimony here as to the commercial designation as I would like to have in determining the case. I am prepared to dispose of it on the testimony of the government chemist, to the effect that this is one of the oils of lemon. That being so, and in the absence of any commercial testimony to show that there is only one kind of oil of lemon, I am inclined to reverse the board of appraisers, and direct the classification under the paragraph providing for oil of lemon.

In re MILLS et al.

(Circuit Court, S. D. New York. June 27, 1893.)

CUSTOMS DUTIES—CLASSIFICATION—"COTTON HEMSTITCHED LAWNS."

Cotton hemstitched lawns, imported in pieces of from 28 to 30 yards in length, and 45 inches in width, having a broad hem about 5 inches wide turned over and sewed down on one side of the fabric, the body of the goods being a homogeneous cotton cloth, containing from 150 to 200 threads to the square inch, counting warp and filling, but open-work patterns or figures made by drawing out threads appearing continuously upon certain parts of the goods, the merchandise being chiefly used for women's and girls' dresses, skirts, and aprons, the broad hem constituting

a part of such garments when made up, but the material being also sold for sash curtains, *held*, that these lawns were properly dutiable as manufactures of cotton at 40 per cent. ad valorem, under Schedule I, par. 355, Tariff Act Oct. 1, 1890, as claimed by the importers, and not as "partly-made cotton wearing apparel," at 50 per cent. ad valorem, under paragraph 349 of the same schedule and act, as classified by the collector of the port of New York.

At Law.

Appeal by the importers and the United States from a decision of the board of United States general appraisers.

Merchandise: Cotton hemstitched lawns. Classified by the collector as "partly-made cotton wearing apparel, 50 per cent. ad valorem," under paragraph 349, Tariff Act Oct. 1, 1890.

Importers' protest: "Manufactures of cotton not specially provided for, 40 per cent. ad val.," under paragraph 355 of same act; or as "cotton cloths, under paragraphs of Schedule I, according to number of threads and value."

The board of general appraisers found as conclusion of law that the merchandise was dutiable as countable cotton cloths, under Schedule I, par. 347, and sustained the protest on that head. Evidence was taken by both sides in the circuit court. It appeared that the goods came in pieces of from 28 to 30 yards in length, by about 45 inches wide, with a broad hem on one side; that their chief use was to be made up into women's and girls' dresses, skirts, and aprons, though the material was also sold for sash curtains. A government examiner testified that the count of threads in the fabric to the square inch was not uniform, as threads had been drawn out of certain parts to produce the open-work patterns.

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

Curie, Smith & Mackie, (D. Ives Mackie, of counsel,) for the importers.

LACOMBE, Circuit Judge. In view of the presence of the hem, the article may be said to be partly made up; that is, there has been some manufacturing done to it since it left the loom. The evidence shows that it is adaptable, and is sometimes used for curtains, as well as for making articles of wearing apparel. With regard to the use of the phrase "made up wholly or in part,"—that is, as to these partly made up articles,—I think the true criterion when it is applied to wearing apparel is this: That it must at least be made up sufficiently far to enable us to identify the particular article of wearing apparel that is going to be made out of it. We cannot tell from this article whether it is a partly made up skirt or apron, or some other gown; and, until the process of partly making has progressed far enough along to enable us to say what particular piece of wearing apparel it is, I do not see how we can call it wearing apparel partly made up, especially as it is still susceptible of use for making curtains.

As to the other point, under the Robertson Case, (Robertson v. Hedden, 40 Fed. Rep. 322,) the ruling in which case I shall adhere to, there is but one conclusion to reach,—the article is not homogeneous. The material of which it is composed does not give the same results when counted in different places. For that reason I shall reverse the decision of the board of appraisers, and direct its classification under paragraph 355.

In re JOHNSON et al.

(Circuit Court, S. D. New York. June 27, 1893.)

CUSTOMS DUTIES—CLASSIFICATION—HERRINGS IN CANS—BLOATER PASTE.

