

while this was imported by them on the order of the several institutions mentioned, it was sold by them to said institutions at an advance over cost, or at a profit of about 20 per cent. I am therefore of the opinion that the merchandise is dutiable as assessed by the collector." The collector thereupon appealed the case to the United States circuit court, under section 15 of the above-cited customs administrative act of June 10, 1890, and further evidence was taken in the circuit court, from which it appeared that absolute alcohol, running as high in percentage of anhydrous alcohol as the imported article in question, was manufactured to a considerable extent in this country from the ordinary alcohol of commerce by a process of treatment with chloride of calcium, which, having a great affinity for water, absorbed the water from the alcohol, which was slowly distilled over by repeated distillations until the alcohol reached the desired strength; that the absolute alcohol was a regular article of commerce in the markets of this country, and was used considerably for "cutting oils" to make essences, by confectioners and manufacturers; that it was also sold to some extent to wholesale druggists and pharmaceutical chemists. It appeared also to have been used at one time in combination with camphene in producing an illuminating fluid. There was testimony, however, that absolute alcohol of the kind imported, being of a very superior character, was used chiefly, if not entirely, for chemical and laboratory purposes, and by the large universities in the country, and always sold in bottles, to prevent deterioration or absorption of moisture from the atmosphere. Evidence was also produced showing that the proper oaths taken by officers of the colleges for which the importation was made were duly presented to the collector of the port on the entry of the merchandise, which was entered free, and the duty subsequently assessed thereon by the collector. It was admitted that the importers' profit in furnishing the article to the colleges in question was about 20 per cent.

Edward Mitchell, U. S. Atty., and James T. Van Rensselaer, Asst. U. S. Atty., for the collector and the United States.
Comstock & Brown, for the importers.

LACOMBE, Circuit Judge, (orally, after hearing argument.) "I affirm the decision of the board of general appraisers in this case."

In re HAAGER et al.

(Circuit Court, S. D. New York. June 22, 1893.)

CUSTOMS DUTIES—TARIFF ACT OF OCTOBER 1, 1890—DOTTED SWISSES AND FIGURED SWISSES, OR SWISS SPOTS AND SWISS SPRIGS.

Cloths composed of cotton, bleached, ornamented with dots, spots, sprigs, or other figures of cotton that were made in the cloth, in a loom, simultaneously with the manufacture of the cloth, by means of bobbins which operated such times, while the shuttle was weaving the cloth, as the pattern required the production of such figures, and commonly known as "Dotted Swisses" and "Figured Swisses," or "Swiss Spots" and "Swiss Sprigs," are not dutiable at the rate of 60 per cent. ad valorem, as embroideries or as articles embroidered, under the provision for embroideries or articles embroidered contained in paragraph 373 (Schedule J) of the tariff act of October 1, 1890, (26 Stat. 594,) nor, though containing exceeding 100 threads, and not exceeding 150 threads, to the square inch, counting the warp and filling, and valued at over 10 cents per square yard, are they dutiable at the rate of 40 per cent. ad valorem, as cotton cloths, bleached, containing such number of threads so counting, and valued at so much per square yard, under the provision for such cotton cloths contained in paragraph 346 (Schedule I) of the same tariff act, (26 Stat. 591,) but are dutiable at the rate of 40 per cent. ad valorem as manufactures of

cotton not specially provided for, under the provision for such manufactures contained in paragraph 355 (Schedule I) of the same tariff act, (26 Stat. 593.)

