

matters. If he prefers to send the barrels in one case and the stocks in another, he is at liberty to do so, but the fact that they are packed in separate cases cannot affect their dutiable character. Machines and many cumbersome articles are frequently transported with the sections or parts in different packings. If the importers had procured a policy of insurance against loss by fire or the perils of the sea, describing their goods as "shotguns on board the steamship Obdam," the policy would have covered the stocks and barrels in separate cases.

When the barrels and stocks are shipped upon different vessels, it may happen that they can never be assembled together again as a complete gun. The dangers of navigation and other contingencies may intervene to prevent it. It is not for the customs officers, in imposing duties, to speculate upon these contingencies. They must take the articles as they find them to be upon examination. If they cannot, by assembling them together, discover that they are really a different thing, it is their duty to classify them as the article they purport to be.

Undoubtedly, with this understanding of the law, importers will be able to escape the duty upon shotguns by sending the stocks and barrels in different vessels, and entering them at different times. The remedy, however, is with congress; and it may be that such a practice upon the part of importers would expose them to the penalty of a condemnation of their merchandise under that statute of congress relating to entries of merchandise by means of any "false or fraudulent practice or appliance."

These conclusions lead to a reversal of the decision of the court below.

SELBACH et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 18, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—ALIZARINE.

A substance which responds to the alizarine tests, and which is commercially known and dealt in as "alizarine," or "alizarine yellow," is free, under paragraph 595 of the tariff act of March 3, 1883, as alizarine, natural or artificial, though not chemically alizarine.

This was an application by E. Selbach & Co. for a review of the decision of the board of general appraisers, affirming the decision of the collector of the port of New York as to the classification of certain merchandise. The merchandise in question was invoiced as "alizarine blue," "anthracene brown," and "anthracene yellow." The collector assessed duty thereon at 35 per cent. ad valorem, under paragraph 82 of the tariff act of 1883, as coal-tar colors. The importers' protest claimed that the merchandise was entitled to free entry, as alizarine, natural or artificial.

Hartley & Coleman, for the importer.
J. T. Van Rensselaer, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The merchandise in question is anthracene or alizarine yellow, claimed to be free, as alizarine,

natural or artificial, under paragraph 595 of the tariff act of March 3, 1885, but assessed for duty under paragraph 82 of said act as a coal-tar color or dye, by whatever name known, not specially provided for. That this article is not chemically alizarine seems to be immaterial. The evidence is undisputed that it responds to the alizarine tests, and was commercially known and dealt in as "alizerine" or "alizerine yellow" at the time of the passage of said act. The decision of the board of general appraisers affirming the action of the collector is reversed.

KAUFMANN et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 18, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—MILLET PULP.

Millet pulp, from which the hull has been removed, though adapted for use as food and not for agricultural purposes, and which will not germinate, is dutiable under paragraph 206½ of the tariff act of 1894, as seeds. *Boving v. Lawrence*, 1 Blatchf. 616, Fed. Cas. No. 1,712, followed.

Comstock & Brown, for importers.

Henry C. Platt, for the United States.

TOWNSEND, District Judge (orally). The merchandise in question is millet pulp from which the hull has been removed. It will not germinate, and is not used for agricultural purposes. It is used for bird food or in the preparation of food for man. It was assessed for duty under section 3 of the tariff act of August 28, 1894, as a nonenumerated manufactured article. The importer protested, claiming that it was dutiable under paragraph 206½ of said act, directly or by similitude to "garden seeds, agricultural seeds, and other seeds, not specially provided for." Were it not for the decision of Mr. Justice Nelson in *Boving v. Lawrence*, 1 Blatchf. 616, Fed. Cas. No. 1,712, I should sustain the decision of the board of general appraisers. The product in question is not included in the common understanding of the word "seeds," nor in the meaning given to "seeds" in the dictionary. It has been advanced by manufacture so as to pass from the group of garden or agricultural seeds to the group of food products. It is not only dissimilar to such seeds in condition and the purpose to which it is applied, but it has been, by a process of hulling, deprived of the germinative quality essential to its use as garden or agricultural seeds. The article is, however, commercially known and dealt in as seeds. In *Boving v. Lawrence*, supra, the court held, construing a similar provision, that, as the articles had always been bought and sold and known in trade as "seeds," they were free under the clause, "garden seeds and all other seeds not otherwise provided for." The decision of the board of general appraisers is therefore reversed.