

other provisions of the constitution and other acts of congress) except of fugitives from justice. This defendant is not a fugitive; he has not fled from the District of Columbia. He was not there; and there is no such thing as constructive flight.

If the acts of 1871 and 1874, above cited, were sufficient to extend section 33 to the District of Columbia (as to which I express no opinion), then removals to that district under section 1014 may now be had for all federal offenses committed there, "the same as elsewhere within the United States"; i. e., for all offenses created under the general legislation of congress, which embraces all the crimes for which removals may be had as between the different federal judicial districts of the country. That is the full scope of section 1014 and section 33. Beyond this, that is to say, in the cases of merely local offenses, which stand on the same level as ordinary offenses in the several states, if the existing laws in regard to interstate extradition passed in pursuance of a separate clause of the constitution, are not "locally applicable" to the District of Columbia under the act of 1871, so as to give a right of removal to that district in accordance with, or in analogy to, the mode of procedure in interstate extradition, the remedy is with congress, if, indeed, congress desires to change the existing conditions; and the report of the senate judiciary committee above cited is sufficient evidence to show that congress has not been under any misapprehension as to what the existing legal status of local offenses in the District of Columbia is, as respects the right of removal. Meantime, it is not for this court to anticipate or presume upon the intent of congress on that subject; or to attempt to supply any supposed defects in the statutes by wrenching them from the true meaning and intent with which they were enacted; least of all when doing so would introduce a new class of removals in favor of the District of Columbia alone, while similar removals are denied, under the constitution and laws, to every other district and state in the country.

Without reference, therefore, to other important points discussed by counsel, the application is denied, on the above grounds, and the defendant discharged.

UNITED STATES v. KENWORTHY.

(Circuit Court of Appeals, Third Circuit. June 3, 1895.)

No. 4.

1. CUSTOMS DUTIES—COMMISSION—REV. ST. § 2907—ACT MARCH 3, 1883—POWERS OF CUSTOMS OFFICERS.

In determining the dutiable market value of imported merchandise, it is within the authority of the designated customs officers, under Rev. St. § 2902, and Act March 3, 1883, § 7, to inquire into the origin of disputed items claimed by the importers to be commissions and charges, and to ascertain whether they are truly such, or part of the wholesale price which the importers paid for the merchandise.

2. SAME—CONCLUSIVENESS OF VALUATION.

It appearing to the customs officers that certain wool purchased from M. & Son, in Glasgow, for importation by K. & Bro., had previously been

sold by other persons to M. & Son, and a commission paid by M. & Son upon their purchase; that the price paid by K. & Bro. included such commission; and that they also paid their brokers a commission on their purchase of the wool,—those officials, in determining the dutiable market value of the wool, refused to treat the commission paid by M. & Son in the prior and independent transaction as a “charge,” within section 7 of the act of March 3, 1883, and took into consideration the fact that that commission was a part of the price which the importers paid for the wool. *Held* that, in the absence of fraud, their decision and valuation were final and conclusive.

8. SAME.

Upon the facts so found the commission paid by M. & Son on their prior purchase was not a “charge,” to be excluded in ascertaining value within the meaning of the act of March 3, 1883, § 7.

In Error to the District Court of the United States for the Eastern District of Pennsylvania.

This was an action by the United States against John Kenworthy, surviving partner of T. Kenworthy & Bro., to recover duties. At the first trial the court directed a pro forma verdict for the government, reserving the right to enter judgment for the defendant after argument. Upon argument, the court directed a new trial (59 Fed. 570), upon which a judgment was entered for the defendant. Plaintiff brings error. Reversed.

Ellery P. Ingham, for the United States.

Leonard Myers, for defendant in error.

Before ACHESON and DALLAS, Circuit Judges, and BUFFINGTON, District Judge.

ACHESON, Circuit Judge. On June 19, 1884, T. Kenworthy & Bro. imported into the United States, at Philadelphia, by the steamship *Phoenecian*, from Glasgow, a lot of wool, 24,238 pounds. Schedule K of the tariff act of March 3, 1883 (22 Stat. 488, 508), under which this merchandise was dutiable, provides:

“Wools of the third class, the value whereof, at the last port or place whence exported to the United States, excluding charges in such port, shall be twelve cents or less per pound, two and a half cents per pound; wools of the same class, the value whereof, at the last port or place whence exported to the United States, excluding charges in such port, shall exceed twelve cents per pound, five cents per pound.”