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

The firm of Albert Haager & Co. imported by the Gascogne, January 5, 1891, by the Bretagne, January 27, 1891, by the Champagne, March 31, 1891, and by the Werkendam, August 6, 1891, from a foreign country into the United States, at the port of New York, certain merchandise, consisting of cloths composed of cotton, bleached, ornamented with dots, spots, sprigs, or other figures of cotton, and commonly known as "Dotted Swisses" and "Figured Swisses," or as "Swiss Spots" and "Swiss Sprigs." This merchandise was classified for duty at the rate of 60 per cent. ad valorem, as embroideries or articles embroidered by machinery, under the provision for "laces * * * embroideries * * * and articles embroidered by hand or machinery, * * * all of the above-named articles, composed of * * * cotton or other vegetable fibre, or of which these substances or either of them or a mixture of any of them is the component material of chief value, not specially provided for in this act," contained in paragraph 373 (Schedule J) of the tariff act of October 1, 1890, (26 Stat. 594,) 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 in fact embroidered, and was not known commercially as embroideries; that it was dutiable at the rate of 40 per cent. ad valorem, as manufactures of cotton, under the provision for "all manufactures of cotton not especially provided for in this act," contained in paragraph 355 (Schedule I) of the same tariff act, (26 Stat. 593;) that, if not so dutiable, then that it was dutiable as cotton cloths bleached, colored, etc., according to the number of "threads to the square inch, counting the warp and filling," and the value per square yard, at the respective rates of duty provided for such cloths in paragraphs 344-348, inclusive, (Schedule I,) of the same tariff act, (26 Stat. 591, 592.) 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,) transmitted the invoices of this merchandise, and all the papers and exhibits connected therewith, to a board of three United States general appraisers on duty at that port. The board of general appraisers, having examined the case thus submitted, found, among other things, (1) that this merchandise was not embroideries, or articles embroidered; that its plain or unornamented portions contained exceeding 100, and not exceeding 150, threads to the square inch, counting the warp and the filling, but that this merchandise, not being homogeneous, in that the number of threads in the part of this merchandise containing the dots, spots, sprigs, or other figures was greater than the number of threads in its plain or unornamented portions, was not, under the decision in the case of *Robertson v. Hedden*, 40 Fed. Rep. 322, countable cotton cloths, within the intent of the aforesaid paragraphs 344-348, inclusive; and the board of general appraisers decided that this merchandise was dutiable at the rate of 40 per cent. ad valorem, as manufactures of cotton not specially provided for under the provisions for such manufactures contained in the aforesaid paragraph 355, as first claimed in the importers' protests.

The collector, being dissatisfied with this decision, applied, pursuant to section 15 of the customs administrative act, to the United States circuit court for the southern district of New York for a review of the questions of law and fact involved therein. In compliance with an order granted upon this application, the board of general appraisers made their return to the said circuit court, and thereafter a large mass of evidence was taken in behalf of the collector and in behalf of the importers.

From the return and the evidence in the case, in addition to the facts already set forth, it appeared that there was a resemblance to embroidery in the dots, spots, sprigs, or other figures on this merchandise; that, according

to the testimony of the great majority of the witnesses in this case, embroidery, as generally known to trade and commerce, was an ornamentation added by means of a needle or needles directed by hand or machinery to a cloth or fabric after the completion of the cloth or fabric, and articles embroidered, as so known to trade and commerce, were articles that had been ornamented by means of a needle or needles so directed; that as far back as February 1, 1857, the treasury department, in its General Regulation issued at that date, (page 565,) under the head of "Embroidery," promulgated the following definition: "The term tamboured or embroidered * * * can only be properly and safely applied to those fabrics * * * figured or ornamented by the employment of the needle, whether directed by the hand or by machinery in the loom or frame; and consequently, manufactures * * * figured in the loom or machine which weaves the fabric, as the texture is formed, without the employment of the needle either by hand or mechanical agency are not to be considered as * * * liable to duty * * * as tamboured or embroidered;" that this merchandise was a woven fabric completed in the loom as it appeared in the market,—that is to say, the dots, spots, sprigs, or such other figures that it contained, were made in the cloth, in the loom, simultaneously with the manufacture of the cloth, by means of bobbins which operated at such times, while the shuttle was weaving the cloth, as the design or pattern of the merchandise required the production of such figures, and were not made with a needle or needles directed by hand or machinery; and that, according to the testimony of the great majority of the witnesses in the case, this merchandise was not known to trade and commerce as embroideries, or as articles embroidered.

The evidence further showed that the warp of this merchandise and of other cotton cloths was the threads thereof running continuously from end to end, and the filling, the threads thereof running continuously from side to side, or from selvidge to selvidge; that the threads of the dots, spots, sprigs, or other figures on this merchandise, were not part of either the warp or filling, but were additional to the filling; and that this merchandise contained exceeding 100 threads, and not exceeding 150 threads, to the square inch, counting the warp and filling, and was valued at over 10 cents per square yard. Paragraph 346 (Schedule I) of the aforesaid tariff act (26 Stat. 591) levies a duty of 40 per cent. ad valorem on "all cotton cloth, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, * * * bleached, valued at over ten cents per square yard."

