into pieces like vermicelli, sent the fur, with some admixture, into one place, and dropped under the machine the pelt so cut, and the other things produced by this operation; that the fur, with its admixtures, was then subjected to a process of blowing, by which the pure fur was separated from its admixtures; that this pure fur, so obtained, was commercially known as "hatters' fur;" that its admixtures, after such separation, were commercially known, if from coney skins, as "coneys' dags," and, if from hares' skins, as "hares' dags," being, respectively, the same kinds of articles as were respectively so invoiced; that from what was dropped under the machine before referred to, in cutting hares' skins, was obtained what was invoiced and commercially known as "hares' waste;" that "fur waste," "hares' combings," "coneys' dags," "hares' dags," and "hares' waste" were never, any of them, regarded or known, commercially, as "hatters' fur, not on the skin," or as a variety thereof; and that the only things obtained from coneys' and hares' skins that were so regarded or so known were articles hereinbefore described as "hatters' fur."

Charles Curie, (W. Wickham Smith, of counsel,) for plaintiffs.

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

LACOMBE, Circuit Judge, (orally.) I direct a verdict in favor of the plaintiffs for the amount, with interest thereon, of all duties exacted in excess of duties at the rate of 10 per cent. ad valorem.

BISTER et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. January 12, 1894.)
No. 37.

CUSTOMS DUTIES—CLASSIFICATION—GLORIA CLOTH.

Gloria cloth is dutiable at 12 cents per square yard and 50 per cent. ad valorem, as "women's and children's dress goods," or "goods of similar description and character, composed wholly or in part of wool, worsted," etc., under paragraph 395 of the tariff act of 1890, and not at 50 per cent. ad valorem, as a "manufacture of silk, or of which silk is the component material of chief value," under paragraph 414. 54 Fed. 158, affirmed. Hartranft v. Meyer, 10 Sup. Ct. 751, 135 U. S. 237, distinguished.

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

Application by Bister & Schmitt for a review of a decision of the board of general appraisers affirming a decision of the collector of the port of New York as to the classification of certain gloria cloth imported by them. The circuit court affirmed the board's decision. 54 Fed. 158. The importers appeal. Affirmed.

Chas. Curie, David I. Mackie, and W. Wickham Smith, for appellants.

Edward Mitchell and Jas. T. Van Rensselaer, for the United States.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. The only question we have occasion to decide upon this appeal is whether the gloria cloth imported by the appellants, which is a cloth similar in description and charac-

ter to women's and children's dress goods, and is composed of silk and worsted,—silk being the material of chief value,—was properly classified for duty under the provision of the tariff act of October 1, 1890, which subjects to duty, "women's and children's dress goods * * * and goods of similar description and character, composed wholly or in part of wool, worsted * * * and not specially provided for in this act," or whether the importations should have been classified under another provision of the same tariff act, which subjects to duty "all manufactures of silk, or of which silk is the component material of chief value, not specially provided for in this act."

We are of the opinion that the former is the provision of more specific description, and, if this view is correct, the decision of the board of general appraisers, and that of the circuit court in affirmance of their decision, were correct. We think when the two provisions are read together the latter is to be interpreted as imposing duty upon all manufactures of which silk is the component material of chief value, except those similar to women's or children's dress goods. It seems hardly debatable that if one provision of a tariff act should prescribe a duty on wearing apparel, and another on all manufactures of which silk is the material of chief value, the former would supply the proper classification for an article of wearing apparel made of silk. The descriptive phrase, "goods of similar description and character to women's and children's dress goods," is a yet narrower term of enumeration. It describes a material of which women's and children's wearing apparel is made. The case falls within the general rule that, where a tariff act imposes a duty on an article by a specific name or description, general terms in the act, though embracing it broadly, are not applicable to it. The general must give way to the particular. The case of Hartranft v. Meyer, 135 U. S. 237, 10 Sup. Ct. 751, upon which the appellants greatly rely, does not assist them, but is an illustration of the rule stated. The case there was whether certain cloth, composed partly of wool and partly of silk, in which silk was the component of chief value, should have been classified under a provision subjecting to duty all manufactures of wool made wholly or in part of wool not specially enumerated in the act, or under another provision in the same act subjecting to duty all goods not specially provided for in the act, "made of silk, of which silk is the component material of chief value." The court held that the descriptive language in the latter provision was narrower and more limited, and constituted, therefore, the special enumeration, rather than the other.