The entire value, as stated by the importers, was £596. 14s. 10d., which, if correct, entitled the wool to come in on the payment of a duty of 2½ cents per pound. The dutiable value of the wool, however, was raised by the appraiser, and fixed by him at a sum which subjected the wool to a duty of 5 cents per pound. The duty having been assessed by the collector in accordance with the report of the appraiser, the importers asked for a reappraisal of the wool; and thereupon the collector selected a merchant appraiser, who acted conjointly with the general appraiser, agreeably to the provisions of section 2930 of the Revised Statutes. The merchant appraiser and the general appraiser were unable to agree, and they submitted to the collector two separate reports, showing different appraisements. The collector sustained the appraisement made by the general appraiser, under the authority conferred upon him by section 2930,

which provides that, in case the merchant appraiser and the general appraiser shall disagree, "the collector shall decide between them; and the appraisement thus determined shall be final, and be deemed to be the true value, and the duty shall be levied thereon accordingly."

By section 2902 of the Revised Statutes it is made "the duty of the appraisers of the United States, and every of them, * * * or of the collector, * * * as the case may be, by all reasonable ways and means in his or their power, to ascertain, estimate, and appraise the true and actual market value and wholesale price, any invoice or affidavit thereto to the contrary notwithstanding, of the merchandise, at the time of exportation"; and, by section 2922, "the appraisers or the collector, * * * as the case may be, may call before them and examine upon oath any owner, importer, consignee, or other person, touching any matter or thing which they may deem material in ascertaining the true market-value or wholesale price of any merchandise imported, and require the production, on oath, to the collector or to any permanent appraiser, of any letters, accounts, or invoices, in his possession relating to the same." By section 2907, in determining the dutiable value of merchandise, there was to "be added to the cost, or to the actual wholesale price or general market-value, * * * the cost of transportation, shipment, and transshipment, with all the expenses included, from the place of growth, production, or manufacture * * * to the vessel, * * * the value of the sack, box, or covering of any kind in which such merchandise is contained; commission at the usual rates, but in no case less than two and a half per centum; and brokerage, export duty, and all other actual or usual charges for putting up, preparing, and packing for transportation or shipment." The seventh section of the act of March 3, 1883, however, repealed section 2907 and section 2908, and further declared: "And hereafter none of the charges imposed by said sections or any other provisions of existing law shall be estimated in ascertaining the value of goods to be imported, nor shall the value of the usual and necessary sacks, crates, boxes, or covering of any kind be estimated as part of their value in determining the amount of duties for which they are liable."

The controversy here relates to the action of the general appraiser and the collector with respect to an item among the "charges" in the invoice as presented by the importers to the customhouse. That invoice, upon its face, shows that the importers paid for the wool, net £636. 5s. 2d., including £10 for cost of bags and all charges. Among these charges, as set down in this invoice, is the item, "Commission, 2½ per cent.," amounting to £15. 2s. 11d. Now, in appraising the wool, the general appraiser and the collector each decided that that item was not truly a charge, but that in fact it was part of the price which the importers paid for the wool, and they took that fact into consideration in determining the value of the wool. That this is the true state of the case, and that the United States officials did not, as is asserted, add to the actual market value or wholesale price of the wool the alleged commission for the purpose of customs duty, is clearly shown, we think, by this record.

Upon the trial, the government put in evidence a letter addressed to the collector by the general appraiser, and which accompanied his report or certificate of appraisement. In the course of that letter the general appraiser states:

