

negotiation, the parties have settled upon and adopted as expressing their final agreement. Undoubtedly there are exceptions to this rule where the language of the contract is ambiguous or susceptible of more than one interpretation, or where extrinsic evidence is necessary to enable the court to properly define some particular word or phrase, or where it shows some independent agreement, not covered by the written contract, nor inconsistent with it. In the case at bar, however, the written contract is wholly free from any ambiguity as to the quality of phosphate to be delivered. It must be "high grade, kiln-dried land phosphate" of the character more particularly described therein. That is the quality of phosphate which was sold and bought, and with which alone the contract is concerned. No phosphate which was not kiln-dried would be a proper delivery under the contract. No tender of phosphate not kiln-dried would be a tender of "phosphate of the proper quality to deliver under the contract." Any evidence of prior conversations which would tend to show that the phosphate might be delivered without kiln-drying would contradict the express terms of an unambiguous subsequent written contract. The plaintiff relies upon defendants' alleged failure to take under the delivery clause above quoted, but that clause expressly gave the buyers 30 days to take "phosphate of the proper quality to deliver under the contract." If the evidence of prior conversations tended to show that defendants were not to have full 30 days to take such phosphate, it would contradict another express and unambiguous provision of the subsequent written contract. In either event, it was properly excluded, and, if it did not go to the extent of contradicting the written contract in one or other of those particulars, it was immaterial and inadmissible, the vital points in issue being whether plaintiff had tendered the phosphate it had agreed to deliver, and had given defendants the time stipulated in the contract for its removal.

There was no error in the direction of a verdict for defendant, as the undisputed proof shows that no phosphate was kiln-dried until November 23d, and that it was sold by plaintiff before the 30 days had elapsed to which, under the contract, the defendants were entitled for its removal.

Judgment affirmed.

OPPENHEIMER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. April 26, 1894.)

CUSTOMS DUTIES—CLASSIFICATION—SILK VEILS IN THE PIECE.

Silk veils or veilings in the piece, with borders upon them, and a distinctly marked line between the borders, designating where they were to be cut off, *held* to be dutiable at 60 per centum ad valorem, as "wearing apparel," under paragraph 413 of the tariff act of October 1, 1890, and not at 50 per centum ad valorem, as "manufactures of silk not specially provided for," under paragraph 414 of said act.

Application by Oppenheimer & Levy, importers, for review of a decision of the board of United States general appraisers concern-

ing certain importations of silk veils in the piece made by them. The said board affirmed the decision of the collector. The importers appealed.

The contention of the United States was that the merchandise was in fact veils, although manufactured in the piece; that they were clearly marked and designated by a border, and adapted to no other use than for veils; that the mere cutting by scissors between the borders on a clearly marked line in the goods did not constitute any further process of manufacture, and nothing more was necessary to be done in order to constitute veils ready to be worn, and that veils were wearing apparel for women. Citing *Arnold v. U. S.*, 147 U. S. 494, 13 Sup. Ct. 406; *Maillard v. Lawrence*, 1 Blatchf. 504, Fed. Cas. No. 8,971. It was urged on behalf of the importers that the goods were "piece goods," and were commercially known as "silk veiling" and not as "silk veils," and that it required a further process before they became veils ready for use.

Benjamin Barker, Jr., for importers.
Henry C. Platt, U. S. Atty.

COXE, District Judge (orally). Of course, if the article in suit is an article of wearing apparel made up wholly or in part, paragraph 413 of the tariff act of October 1, 1890, is more specific than paragraph 414 of the same act which provides for "manufactures of silk." It being admitted that a veil is an article of wearing apparel, and that the importations in question are intended to be cut up into veils, I am inclined to think that they are manufactured articles of wearing apparel, and that the collector has classified them correctly. It will be conceded that if they were made up separately and imported in that form, they would be articles of wearing apparel. The question is whether making them up in the piece and thus requiring the seller or user to cut them through with scissors at the indicated point takes them out of the category of wearing apparel made up wholly or in part. I am inclined to the opinion that it makes no difference that these veils are in the piece when imported. They are wearing apparel made up in part by the manufacturer. The paragraph in question does not refer to completed articles only, because the language is "manufactured wholly or in part * * * by the manufacturer." The goods imported are in fact veils. They are used for no other purpose. The moment they are separated at the border they are ready for use as wearing apparel. The decision of the board is affirmed.

GROTH et al. v. INTERNATIONAL POSTAL SUPPLY CO.

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

No. 121.

1. INTERPRETATION OF PATENTS—PIONEER INVENTIONS.

The fact that an invention is of a primary character does not warrant a construction of the patent which does away with restrictions imposed by the language of the claims themselves.

2. SAME—INFRINGEMENT—MAIL-STAMPING APPARATUS.

The Hey patents, Nos. 341,380 and 388,366, for improvements in mail-stamping apparatus, construed, and held not infringed. 57 Fed. 658 reversed.