

proper for the court to order a fee paid to complainants' counsel out of the fund realized from the sale. *Trustees v. Greenough*, 105 U. S. 527; *Railroad Co. v. Pettus*, 113 U. S. 116, 122, 5 Sup. Ct. 387; *Hobbs v. McLean*, 117 U. S. 567, 582, 6 Sup. Ct. 870; *Dodge v. Tulleys*, 144 U. S. 451, 12 Sup. Ct. 728; *Meddaugh v. Wilson*, 151 U. S. 333, 14 Sup. Ct. 356. But the compensation must be limited to the service in filing the bill and assembling the creditors. After the creditors were brought in, two hostile camps were formed, the bondholders in one and the lien claimants in the other. Services rendered by counsel in the litigation thereafter, in which the case, after two trials below, has been brought twice to this court, must be paid for by their own clients, and not by the bondholders.

This naturally brings us to the question of costs. As we have sustained assignments of error on the appeal and the cross appeal, we shall divide the costs of appeal between the bondholders on the one hand and the lien claimants as a class on the other. The half to be paid by each side shall be deducted from the fund awarded to them from the proceeds of sale before distribution. The order with respect to the costs in the court below will be that each party shall pay his own costs. All costs incurred in the bringing in of defendants and the service of process upon them shall be taxed to the proceeds of sale. The compensation of the special master shall be paid one-half by the bondholders and one-half by the lien claimants out of the funds awarded to the two sides respectively, before distribution. The expenses of the receivership and the sale must, of course, be paid from the general fund arising from the sale.

We have been asked to prepare the decree in this court for entry in the court below, but this is impracticable. We have considered all the assignments of error to the decree appealed from, and we hope we have made this opinion sufficiently specific to render easy the drawing of a proper decree. The decree of the circuit court is reversed, with instructions to enter the same decree, modified in accordance with this opinion.

PICKHARDT et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. March 5, 1895.)

No. 83.

CUSTOMS DUTIES—CLASSIFICATION — BURDEN OF PROOF—GALLEIN AND COERULINE.

Certain imports of gallein (being a dyestuff producing blue and purple shades, and consisting of two parts pyrogallic acid, which is derived from nutgalls or other vegetable matter, and one part phthalic acid, which is derived from coal tar) and of coeruleine (which produces green shades, and is made by boiling gallein in sulphuric acid) were classified by the collector as coal-tar colors or dyes not specially provided for, under paragraph 18 of the act of October 1, 1890. *Held*, the evidence being contradictory, that the importer had not sustained the burden resting upon him to overthrow the correctness of the collector's classification, and show that the dyestuffs were dutiable, as claimed in his protest, under paragraph 61, as "other paints and colors, • • • including lakes, crayons, • • • not specially provided for."

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

This was an application by William Pickhardt and Adolph Kuttroff, partners as William Pickhardt & Kuttroff, importers of certain dyestuffs, for a review of the decision of the board of general appraisers sustaining the decision of the collector of the port of New York as to the rate of duty on such goods. The circuit court affirmed the decision of the board of general appraisers. The importers appealed.

Edward Hartley, for appellants.

James T. Van Rensselaer, Asst. U. S. Atty.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. The appellants, composing the firm of William Pickhardt & Kuttroff, imported into the port of New York, after October 1, 1890, and during the year 1891, sundry invoices of the dyestuffs known as "gallein" and "coeruleine." The collector classified this merchandise as coal-tar colors or dyes, and exacted a duty of 35 per cent. ad valorem, under the provision of paragraph 18 of the tariff act of October 1, 1890, which reads as follows: "All coal tar colors or dyes by whatever name known, and not specially provided for in this act, thirty-five per centum ad valorem." The importers protested against this decision upon the ground that the gallein was not a coal-tar color or dye, but should pay a lower rate of duty, because it should be classified as either an extract of logwood or of dyewood, or as a color not specially provided for, or as a chemical compound, or as a coal-tar preparation, not a color or dye. They protested against the collector's exaction upon the coeruleine, because it was one of the first three articles just named, and, in some protests, because it was a coal-tar preparation, not color or dye, not specified. The decision of the collector was affirmed by the board of general appraisers, whose decision was affirmed by the circuit court. Upon this appeal the appellants confine themselves to the claim in the protests that the goods were dutiable under paragraph 61 of the tariff act of October 1, 1890, which reads as follows: "All other paints and colors, * * * including lakes, crayons, * * * not specially provided for in this act, * * * twenty-five per cent. ad valorem." The position of the appellants is that the goods are not coal-tar colors or dyes, and, not being so, they must be dutiable under paragraph 61.