"The importers produced an affidavit or declaration of Alexander Campbell, of the firm of R. & A. Campbell, of Glasgow, with a copy of an invoice from the said firm to B. H. Moore & Son annexed, showing a prior sale of the wool in question, from them, as agents of other parties, to the said Moore & Son, and upon this they (the Campbells) charged a commission of $2\frac{1}{2}$ per cent. Moore & Son, as the papers and testimony show, sold the wool to the importers at a price including this so-called 'commission,' under the following circumstances: The importers had directed their brokers to purchase 100 bags of wool for them at a price which would entitle the same to entry here at a duty of $2\frac{1}{2}$ cents per lb. I am satisfied that they did this in good faith, and without any intention to defraud the revenue; but while they admit that they actually paid Moore & Son about $12\frac{23}{100}$ cents, or nearly $12\frac{1}{4}$ cents, per pound for the wool over and above all other charges, they claim that this so-called 'commission,' under a prior transaction between other parties, shall be deducted from the price paid, and thus reduce the same to an almost infinitesimal fraction (about $\frac{3}{100}$ of a cent) below twelve cents, which is the dividing line between the higher and lower rates of duty. It seems to me that such a claim cannot lawfully be allowed. Its allowance would certainly establish a very dangerous precedent. It is based solely upon a charge paid under a prior contract or sale, and which became part of the price paid for the wool by the importers, whose brokers charged a separate commission of $1\frac{1}{2}$ per cent. as 'brokerage' for their services, to which no exception is taken. One of the latter, Mr. Kitching, testified that this $1\frac{1}{2}$ per cent. was divided between his firm and Moore & Son (the latter receiving two-thirds thereof); and from the testimony it is clear that this was the only commission charged for any services rendered the importers by their own agents or brokers."

From this letter it appears that the evidence before the general appraiser satisfied him that the disputed item—the alleged charge—was not a commission paid by the importers to their agents, nor a commission appertaining at all to this importation, but that it was something which entered into a previous and independent transaction (the prior sale to the vendors of these importers), and constituted part of the price that the importers paid when they purchased the wool. As the appraisement made by the general appraiser was sustained by the collector, presumably the latter official, upon proper investigation, found the facts to be as above stated. Now, certainly, if such be the facts, the so-called "commission" is not the commission mentioned in section 2907 of the Revised Statutes, or a "charge," within the meaning of the act of March 3, 1883.

Was it within the lawful authority of the customs officers to inquire into the origin of the disputed item, and to ascertain whether it was a true charge, and therefore to be excluded in fixing the actual market value, or whether it was a part of the price of the wool, and to be taken into consideration in determining the true valuation? In view of the statutory provisions relating to their duties in this regard, we cannot doubt that such inquiry and determination were within the rightful power of those officers. As we have already seen, by section 2902, it is incumbent on these officials, "by all reasonable ways and means, * * * to ascertain, estimate, and appraise the true and actual market-value and wholesale price" of the imported merchandise, "any invoice or affidavit thereto to

the contrary notwithstanding"; and, by section 2922, they may examine on oath any person "touching any matter or thing which they may deem material in ascertaining the true market-value or wholesale price of any merchandise imported." It cannot be successfully maintained that, under the seventh section of the act of March 3, 1883, all so-called "commissions" and other charges which may be claimed by an importer are to be allowed without inquiry as to their real nature and rightfulness. Undoubtedly, it is the right and duty of those appointed and empowered to pronounce judgment upon the question of dutiable valuation to make such inquiry; and when, as the result of such investigation, the designated officials find that an alleged commission has no proper relation whatever to the importation, but that it is really part of the price of the merchandise, and they take that fact into consideration in making their appraisalment, they do not transcend their rightful authority. But, if the general appraiser and the collector acted here within the limits of their statutory authority, then, in the absence of fraud (of which there is no pretense), the valuation made by the former, when confirmed by the latter, became final and conclusive. *Hilton v. Merritt*, 110 U. S. 97, 3 Sup. Ct. 548; *Auffmordt v. Hedden*, 137 U. S. 310, 11 Sup. Ct. 103; *Muser v. Magone*, 155 U. S. 240, 15 Sup. Ct. 77. It follows, therefore, that it was error to allow the witness Culver to testify that the disputed charge was paid as a commission, and did not enter into the price or value of the wool, for that was a question of fact, which had been finally determined by the authorized officials, and was not retriable by the jury. *Muser v. Magone*, supra.

We are of opinion that the court should have given peremptory instructions in favor of the government.

The judgment of the court below is reversed, and the case is remanded, with a direction to grant a new trial.

MURPHY et al. v. UNITED STATES.

(Circuit Court, S. D. New York. June 10, 1895.)

No. 2,107.

