mittee on finance, call in experts from both sides, and give us some language that is authoritative, and the meaning of which we know."

But, assuming that agreement on the propositions stated by counsel may be discerned in the debate, it may also be discerned what was meant by being "in bond," and "withdrawn for consumption," and that the amendment was only the repetition of existing law. These give us some guide to the meaning, and show that its general language was addressed to, and intended to provide for, a well-known condition, and was not intended to assimilate all conditions. See remarks of Senators Aldrich, Jones, Vest, Allison, and Sherman, Cong. Rec., May 10, 1894, p. 5430 et seq.

A question identical with the one at bar arose under the act of 1883, and was decided by Attorney General Brewster in accordance with the views herein expressed. 17 Op. Atty. Gen. 650. See, also, opinion of Attorney General Olney of January 17, 1895, substantially to the same effect.

I think, therefore, that the rails in controversy became subject to duty under the act of 1883, and to such duty the government had acquired a right before the passage of the McKinley and Wilson acts, which were preserved and continued by them. The decision of the board of general appraisers is therefore reversed.

UNITED STATES v. FIELD et al.

(Circuit Court of Appeals, Seventh Circuit. January 6, 1896.)

No. 254.

CUSTOMS DUTIES—TOURNAY CARPETS.

Tournay velvet carpets being specifically made subject, by the act of 1894, par. 288, to a certain duty, they cannot be treated as "manufactures of wool," within the meaning of paragraph 297, which provided that the rates of duties fixed by the act for manufactures of wool should take effect January 1, 1895.

Appeal from the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

John C. Black, U. S. Dist. Atty., for appellant.

N. W. Bliss, for appellees.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. Schedule K of the tariff act of 1894, entitled "Wool and Manufactures of Wool," embraces paragraphs numbered from 279 to 297, inclusive, the last reading in this wise: "The reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, eighteen hundred and ninety-five." Provision is made in the different paragraphs for duties upon various articles "made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals," and, by paragraph 283, "on all manufactures, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca or other animals * * * not specially provided for in this act." Carpets of various descriptions are specially provided for. "Saxony, Wilton

and Tournay velvet carpets" are made subject, by paragraph 288, to a duty of 45 per centum ad valorem. The duty imposed upon this description of carpets by the act of 1890, par. 400, was "sixty cents per square yard, and in addition thereto forty per centum ad valorem." On October 9, 1894, the appellees, Marshall Field and others, composing the firm of Marshall Field & Co., imported a quantity of Tournay velvet carpets, upon which the collector demanded the duty prescribed by the act of 1890. It was paid under protest, the importers claiming that the goods were dutiable only under paragraph 288 of the later act. This view the court below upheld, overruling the decision of the general appraisers, and we think the judgment should be affirmed. The component of chief value in Tournay velvet carpets is worsted, the remainder, amounting to about 10 per centum, being linen or jute; and worsted, it is conceded, is composed of a long fiber combed from the wool of sheep. This, it is insisted, makes it a species of wool. But the testimony shows that it is not so regarded in commerce, and it is evident that it has not been so treated by congress in its various enactments on the subject. In Elliott v. Swartwout, 10 Pet. 137, 151, where it was admitted "that worsted was made out of wool by combing, but that it becomes thereby a distinct article, well known in commerce under the denomination of 'worsted,'" the court said: "It being admitted in this case that 'worsted' is a distinct article, well known in commerce under that denomination, we must understand congress as using the term in that commercial sense, and as contradistinguished from 'wool' and 'woolen goods,' and other well-known denominations of goods;" and much more must the distinction be recognized in later enactments which presumably were framed with reference to that decision. It follows that the words "manufactures of wool," as used in paragraph 297 of the act of 1894, does not apply to Tournay velvet carpets, mentioned in paragraph 288, which are made of worsted, as distinguished from wool. It is, moreover, a well-settled rule, as declared in Arthur v. Rheims, 96 U. S. 143, "that, when an article is intended to be made dutiable by its specific definition, it will not be affected by the general words of the same or another statute which would otherwise embrace it." This rule is recognized in half a dozen cases in the volume just cited. See, also, Worthington v. Abbott, 124 U. S. 434, 8 Sup. Ct. 562; Robertson v. Salomon, 130 U. S. 412, 9 Sup. Ct. 559; Seeberger v. Cahn, 137 U. S. 95, 11 Sup. Ct. 28, and cases cited. If, therefore, it were conceded that the carpets in question "might in some respects be considered a manufacture of wool," yet, being subjected by this act to a particular duty, they cannot be so regarded here; and it must be considered that the duty placed upon them took effect upon the passage of the act, unaffected by paragraph 297, which applied only to manufactures of wool eo nomine.

The question whether paragraph 400 of the act of 1890 was repealed, and at once became inoperative, upon the passage of the act of 1894, need not be considered. The judgment below is affirmed.

LOWELL MANUF'G CO. v. WHITTALL.

(Circuit Court, D. Massachusetts. December 21, 1895.)

1. DESIGN PATENTS—INFRINGEMENT—PENALTY.
A manufacturer who, after notice sufficient to charge him with knowledge of a patented design, completes the manufacture of one lot of infringing goods, and delivers them to the purchaser, though he promptly gives orders to stop further production, is liable to one penalty of $250, under Act Feb. 4, 1887 (24 Stat. 387).

2. SAME—ENFORCEMENT OF PENALTY—EQUITY JURISDICTION.
Quære: Whether a federal court sitting in equity has constitutional power to enforce this penalty in the absence of a statutory provision for a trial of the issues of fact by a jury, subject to the fundamental rules of the common law. Untermeyer v. Freund, 7 C. C. A. 183, 58 Fed. 205, questioned.

3. SAME—PROOF OF INFRINGEMENT—COMPARISON BY COURT.
The court cannot in this case determine by mere personal inspection and comparison, in the absence of any explanatory proofs, that the paper drawings of an earlier design patent anticipated the design of the patent sued on.

4. SAME—COSTS.
Costs will not be awarded to complainant though he obtain an injunction and a decree for one penalty of $250, where the infringement was not willful and defendant, before the suit was brought, offered to pay that sum and submitted to the patent.

This was a bill in equity by the Lowell Manufacturing Company against Matthew J. Whittall for alleged infringement of a design patent.

Witter & Kenyon, for complainant.
Louis W. Southgate, for defendant.

PUTNAM, Circuit Judge. This is a bill brought by the owner of a patent for a design for carpets, for an injunction, an accounting of profits, and penalties under the act of February 4, 1887, c. 105 (24 Stat. 387). It may well be questioned whether the proofs establish the notice required by sections 4900 and 4933 of the Revised Statutes. Certainly they do not show that complainant's manufactures were marked as required by these sections; and there are no proper allegations in the bill of either such marking or notice. However, the penalty which we think complainant is entitled to recover under the act of 1887 exceeds any possible profits which there is any proof or suggestion can be recovered; so the court would not, in any event, be justified in putting the parties to the expense or delay of proceedings before a master.

According to his own testimony, the respondent received on June 3, 1894, sufficient information to charge him with knowledge of complainant's design under the act of 1887. After that date he made a delivery to one purchaser of a lot of infringing carpet, the manufacture of which was not completed until June 5th, although the respondent promptly gave orders to stop further production. We think he is liable for one penalty for this lot. It is claimed that