

opinion that the threads of the figures which, like those of the Swiss muslins, were woven upon the loom at the same time with the fabric itself, were to be counted, and that the statute meant that the cloth to which it referred should be homogeneous, so that the number of threads per square inch should not differ in different parts of the fabric.

The supreme court in *Hedden v. Robertson*, 151 U. S. 520, 14 Sup. Ct. 434, did not concur in this view, but was of opinion that the provisions of the act of 1883 "fix the rate of duty by a classification based on the number of threads in a square inch of cotton cloth, without reference to the mode by which the count shall be made, and without regard to the incidental ornamentation of the fabric," and further said:

"We have no authority, where the duty is thus specifically declared, to make an exception, based upon something that might be added to the cloth in the way of figures or patterns placed upon the groundwork of the fabric. The groundwork being cotton cloth, within the terms and provisions of the statute, and the threads thereof being countable, the goods were dutiable, by the express language of the statute, at the rate which was exacted by the collector from the defendant in error."

The decision of the supreme court that "the ornamentation placed upon the groundwork of the fabric does not change its character as cotton cloth, subject to the countable clause of the statute," is controlling upon this appeal, and compels the conclusion that the merchandise in this case should have been classified for duty, and the entries thereof should have been liquidated, under the provisions of paragraph 346.

The decision of the circuit court is reversed.

UNITED STATES v. ZENTGRAF.

(Circuit Court of Appeals, Second Circuit. April 19, 1894.)

CUSTOMS DUTIES—DUTIABLE WEIGHT—ULTRAMARINE BLUE.

Ultramarine blue in pulp, which consists of the ultramarine ground in water so as to form a thick paste, is dutiable, under paragraph 55 of the act of October 1, 1890, at 4½ cents a pound on the full weight of the paste, and not on the weight of the ultramarine contained therein when dry.

Appeal from the Decision of the Circuit Court for the Southern District of New York sustaining the decision of the board of general appraisers, who reversed the decision of the collector upon the amount of duty to be imposed upon ultramarine blue in pulp.

Henry C. Platt, U. S. Atty., and James T. Van Rensselaer, Asst. U. S. Atty.

Albert Comstock, for appellee.

Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. The merchandise in question was ultramarine blue in pulp, which was imported into the port of New

York on May 29, 1891. A duty of $4\frac{1}{2}$ cents per pound was exacted by the collector upon the net weight of the imported article, under the provisions of paragraph 55 of the tariff act of October 1, 1890, which is as follows: "Ultramarine blue, four and one half cents per pound." The importer protested against the assessment of duty upon the whole weight, claiming that the assessment should be only upon the weight of the ultramarine blue contained in the pulp.

Ultramarine blue is imported in the form of powder, of little lumps or drops, and in pulp. The pulp is a thick paste, which is made by grinding the ultramarine in water, and is used to produce a high gloss upon paper hangings. It is sold by the pound, but the price is reduced in accordance with the quantity of water contained in it. The board of general appraisers decided that the duty should be assessed only upon the actual quantity of ultramarine blue in the casks at $4\frac{1}{2}$ cents per pound, and their decision was sustained by the circuit judge "with extreme doubt."

If the foregoing statement contained all the facts which are applicable to the case, the reason of the decision of the board of general appraisers would be very persuasive; but other provisions of the tariff act of October 1, 1890, in that portion of Schedule A which relates to colors, are important. Thus, paragraph 50 imposed upon "blues * * * dry or ground in or mixed with oil," a duty of six cents per pound, and "in pulp or mixed with water six cents per pound on the material contained therein when dry." Paragraph 53 contained the same provision, in the same language, in regard to chrome yellow, chrome green, and like chromium colors. Under paragraph 57, the duty of 12 cents per pound is imposed upon vermilion red, whether dry or ground in oil or water. It seems apparent that congress was aware of the differing methods in which colors were prepared for the market,—that they were either dry, or mixed with oil, or mixed with water,—and, with respect to a portion of the blues and to the chromium colors, provided in terms that when they were mixed with water the specific duty per pound should be assessed only on the weight of the color actually contained therein. Congress knew of the distinction between material dry and ground in water, and discriminated between the two methods, when it chose to do so. It omitted any discrimination in regard to ultramarine blue, and presumably for a satisfactory reason. The distinction which the legislature carefully made in paragraphs 50 and 53, and which was not made in paragraph 55, leads us to the conclusion that the distinction was intentionally omitted, and that the article known as "ultramarine blue" is dutiable at $4\frac{1}{2}$ cents per pound in whatever form it is commercially known and purchased.

The decision of the circuit court is reversed.

MAYOR, ETC., OF CITY OF NEW YORK et al. v. AMERICAN CABLE
RY. CO.

(Circuit Court of Appeals, Second Circuit. April 18, 1894.)

ASSIGNMENT OF PATENTS—PATENT-OFFICE RECORDS.

Certified copies of the patent-office record of instruments purporting to be assignments are not prima facie proof of the execution or genuineness of the instruments. *Dederick v. Agricultural Co.*, 26 Fed. 763, and *National Folding Box & Paper Co. v. American Paper Pail & Box Co.*, 55 Fed. 488, disapproved.

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

This was a suit by the American Cable Railway Company against the mayor, aldermen, and commonalty of the city of New York, for infringement of letters patent No. 271,727, issued February 6, 1883, to Daniel J. Miller, for improvements in the construction of cable railways. There was a decree for complainant in the court below (56 Fed. 149), and defendants appeal.

Francis Forbes and William N. Dykman (on the brief), for appellants.

Chas. Howard Williams, Daniel H. Driscoll, and Edward W. Cady (on the brief), for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. The complainant's title to the letters patent in suit depends upon the authenticity of the mesne assignments under which it claims. No evidence was introduced tending to prove the execution of the assignments from the patentee to Horton, from Horton to the Cable Railway Construction Company, and from the Cable Railway Construction Company to the complainant, except duly-certified copies of the patent-office record of three instruments which purport to be such assignments. The objection that the instruments were not sufficiently proved was taken in due season, and was insisted upon at the hearing in the circuit court. We are of opinion that the objection was valid, and consequently that the complainant was not entitled to a decree.

The assignment of a patent is not a public document, but is merely a private writing. There is no statutory provision requiring it to be recorded in the patent office. Section 4898 of the Revised Statutes permits this to be done for the protection of the assignee against a subsequent bona fide purchaser or mortgagee. The section does not make the recorded instrument evidence, does not require the assignment to be executed in the presence of any public officer, or to be acknowledged or authenticated in any way before recording, and does not provide or contemplate that it shall remain subsequently in the custody of the office. It devolves upon the patent office merely the clerical duty of recording any instrument which purports to be the assignment of a patent. We are aware of no principle which gives to such a record the effect of primary evidence, or of