1. CUSTOMS DUTIES—CLASSIFICATION—WORSTED DRESS GOODS.

Under the act of 1894, "worsted dress goods" are dutiable at 50 per cent. ad valorem, under paragraph 283, Schedule K, and not at 12 cents per square yard and 50 per cent.

2. SAME.

Paragraph 297, postponing reduction of duty on "manufactures of wool," does not include manufactures of "worsted," and the distinction between "wool" and "worsted," stated in the earlier tariff acts, still exists, though omitted in the act of 1894.

3. SAME—CONSTRUCTION OF STATUTE.

Where language of a statute is explicit, it must be strictly construed; and *held*, that "worsted dress goods" are not "manufactures of wool," but of "worsted."

This was an appeal by Alexander Murphy and others, importers, from a decision of the board of general appraisers sustaining the

action of the collector of the port of New York in respect to the classification for duty of certain merchandise.

W. Wickham Smith, for importers.

Jas. T. Van Rensselaer, Asst. U. S. Atty., for the United States.

TOWNSEND, District Judge. On August 30, 1894, the appellants imported and entered for duty at the port of New York certain worsted dress goods. The importers claimed they were dutiable at 50 per cent. ad valorem, under paragraph 283, Schedule K, of the tariff act of August, 1894. They were classified for duty at 12 cents per square yard and 50 per cent. ad valorem, under the provisions of paragraph 395, Schedule K, of the tariff act of October 1, 1890. The board of general appraisers sustained the assessment, and the importers appealed. The single question presented by the appeal is whether these goods are dutiable under the earlier or later act.

It is admitted that these goods are made from the fleece of the sheep, and are, in that sense, a product of wool. The earlier tariff acts provided rates of duty on manufactures of wool differing from those on manufactures of worsted, and recognized wool and worsted as different materials. The tariff acts of 1890 and 1894, while retaining the distinction in terminology, provided the same rates of duty for woolen as for worsted goods. The courts have repeatedly recognized and enforced this distinction between wool and worsted, and have uniformly held that manufactures of worsted were not manufactures of wool, within the meaning of the tariff acts. *Elliott v. Swartwout*, 10 Pet. 137; *Riggs v. Frick*, Taney, 100; ¹ *Seeberger v. Cahn*, 137 U. S. 95, 11 Sup. Ct. 28; *Ballin v. Magone*, 41 Fed. 921. It is urged on behalf of the government that the term "manufactures of wool" is used descriptively, and not denominatively, in this act of 1894. Paragraph 297 of said act reads as follows: "The reduction of the rates of duty herein provided for manufactures of wool shall take effect January 1, 1895." The heading of said Schedule K is, "Manufactures of Wool." In support of this contention, counsel for the government introduced in evidence various official documents, letters to the chairman of the finance committee of the senate, and other papers, tending to show that the same reasons existed for a postponement of duties on all the products of the sheep's fleece. It appears, however, that in the tariff bill as it first passed the house of representatives there was a further provision applying to all rates of duty in the woolen schedule except carpets, which provision was afterwards stricken out in the senate. Counsel for the government further claims that the distinction between wool and worsted in the decisions cited is based upon the fact that congress had in these earlier acts created and preserved the distinction for tariff purposes, thus creating a statutory, as contrasted with a commercial, distinction; and that, as this artificial distinction no longer exists, it should not be applied in the construction of the present act. But the

¹ Fed. Cas. No. 11,825.

distinction in terminology, as already shown, has been uniformly preserved, and in *Ballin v. Magone*, 41 Fed. 921, Judge Lacombe, referring to the provisions of the act of 1883, says:

"The tariff act itself, however, recognizes a difference between woolen and worsted articles; between goods composed of worsted and goods composed of wool. We find the words 'wool' or 'worsted' used in contrast at least six times in this very schedule; and the examination of successive tariff acts, back to, I think, 1816, shows an unbroken continuance of such contrasting use. It seems plain, therefore, that the words 'woolen cloths,' used in the paragraph on which the defendant relies, are to be taken as including only those woolen cloths which are not worsted, or composed of worsted, within the meaning of those terms (that is, 'worsted,' or 'composed of worsted'), as used in this tariff."