Gallein is a dye which produces blue and purple shades, and is made of two molecules or parts of pyrogallic acid and one molecule or part of phthalic acid. The source of commercial supply of pyrogallic acid is from nutgalls, or other vegetable matter. The present source of commercial supply of phthalic acid is from coal tar. Coeruleine is a dye made by boiling gallein in sulphuric acid, and produces green shades. Both are used for dyeing wool, cotton, and silk, as woods were formerly used. They are imported

in petroleum barrels, in the form of paste suspended in water, and containing as much as 20 per cent. of the dyeing property. The board of general appraisers found that both of these articles were commercially known as "coal-tar colors or dyes," and the circuit judge was of opinion that the witnesses for the importers did not substantially contradict this finding. The record does not contain the testimony upon which the board of general appraisers relied, and the new testimony before the circuit court, upon commercial designation, does not justify the conclusion that these two kinds of dyes are designated in the speech of commerce as "coal-tar products." The oral testimony was of a technical character. The position of the appellants, as stated by a chemist of repute, is that tannic acid is the dominant characteristic or constituent of gallein, and has the color-producing property, while the phthalic acid is the uniting substance. The expert for the United States is a chemist, and is the manager of the factory of a corporation which manufactures coal-tar colors and dyes in this country, but does not make gallein or coeruleine. He was of opinion that the gallic acid furnishes the coloring matter, but that if the phthalic anhydride was eliminated, while the thing that remained would be a coloring matter, it would not be worth anything as such. He states his theory as follows: "Without the presence of phthalic anhydride, the body could not exist at all. It would not be worth anything at all. The phthalic anhydride imparts to the methyl very strong acid properties, which alone makes it possible for the dye to combine with metallic bases and form lakes. That is the *conditio sine qua non*." The same divergence existed, as a matter of course, in regard to the ingredient which was the determining characteristic of coeruleine. The respective witnesses were asked their opinion in regard to the correctness of the definition of "gallein" in the Century Dictionary, which defined it as a coal-tar color. The appellants' chemist objected to the definition because he would not call it a coal-tar color, but an artificial coloring matter. As the gallic acid was the chromogenous substance, and was of vegetable origin, he could not call the whole product a coal-tar color. The expert for the government, under his theory of the proper controlling or determining ingredient of the product, pronounced the definition to be a true description of the article.

Under this state of the testimony, the appellants did not sustain the burden which rested upon them to overthrow the presumption of the correctness of the collector's decision. They did not show that the articles were not coal-tar colors, and, if they had, it does not follow, necessarily, that they are dutiable under paragraph 61, for there may be a question which was not examined in the record,—whether this paragraph, which provides for all paints and colors, includes dyestuffs. It is understood that the board of general appraisers has decided this question in the negative. The decision of the circuit court is affirmed.

In re MAIOLA.

(Circuit Court, S. D. New York. February 2, 1895.)

1. IMMIGRATION—CONTRACT LABOR ACTS—TO WHOM APPLICABLE.

The statutes of the United States relating to the exclusion of contract laborers, including the act of March 3, 1891, making the decision of the immigration officers final as to the right of such laborers to land, are directed solely against alien immigrants, not against alien residents returning after a temporary absence; and the courts therefore have power, upon habeas corpus, to inquire whether one who is refused admission to the country by the immigration officers is or is not an immigrant, and so within the jurisdiction of such officers.

2. SAME—WHO ARE IMMIGRANTS.

An unmarried man, who has immigrated to the United States in 1892, with the intention of making his home there; has remained about two years, working at his trade; and then, being taken ill, has returned to his native country, remained about ten months, doing no work; and then, in 1895, returns to the United States,—is not an immigrant on his return, in 1895.

This was a petition for a writ of habeas corpus by Giacondo Maiola, alleging that he was illegally restrained of his liberty by the immigration officers at the port of New York.

Ullo, Ruebsamen & Cochran, for commissioners.
John Palmieri, for the immigrant, Maiola.

LACOMBE, Circuit Judge. The relator is detained, under a decision of the immigration authorities, as "an alien or foreigner intended to be imported into the United States under a contract or agreement to perform labor therein." By statute of the United States, the decisions of inspecting officers touching the right of any alien to land, when adverse to such right, are made final, and it has been held to be within the constitutional power of congress to make them so. See *In re Howard*, 63 Fed. 263, and statutes and authorities therein cited. The relator, however, contends that under the decisions of this court (*In re Panzara*, 51 Fed. 275; *In re Martorelli*, 63 Fed. 437) the question whether or not the alien is an immigrant may still be inquired into, since courts, upon habeas corpus, will always look into the question of jurisdiction, and jurisdiction to decide finally touching the right to land has only been confided to the inspecting officers in the case of an immigrant. The relator's point is well taken. The entire body of statute law touching the exclusion of contract laborers, viz. Act Feb. 26, 1885 (23 Stat. 332); Act Feb. 23, 1887 (24 Stat. 414); Act Oct. 19, 1888, c. 1210, Deficiency Bill (25 Stat. 566); Act March 3, 1891; and Act March 3, 1893,—conclusively show that it is directed solely against alien immigrants, not against alien residents when returning after a temporary absence. The very section (section 8) of the act of 1891 under which the inspection officers acted, and which makes their adverse decision final, provides for an inspection of "alien immigrants" who may arrive by water; and it is testimony touching the right of "such aliens" to enter the United States that the inspecting officers are to take and consider, during which inspection "such aliens" are to be properly housed, fed, and cared for. The next en-