

The questions involved, as I understand them, are whether or not the importation in question is a species of the genus "marble" and was known as a variety of marble commercially and in common parlance. These are questions of fact and are presented to the court upon the same record that was presented to the board. I do not think it is necessary to enter into a discussion of these matters at length, for the reason that the question now presented to the court is not whether the court would have reached a different conclusion from the board had the proof been submitted to the court in the first instance, but whether or not the finding of the board is so contrary to the weight of evidence that the court is justified in setting it aside; whether or not the court, if this were an appeal from the report of a master or referee, would hold that there was such a lack of evidence to sustain the findings that the decision should be reversed. I think not. There was sufficient proof upon all the questions of fact presented to the board to sustain their findings. I cannot say that upon any of the questions involved there is no evidence to sustain the decision of the board or that the evidence so preponderates against their finding as to justify me in setting it aside.

It is suggested here that the rule, which I understand is the established rule of this court, is not applicable to this particular case, because the appraisers who heard the evidence did not decide upon the questions of fact. This contention is sought to be sustained by the suggestion that the report is signed by three appraisers who did not hear the evidence. I do not understand, however, that it follows from this fact that the case was not decided by the appraisers who heard the proof. The court should presume in the absence of proof to the contrary that the appraisers who heard the cause decided the cause. The mere fact that the report is signed by other appraisers is not conclusive to my mind as establishing a different proposition. It very frequently happens even in court cases that the judge who decides the case does not sign the decree. The decision of the board of general appraisers should be affirmed.

CHINA & JAPAN TRADING CO. v. UNITED STATES.

(Circuit Court, S. D. New York. January 30, 1895.)

No. 577.

1. CUSTOMS DUTIES—ACT OF OCTOBER 1, 1890—BAMBOO BLINDS AND SCROLLS.
Certain bamboo blinds and scrolls, assessed by the collector as "manufactures of wood," under paragraph 461, held to be dutiable as "manufactures of grass," under paragraph 460.
2. SAME—PAPER UMBRELLAS.
Giant paper umbrellas, used only for decorative purposes, held not dutiable as "umbrellas, parasols and sunshades," under paragraph 471, but as "manufactures of paper," under paragraph 425.

This was an application by the China & Japan Trading Company, the importer of certain bamboo blinds and scrolls and giant paper umbrellas, for a review of the decision of the board of gen-

eral appraisers sustaining the decision of the collector of the port of New York as to the rate of duty on such merchandise.

W. B. Coughtry, for importer.

Wallace Macfarlane, U. S. Atty., and Henry C. Platt, Asst. U. S. Atty.

COXE, District Judge (orally). I am inclined to reverse the decision of the board of general appraisers in this cause. As to the first articles imported the question is whether or not the bamboo of which they are composed is wood. It seems to me that the weight of evidence is clearly to the effect that it is not wood. The extracts read from the various dictionaries and encyclopedias by the counsel for the importers, indicate that bamboo is a species of grass, and I think the testimony is to the same effect. In the testimony offered by the collector the nearest approach to contradicting the proposition that bamboo is a species of grass, is the opinion of one witness that in the process of time the character of the grass is changed to wood, but that to my mind is not a very satisfactory or conclusive view of the matter. It also appears that articles of bamboo are sometimes kept in stock with wooden articles, and sold by dealers in wooden ware, but that does not make it wood. If it were sold by a tinsmith with tin articles it would hardly be contended that this fact would make it tin.

As to the other branch of the case, it is undisputed that these large umbrellas are not used in the way in which ordinary umbrellas are used. They are not suitable for that purpose and are never so used. Their sole use is for the decoration of houses, halls and large buildings. This being so, it would be illogical to classify them with the ordinary cloth umbrellas which are used to protect individuals from the sun and rain. As the board of appraisers with this same evidence before it has in another case reached the conclusion that these importations should be classified as the importer now contends, I shall follow their second and more mature conclusion. The decision of the board is reversed.

MOVIUS et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 18, 1895.)

CUSTOMS DUTIES—CLASSIFICATION—"LANOLINE."

"Lanoline" being a manufactured article made from wool grease by an elaborate process through which the potash salts contained in the crude wool grease have been entirely removed; the volatile fatty acids partially removed; the removal of the potash salts having destroyed any combination that had existed between them and the fats, the fats having been thereby changed in condition; the resulting "lanoline" being chiefly cholesteroline and similar fats, fatty acids and varying percentages of water, an article patented as to its processes of manufacture and trade name and being widely advertised as possessing therapeutic and medicinal qualities, is properly dutiable as a "medicinal proprietary preparation" at 25 per cent. ad valorem under paragraph 75 of the tariff act of October 1, 1890, and not as "wool grease" at one-half of one cent per pound under