The decision of the circuit court is affirmed.

UNITED STATES v. SHATTUCK et al.

(Circuit Court of Appeals, Second Circuit. January 12, 1894.)

No. 36.

CUSTOMS DUTIES—CLASSIFICATION—WEBBINGS.

Webbing made of cotton, silk, and India rubber, the cotton predominating in quantity, and the rubber in value, cannot, in the absence of any finding as to its commercial or common designation, be classified as cotton webbing, under Schedule I, par. 354, of the act of 1890, but should be placed under paragraph 460, as a manufacture of which India rubber is the component material of chief value. 54 Fed. 365, affirmed.

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

Application by Warren S. Shattuck and Gustav Binger for review of a decision of the board of general appraisers affirming the action of the collector of the port of New York in the classification of certain merchandise imported by them. The circuit court reversed the board's decision. 54 Fed. 365. The United States appeal. Affirmed.

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

W. Wickham Smith, for appellees.

Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is an appeal by the United States from a decision of the United States circuit court for the southern district of New York, which reversed a decision of the board of general appraisers in regard to the classification for duty of a portion of the appellees' merchandise. The appellees imported into the port of New York, on November 18, 1890, three kinds of elastic webbing, respectively known in the record as samples "A," "B," and "C," each one being composed of cotton, silk, and India rubber. Duty was assessed thereon at the rate of 60 per cent. ad valorem, under paragraph 412 of the tariff act of October 1, 1890. The important part of the paragraph is as follows:

"Webbings, * * * any of the foregoing which are elastic or non-elastic, * * * made of silk, or of which silk is the component material of chief value, fifty per cent. ad valorem."

Against this classification, the appellees protested, upon the ground that the component material of chief value of the merchandise was India rubber, and that the goods were dutiable under paragraph 460 of the same tariff act, which paragraph, omitting unimportant portions, is as follows:

"Manufactures of India rubber, * * * or of which these substances, or either of them, is the component material of chief value, not specially provided for in this act, thirty per centum ad valorem."

The board of general appraisers found the following facts:

"(1) That the merchandise is elastic webbing, composed of cotton, silk, and India rubber. (2) That all of the goods are manufactured chiefly of cotton.

(3) That in Exhibit A silk is the component material of chief value. (4) That Exhibits B and C have India rubber as the component material of chief value."

As conclusions of law, the board found that Exhibit A was properly classified by virtue of paragraph 412. The importers acquiesced in this decision, and sample A now disappears from the case.

In regard to samples B and C, the board was of opinion that they should have been classified as cotton elastic webbing, and dutiable at 40 per cent. ad valorem, under the provisions of paragraph 354 of the tariff act of October 1, 1890. The important part of this paragraph is as follows:

"Cotton * * * webbing, * * * any of the foregoing which are elastic or non-elastic, forty per cent. ad valorem."

As the appellees had claimed in their protest that the webbing should have been classified under paragraph 460, as manufactures of India rubber, the protest, in the opinion of the board, was not well taken, was therefore overruled, and the action of the collector was unaltered. Upon appeal to the circuit court, the decision of the board was reversed. No additional evidence was offered or was taken for use before that court.

The facts which were found by, or were presented before, the board of general appraisers, were so few in number that a decision in the case must be of very narrow scope. They simply found in regard to samples B and C that they were composed of cotton, silk, and India rubber, that they were manufactured chiefly of cotton; that is, that cotton predominated in quantity, and that India rubber was the component material of chief value. They found nothing in regard either to the commercial designation or the common designation of the article. Whether its name was "silk webbing," or "cotton webbing," or "silk and cotton webbing," and whether it was, as a fact, rather than as a conclusion of law, cotton webbing, did not appear; nor did they find that elastic webbing necessarily included India rubber as a component material. The only other fact which appears in the record, and which is of small importance, is that in sample B the value of the cotton exceeds that of the silk by $1.02 per hundred pounds, and that in sample C the value of the silk exceeds that of the cotton by 38 cents per hundred pounds.