Edward Mitchell, U. S. Atty., and Thomas Greenwood, Asst. U. S. Atty., for collector,

Contended that this merchandise was dutiable as embroideries, or as articles embroidered, under said paragraph 373, but, if not so dutiable, then that it was dutiable as countable cotton cloths, under said paragraph 346.

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

LACOMBE, Circuit Judge, (orally.) In this case, as to the question whether or not the articles are embroideries, I think the weight of the testimony is overwhelmingly in support of the conclusion reached by the board of general appraisers; and on the other point I am inclined to adhere to the views expressed in the case of *Robertson v. Hedden*, 40 Fed. Rep. 322, and for that reason shall affirm the decision of the board of general appraisers.

In re KLINGENBERG.

(Circuit Court, S. D. New York. June 23, 1893.)

CUSTOMS DUTIES—BOARD OF GENERAL APPRAISERS' DECISIONS—JURISDICTION OF CIRCUIT COURTS.

The customs administrative act of June 10, 1890, (26 Stat. 131,) confers no jurisdiction upon circuit courts of the United States, on the application of a dissatisfied collector of customs, to review and reverse a decision of a board of general appraisers, involving neither the classification of imported merchandise, nor the rate of duty leviable thereon, but only the value of the paper florin of Austria-Hungary, the currency in which such merchandise was invoiced. *Passavant v. U. S.*, 13 Sup. Ct. Rep. 572, 148 U. S. 214, applied.

At Law. Motion to dismiss, for want of jurisdiction, an appeal taken by the collector of customs from a decision of a board of United States general appraisers.

One A. Klingenberg imported from Austria-Hungary into the United States, at the port of New York, certain merchandise, by the *Bohemia* and by the *Rugia*. The merchandise imported by the *Bohemia* was shipped from various places in Bohemia. The invoice covering this merchandise was consulated at Prague, Bohemia, July 6, 1892. The shipment of this merchandise by vessel to the United States was made from Hamburg, Germany, July 7, 1892, and this merchandise was entered for consumption at the port of New York July 23, 1892. The merchandise imported by the *Rugia* was also shipped from various places in Bohemia. The invoice covering this merchandise was consulated at Prague, Bohemia, July 9, 1892. The shipment of this merchandise by vessel to the United States was made from Hamburg, Germany, July 10, 1892, and this merchandise was entered for consumption at the port of New York July 26, 1892. The invoices of the merchandise of both these importations set out its value in paper florins of Austria-Hungary, but were not accompanied with consular certificates stating depreciation in value, per paper florin, from that of the gold florin, which (the gold florin) the secretary of the treasury, in his instructions to officers of the customs, issued August 3, 1892, (\$ 13,091,) declared was the only actual standard of value of that country. The secretary, in these instructions, directed that, in the absence of such certificates of depreciation, these officers should, in determining the value of all imported foreign merchandise, take the value of a paper florin at \$0.482, which sum of \$0.482, under the provisions of section 52 of the tariff act of October 1, 1890, (26 Stat. 624,) had been estimated by the director of the mint, and on July 1, 1892, (\$ 13,003,) proclaimed by him (the secretary) to be the value of the gold florin. The collector of customs at that port, the local appraiser having returned the invoice (and entered) amounts of these paper florins as the value in such florins of this merchandise, thereafter converted these amounts of paper florins into United States money of account, at the rate of \$0.482 per paper florin, and on the amount of such money of account, so obtained, as the dutiable values of this merchandise, exacted duties of the importer according to the classifications, and at the rates, provided by law. Against the exaction of duties on any amount of such money of account in excess of the amount thereof to be obtained by converting into such money the aforesaid amounts of these paper florins at the rate of \$0.32, the importer duly protested, claiming that in estimating the value of the Austrian florin, the currency in which the invoices of this merchandise were made out, the collector should have adopted the value of the standard currency of Austria, viz. the silver florin, as last—July 1, 1892—(\$ 13,003) proclaimed by the secretary of the treasury, (\$0.32,) or the actual value of the Austrian paper florin, and that the collector had no right to adopt the (then) proclaimed value of the gold florin (\$0.482) in estimating duties, because this merchandise was not purchased in gold florins,