Various kinds of herring, packed in hermetically sealed tin cans, and known by the names of "Digby chicks," "preserved bloaters," "divided herring," "kippered herring," "fresh herring," "deviled herring," and "herring in tomato sauce," are dutiable under Schedule G, par. 295, of the tariff act of October 1, 1890, as "fish in cans or packages made of tin," at 30 per cent. ad valorem, and not as "fish, smoked, dried, salted, pickled, frozen, packed in ice, or otherwise prepared for preservation," at three-fourths of one cent per pound, under paragraph 293 of said schedule and tariff act, or as "herrings, pickled or salted," at one-half of one cent per pound, or as "herrings, fresh," at one-fourth of one cent per pound, under paragraph 294 of the same schedule and act. "Bloater paste," being a kind of herring ground into paste, and mixed with condiments and spices for use as a sauce, and also packed in small tin cans, is dutiable, under said paragraph 295, as "fish in cans or packages made of tin," at 30 per cent. ad valorem, and not as a "sauce," under paragraph 287 of said schedule and act, at 45 per cent. ad valorem.

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 various kinds of herring packed in hermetically sealed tin boxes, and known by the names of "Digby chicks," "preserved bloaters," "divided herring," "kippered herring," "fresh herring," "deviled herring," and "herring in tomato sauce," which were assessed for duty at 30 per cent. ad valorem, under the provision for "fish * * * in tins," of paragraph 295 of Schedule G of the tariff act of October 1, 1890, which is as follows: "295. Fish in cans or packages made of tin or other material, except anchovies and sardines and fish packed in any other manner, not specially enumerated or provided for in this act, thirty per centum ad valorem." Also from the decision of the said collector and the said board in the classification for duty of certain so-called "bloater paste," which was assessed for duty under paragraph 287 of said schedule and act, which is as follows: "287. Vegetables of all kinds, prepared or preserved, including pickles and sauces of all kinds, not specially provided for in this act, forty-five per centum ad valorem." Against these classifications the importers duly protested, claiming that all the herrings, except the bloater paste, were dutiable either under paragraph 293 or paragraph 294 of said tariff act, which are as follows: "293. Fish, smoked, dried, salted, pickled, frozen, packed in ice, or otherwise prepared for preservation, and fresh fish, not specially provided for in this act, three-fourths of one cent per pound." "294. Herrings, pickled or salted, one-half of one cent per pound; herrings, fresh, one-fourth of one cent per pound." The bloater paste either under said paragraphs 293 or 294, or under said paragraph 295.

The importers appealed to the board of United States general appraisers, who took voluminous testimony in the case on behalf both of the importers and the government. From the importers' testimony it appeared that all the different varieties of herrings known by the names above given were prepared in England by different processes. The so-called "fresh herring" were herring taken from the water, were cleaned, gutted, slightly salted sufficient to prevent them from breaking, packed in small tin boxes containing about one pound, and then subjected to a high degree of heat by which the air was forced out of the cans, which were then sealed up, and the merchandise was ready for the market. The "kippered herrings" were prepared in much the same manner, with the addition of a small quantity of pyroligneous acid, and were likewise submitted to heat for the purpose of expelling the air from the tin cans before the same were finally hermetically sealed up. Essentially the

same processes were followed in the preparation of the other herrings, including those "deviled" and those put up with tomato sauce. It was shown that the "bloater paste" was made from a kind of herring which was ground up fine and mixed with condiments and spices to be used in the nature of a sauce, and put up in air-tight tin cans. Numerous affidavits were presented to the board from wholesale grocers in the city of Philadelphia, Pa., tending to show that in the wholesale markets of that city the so-called "fresh herring," put up as above indicated, were known by that name in trade and commerce. It was also shown that all of the herrings in question were sometimes known in trade under the general name of "pickled" or "salted" herring, and that there was no special trade meaning attached to the expression "herrings, pickled or salted." Testimony was produced on behalf of the government to the effect that "pickled herrings" were herrings simply put down in brine, and packed either in barrels, half barrels, or kegs, and sometimes in tin packages, but which articles had never been "processed" by any system of heating or otherwise. In behalf of the government the testimony of several fishermen from Gloucester, Mass., was also produced, showing that commercially "fresh herrings" were herrings taken from the sea, and before any process had been applied to them, whether of salting or otherwise.

After taking this voluminous testimony, the board of appraisers made a decision affirming the decisions of the collector, both as to all the varieties of herrings and as to the bloater paste. The importers thereupon appealed the case into the circuit court, under the provisions of section 15 of the so-called "Administrative Act of June 10, 1890," and, an order for further evidence having been obtained from said court, further testimony was taken before one of the general appraisers as an officer of the court. The evidence was produced of numerous wholesale grocers in the city of New York, from which it appeared that the term "fish in cans" or "canned fish" was a trade term, covering a large class of fish when put up in air-tight cans for the market, including the so-called "fresh herring" involved in this proceeding.