The mere facts that webbing is made of cotton, silk, and India rubber, the cotton materially predominating in quantity, and the India rubber predominating in value, are insufficient, in view of paragraph 460, and of the obvious fact that "cotton elastic webbing" is a commercial term, to justify the conclusion of law that the article is to be classified as cotton webbing. The commercial designation, or, in its absence, the common designation, could have been ascertained by the testimony of persons familiar with the subject, and, when ascertained, would have made the question of proper classification an easy one. Inasmuch as the facts found by the board are not adequate to justify their conclusions of law, the classification of the particular invoices in this case is to be governed by the provisions of paragraph 460.

The decision of the circuit court is affirmed.

STANDARD VARNISH WORKS v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. January 12, 1894.)

No. 41.

1. CUSTOMS DUTIES—CLASSIFICATION—CANDLE TAR.
Candle tar, a residuum or by-product in the manufacture of candles, is a manufactured article, and dutiable as such under section 4 of the act of October 1, 1890, and not as waste, under paragraph 472. 53 Fed. 786, affirmed.

2. SAME—"WASTE."
Definition of "waste" in tariff acts.

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

Application by the Standard Varnish Works for review of a decision of the board of general appraisers affirming the classification by the collector of the port of New York of certain merchandise imported by them. The circuit court affirmed the decision of the board of general appraisers. 53 Fed. 786. The importers appeal. Affirmed.

W. Wickham Smith, for appellant.

Edward Mitchell, U. S. Atty., and Henry C. Platt, Asst. U. S. Atty.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. The board of general appraisers found that the merchandise in question is commercially known by various names, such as candle tar, candle pitch, palm pitch, and candle residuum; that it is produced from tallow, animal grease, and palm oil, by subjecting the same to treatment with superheated steam in closed boilers or retorts, whereby the stearine and the candle tar or pitch are separated, the stearine being carried out of the retort by distillation, and the candle tar or pitch remaining in the boiler or retort; that this candle tar or pitch is a product used in the arts for waterproofing barrels, waterproofing coverings for roofs, and also for increasing the body of varnishes. There is abundant evidence to support these findings of fact. The board affirmed the decision of the collector, who classified the merchandise for duty as a nonenumerated manufactured article not specially provided for, at 20 per cent. ad valorem. The importer contends that it should be classified either at 10 per cent. ad valorem, under paragraph 472, ("Waste, not specially enumerated or provided for,") or as a nonenumerated, unmanufactured article, under section 4 of the same act, (tariff of 1890.)

The merchandise cannot fairly be classified as an unmanufactured article. It is not in itself a raw material; it is not found in nature; and, although something left over in the manufacture of candles, it is no longer either the tallow, or the animal grease, or the palm oil which were subjected to a manufacturing process in order to obtain the stearine for candles. It has been transformed by that very process. It has become something different from what it was

before, in character, in substance, in name, and use. In this respect it differs from the small cubes of marble broken off from the original block in the process of manufacturing slabs of marble, which began as marble and ended as marble, changed in shape, in adaptability for use, perhaps in name, but still the same in character and substance, which were held by this court not to be manufactures of marble in Re Herter Bros., 4 C. C. A. 107, 53 Fed. 913. This substance, as the expert testimony clearly shows, is chemically a new body, a new creation, entirely distinct from what existed before; and, as it has become such by a process of manufacture, it is a manufactured article.