In five of the instances above referred to as illustrations of this distinction the rates of duty were the same. The schedule in question is entitled "Wool and Manufactures of Wool." It is well settled that the title of an act may legitimately be resorted to as an aid in determining legislative intent when that intent is otherwise ambiguous. But the supreme court of the United States has recently held, in *Hollender v. Magone*, 149 U. S. 586, 13 Sup. Ct. 932, and *Seeberger v. Schlesinger*, 152 U. S. 581, 583, 14 Sup. Ct. 729, that such titles to the schedules in a tariff act are merely intended as general suggestions of the character of the articles within such schedule. Under the above title are included not only articles made from the fleece of the sheep, but also those made from the hair of the camel, goat, alpaca, and other animals, and certain manufactures of flax and cotton. It is not claimed by the government that the paragraph in question refers to goods made from the hair of animals other than sheep, or to any goods except such as are composed of wool or worsted. In *Reiche v. Smythe*, 13 Wall. 162, 164, and *Maddock v. Magone*, 152 U. S. 368, 371, 14 Sup. Ct. 588, it is held, in reference to the construction of tariff acts, that when the same word is used in successive acts, and special meaning was attached to said word in a former act, it will be presumed, in the absence of evidence of a contrary intention, that it was intended that said word should receive the same interpretation in the later act. It is claimed by the government that such evidence of a contrary intention is furnished in this case by the policy of the government as indicated in the letters and official documents already referred to, and in the considerations of inconvenience which would arise from the construction contended for by the importer. That the distinction was directly brought to the attention of congress and acted upon by it; that congress has failed to use the word "worsted" in said paragraph 297; that under the title "Wool and Manufactures of Wool" are included articles not composed of wool,—strongly suggest that congress may not have intended to include "worsted" under "manufactures of wool," and seem to rebut the claim of the counsel for the government that congress intended to give to the word "wool" a different signification from that which it had previously borne. The opinion of the supreme court of the United States in *Refrigerating Co. v. Sulzberger*, 15 Sup. Ct. 508, states the guiding principles of construction and interpretation in

such a case. The court there holds that when the language of an act is explicit there is great danger in departing from the words actually used, in order to give effect to the supposed intention of the legislature, and that in such circumstances the court should not so construe the statute as to embrace cases, because no good reason can be assigned why they were not included within its provisions. The court further emphasizes the rule that it is not for the court to add to or subtract from the express provisions of the law, but only to interpret the law as it exists, leaving to congress to make provision for cases where such enactment may operate unjustly. In view of the failure of congress to make any distinction between the various classes of articles in said schedule, other than by the use of a word in the title, which, by the settled definition of courts and legislature, excluded the articles in question, and in the absence of any positive evidence of intention to include said articles within the provisions of said paragraph, I think it would be a violation of the principles of construction and interpretation to extend the language of said paragraph so as to include "worsed goods." The decision of the board of general appraisers is reversed.

EVERETT v. HAULENBEEK et al.

(Circuit Court, S. D. New York. July 8, 1895.)

1. JURISDICTION OF FEDERAL COURTS—PATENT INFRINGEMENT SUITS—LICENSES.
The federal courts have jurisdiction of a suit for infringement of a patent notwithstanding that a license is set up in defense, so that the question of its existence is involved, and must be tried in trying the question of infringement. Jurisdiction in respect to infringement includes jurisdiction of all questions whether the license covered the infringement.
2. PATENTS—INVENTION.
The discovery of a method of preparing peas by cooking and flattening them while moist without breaking or comminuting them, producing flat disks, while preserving the individuality of the peas, *held* to show invention over the old methods of preparing various grains by cooking and crushing, comminuting, desiccating, or otherwise breaking or dividing them while soft.
3. SAME—PREPARATION OF PEAS.
The Beach patent, No. 215,313, for an improvement in the preparation of peas, by cooking and flattening them while moist, without breaking them, *held* valid and infringed.

This was a bill by William W. Everett against John W. Haulenbeek and others for infringement of a patent for an improved method of preparing peas.

Walter D. Edmonds, for plaintiff.

Nelson Smith, for Peter Haulenbeek.

Clarkson A. Collins, for John Haulenbeek and William Mitchell.

WHEELER, District Judge. The plaintiff, a citizen of Missouri, brings this suit against the defendants John W. Haulenbeek and William L. Mitchell, as principals, and Peter Haulenbeek, as aider and abettor under a pretended license, citizens of New York, for