On the trial in the circuit court it was contended on behalf of the government that congress, in paragraph 295 of the tariff act, had made a specific designation of the whole class of fish which were in fact fish packed in cans or tins, and known to the trade under such general designation, whether the fish were elsewhere enumerated in the tariff act or not. It was also contended that the bloater paste was properly dutiable under paragraph 287, which was a re-enactment of paragraphs 284 and 287 of the tariff act of March 3, 1883, (Tariff Ind.,) under which paragraph 284 of that act "bloater paste" had been held by the circuit court to be properly dutiable as a sauce in the case of Bogle v. Magone, 40 Fed. Rep. 226.

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

Curie, Smith & Mackie, (William Wickham Smith, of counsel,) for the importers.

LACOMBE, Circuit Judge. Neither construction of this paragraph 295 is altogether satisfactory. It is extremely obscure, but, upon considering the various interpretations of it which have been suggested, I adhere to the view that it is to be construed as follows: There should be laid a duty of 30 per cent. ad valorem upon (a) fish in cans or packages made of tin or other material, (except anchovies and sardines,) and (b) fish packed in any manner other than such as has been heretofore specially enumerated or provided; the apparent intent being not so much to lay the duty upon fish, but to lay a duty upon the tin can that brought the fish in, and I am persuaded to take that view of the phraseology of the immediately succeeding section, 296. For that reason I shall affirm the decision of the board of appraisers.

So far as the bloater paste is concerned, which the evidence shows to be bloaters ground into a paste, and mixed with spices, I differ from the board of appraisers. It seems not unreasonable to suppose that congress may have intended, by the use of phrase, in paragraph 287, "pickles and sauces of all kinds," to cover this particular article, but, if so, they have conspicuously failed to manifest their intention in the language they have used. The use of the word "including," and the placing of the clause in the paragraph referring to vegetables of all kinds, coupled with the circumstance that it is grouped with other provisions under the subhead of "Farm and Field Products," would make it impossible for this court to hold that it included a fish sauce, without legislating on the subject, which this court does not sit here to do. For that reason I shall reverse the board of appraisers as to the bloater paste, and direct it to be classified under paragraph 295.

In re ROSENSTEIN et al.

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

CUSTOMS DUTIES—TARIFF ACT OF OCTOBER 1, 1890—SEELIG'S KAFFEE OR COFFEE—CLASSIFICATION.

An imported article styled on the wrapper in which the same is imported "Seelig's Kaffee" and "Seelig's Coffee," but invoiced as chicory, which is composed of more than 68 per cent. of its total weight, but of only about 43 per cent. of its total value, of chicory root, which possesses, as its predominating flavor, that of chicory root, and which is mixed with coffee for use, or is used alone like coffee, is not dutiable at the rate of 2 cents per pound, as chicory root in any of the conditions provided for in paragraph 317, Schedule G, of the tariff act of October 1, 1890, (26 Stat. 588,) but is dutiable at the rate of 1½ cents per pound, as an article used as coffee, or as a substitute for coffee, under the provision for such articles contained in paragraph 321 (same schedule) of that tariff act.

At Law. Appeal by importers from a decision of the board of United States general appraisers.

The firm of Rosenstein Bros., imported by the "Conemaugh," March 11, 1891, by the "Veendam," April 9, 1891, by the "Amsterdam," May 4, 1891, and by the "Spaarndam," May 7, 1891, from a foreign country, into the United States, at the port of New York, certain merchandise invoiced as "chicory," and styled on the wrappers containing the same "Seelig's Kaffee" and "Seelig's Coffee." This merchandise was classified for duty at the rate of 2 cents per pound, under the provision for "chicory root, burnt or roasted, ground or granulated, or in rolls, or otherwise prepared, and not specially provided for in this act," contained in paragraph 317 of the tariff act of October 1, 1890, (26 Stat. 588;) and duty at that rate was exacted thereon by the collector of customs at that port. Against this classification and this exaction the importers duly protested, claiming that this merchandise was not chicory root, burnt or roasted, ground or granulated, or in rolls, or otherwise prepared, but was an article used as coffee, or as a substitute for coffee, and was therefore dutiable at 1½ cents per pound, under the provision for "dandelion root and acorns prepared, and other articles used as coffee, or as substitutes for coffee, not specially provided for in this act," contained in paragraph 321 of the same tariff act.

Upon the receipt of the importers' protests, the collector, pursuant to section 14 of the customs administrative act of June 10, 1890, (26 Stat. 137,)