The process of distillation to which the tallow, grease, or oil is subjected is apparently not undertaken with the intention thereby to obtain this new article. What is sought for is the glycerine and fatty acid to be made into candles, but, owing to the imperfection of the process,—the increase of temperature causing burning,—after the glycerine and fatty acid are drawn off, this pitch-like residue remains. The process has thus resulted in three new products, neither of which existed as a separate body before. For the reason that this so-called residuum was not sought for, the manufacturer endeavoring to produce as little of it as possible, the importer contends that it is "waste," within the meaning of the tariff act. There is no evidence as to the commercial meaning of "waste." Congress evidently did not use the word as meaning "that which is of no value; worthless remnant; refuse,"—the primary definition given in Webster's Dictionary,—since it imposed upon it an ad valorem duty. The Century Dictionary defines "waste" as "broken, spoiled, useless, or superfluous material; stuff that is left over, or that is unfitted, or cannot readily be utilized for the purpose for which it was intended; overplus; useless or rejected material." This definition exactly fits spoiled, superfluous, or rejected material, which is of the same kind as the material utilized for the intended purpose. Whether it covers also a by-product of manufacture such as this, which is chemically a different substance from the material subjected to the process, and which can itself be put to use in the arts, is not so clear. Congress, however, has used the word elsewhere in the tariff. Paragraph 134 lays a duty on "wrought and cast scrap iron and scrap steel," with a proviso that "nothing shall be deemed scrap iron or scrap steel, except waste or refuse iron or steel fit only to be remanufactured." In that case iron or steel being used to produce some manufacture of iron or steel, the refuse or material left over is still iron or steel. Again, paragraph 388 provides for "slubbing waste, roving waste, ring waste, yarn waste, garnetted waste and all other wastes composed wholly or in part of wool." Definitions of some of these terms are found in the special report to the treasury department, published in 1888, and referred to in the decision of this court in Re Higgins, 5 C. C. A. 104, 55 Fed. 278. Ring waste is "a highly purified article of scoured wool, and is made from wool tops or combed wool; and the couronnes, when not made for export, is the tangled slubbing, or wool top, that through accident becomes disarranged in the process of spinning it into yarn." "Garnetted waste is the prod-

act of a garnett machine, which tears and ravels out the twist in thread, thus reducing it back to the original purified wool by reason of taking out the twist which is originally given to the wool to make it yarn or thread." "In the process of spinning yarn, wool tops are sometimes called 'slubbing' or 'roving,' in a process midway between wool tops and yarn." It is plain that in all these cases the waste is still wool. Again, paragraph 670 provides for waste rope and waste bagging; but, although unfitted for the purpose for which bagging or rope is intended, the waste is no new creation; it is the same substance as the bagging or the rope which is used for the intended purpose. The cotton waste of paragraph 549, and the silk waste of paragraph 705, are still respectively cotton and silk.

The merchandise in this case is a residuum in the manufacture of candles, as crude coal tar is a residuum in the manufacture of gas. Each is one of the results of a destructive distillation of the original substances,—grease, oil, or tallow in the one case; tar in the other. In fact it appears that at one time free entry was claimed for this candle residuum by reason of the similitude to crude coal tar. But congress evidently did not suppose that crude coal tar was waste, since, in the tariff of 1883, which contained a provision (paragraph 493) similar to that in the tariff of 1890 for waste at 10 per cent. ad valorem, it expressly provided by another paragraph (paragraph 80) for precisely the same duty on "coal tar, crude." We are of opinion, therefore, that the term "waste," as used in the tariff, does not cover the merchandise in suit.

Decision of circuit court affirmed.

UNITED STATES v. CONRAD et al.

(Circuit Court, D. West Virginia. January 11, 1894.)

1. INDICTMENT—AVERMENT OF TIME.
   A charge of an offense as committed "on the —— day" of a month and year named is not defective where any day of that month was prior to the finding of the indictment and within the period of limitation applicable, and where time is not of the essence of the offense.

2. SAME—DESCRIPTION OF OFFENSE.
   An indictment for depositing in a post office a circular concerning a lottery, (Rev. St. § 3894,) setting forth with particularity the circular and its publication, and alleging that it was concerning a lottery, and to promote and aid the same, is not defective for insufficient description of such lottery.

3. CONSTITUTIONAL LAW—PLACE OF TRIAL FOR CRIME—MAILING LOTTERY CIRCULAR.
   Violations of Rev. St. § 3894, by depositing or causing to be deposited in the mails circulars concerning a lottery, or by sending such matter or causing it to be sent by mail, are complete without transmission or delivery of such matter, and an indictment therefor can be tried only in the district in which the matter is mailed; and so much of that section, as amended by Act Sept. 19, 1890, as provides for the trial and punishment of those offenses in another district, to which such matter is carried by mail for delivery, is void, as conflicting with section 2, art. 3, and with the sixth amendment to the constitution of the United States.