And on—

"88. Green and colored molded or pressed and flint or lime glass bottles, holding more than one pint, and demijohns and carboys, covered or uncovered, whether filled or unfilled, and whether their contents be dutiable or free, and other molded or pressed green and colored and flint or lime bottle glassware not specially provided for in this act, three-fourths of one cent per pound," etc.

The plaintiff imported champagne in bottles, which is stipulated to have been correctly assessed under paragraph 243, and that the bottles have been correctly assessed under paragraph 88, unless they were free, as protested. The tariff act of 1870 provided a duty of three cents for each bottle in which wines, brandy, and other spirituous liquors were imported. De Bary v. Arthur, 93 U. S. 420. That provision was continued in the tariff act of 1883, and dropped from the tariff act of 1890 without any new provision in its place. Laying a duty on champagne in bottles by the dozen would seem to preclude the application of any general duty on the champagne bottles, and the dropping of that specific provision for a duty on bottles seems to imply that thereafter no duty on champagne bottles was to be assessed. Decision of general appraisers reversed.

SEHLBACH et al. v. UNITED STATES.

(Circuit Court, S. D. New York. December 9, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—ALIZARINE BLUE.

Alizarine blue, of a new form, not known at the time of the passage of the act of 1890, was nevertheless dutiable as such, under paragraph 478, and not as a coal-tar color, under paragraph 18.

This was an appeal by Sehlbach & Co. from a decision of the board of general appraisers as to the classification for duty of certain imported merchandise.

Edward Hartley, for plaintiffs.
James T. Van Renselaer, Asst. U. S. Atty.

WHEELER, District Judge. This is an alizarine blue. It was assessed as a coal-tar color, under paragraph 18 of the tariff act of 1890, against a protest that it should be assessed under paragraph 478, which provides specially for "alizarine blue." The proof shows that this particular form of alizarine blue was not known in commerce at the time of the passage of that tariff act, but it is of the same class of colors, although made in a different way. It well falls within the same description. Pickhardt v. Merritt, 132 U. S. 252, 10 Sup. Ct. 80. Decision reversed.

SMITH et al. v. UNITED STATES.

(Circuit Court, S. D. New York. December 9, 1897.)

No. 2,357.

CUSTOMS DUTIES—CLASSIFICATION—CROCUS.

Crocus, which is a color, but is most largely used as a polishing powder, was dutiable as a color, under paragraph 61 of the act of 1890, under the words, "all other paints and colors, whether dry or mixed," and not under paragraph 133 and section 5, as dross residuum from burnt pyrites, or as a nonenumerated article under section 4.

This was an appeal by Smith & Co. from a decision of the board of general appraisers as to the classification for duty of certain imported merchandise. The importation was described by the board of general appraisers as follows:

"The merchandise is crocus. It was assessed for duty as a color at 25 per cent., under paragraph 61, Act Oct. 1890, and is claimed to be dutiable either at 75 cents per ton, under paragraph 133 and section 5, as dross or residuum from burnt pyrites, or at 20 per cent., as a nonenumerated article, under section 4. It appears from the testimony that the residuum from burnt pyrites is valued at about 6 or 7 to 16 shillings a ton. By the application of labor, and at an expense of 20 or 30 shillings a ton, this residuum is converted into crocus, a new article, having a distinctive name, character, and use. It also appears from the evidence introduced by the importer that crocus is used to the extent of about 80 per cent. as a polishing powder and 20 per cent. as a color."

The board further said:

"Both claims are made under the clauses for nonenumerated articles. If it were necessary to apply the similitude clause, it would seem that crocus should be classified as a color, rather than as the residuum of burnt pyrites. But, as it is suitable for use, and is largely used, as a color, there is no necessity to apply the similitude clause. We find: (1) The article is a polishing product; (2) it is a color. As colors are enumerated, we overrule the claim that the merchandise is dutiable under section 4 or section 5."

Everit Brown, for appellants.
Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. This article—crocus—is found to be, and in fact is, a color, although it is much more largely used as a polishing powder. Paragraph 61 of the act of 1890, which comes after several paragraphs as to colors, lays a duty on "all other paints and colors, whether dry or mixed," etc., without reference to being any otherwise provided for; and this article is not by name otherwise provided for. This duty is therefore directly applied to this article, without regard to its other uses. Decision affirmed.

FLEMING CEMENT & BRICK CO. v. UNITED STATES.

(Circuit Court, S. D. New York. December 9, 1897.)

No. 2,320.

CUSTOMS DUTIES—CLASSIFICATION—BRICK.

Magnesic brick, which are not fire brick, were dutiable as brick, under paragraph 76 of the act of 1894, and not as "magnesic fire brick," under paragraph 77.