In proportion to that of the pins; but the use, not the value, is made controlling, by the statute, as to whether they should be separately dutiable. Decision reversed.

MORRISON et al. v. UNITED STATES.

WOLFF et al. v. SAME.

(Circuit Court of Appeals, Second Circuit. January 7, 1898.)

Nos. 54 and 55.

CUSTOMS DUTIES—CLASSIFICATION—GLASS BEADS STRUNG.

Glass beads strung, of two kinds, one consisting of small brown beads, which were a poor imitation of the precious stone known as "cat's eye," and the other of larger size, and also an imitation of precious stones, *held* to have been dutiable as "imitations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set," under paragraph 454 of the act of 1890, and not as manufactures of glass not specially provided for under paragraph 108.

These were appeals taken, respectively, by E. A. Morrison & Son and H. Wolff & Co. from a judgment of the circuit court affirming a decision of the board of general appraisers which affirmed the action of the collector in the classification for duty of certain imported merchandise.

Albert Comstock, for appellants.

Jas. T. Van Rensselaer, for the United States.

Before LACOMBE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. In the year 1891, E. A. Morrison & Son imported into the port of New York two invoices of glass strung beads not exceeding one inch in dimensions, of two different kinds. One kind consisted of small brown beads, which were a very poor imitation of the precious stone known as "cat's eye," which were used principally in the millinery trade for trimming, or for trimming ladies' garments, and were popularly styled "jewels" or "jewel stones." The second kind consisted of larger beads than those of the first class, which were also strung, and were imitations of precious stones, and did not exceed one inch in dimensions, and were used for trimming, and were also called "jewels." In 1893 and 1894, H. Wolff & Co. imported into the port of New York sundry invoices of glass strung beads, not exceeding one inch in dimensions, which were imitation pearl beads, and were called by that name, or were called "wax beads," or "Roman beads," and were used for necklaces or for trimming. All these articles have been long commercially known as beads. The collector assessed a duty of 60 per cent. ad valorem upon all of these goods, under paragraph 108 of the tariff act of 1890, which was as follows:

"Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

The importers protested that the goods were dutiable under paragraph 454 of the same act, which imposed a duty of 10 per cent. ad valorem upon "imitations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set." The board of general appraisers sustained the collector, and the circuit court affirmed the decision of the board upon the articles now in question, whereupon the importers appealed to this court. The cases were tried together upon substantially the same record.

"Glass beads, loose, unthreaded, or unstrung," are dutiable at 10 per cent. ad valorem, under paragraph 445 of the act of 1890. There is no duty specifically placed upon glass strung beads, and it is conceded that the merchandise in question was excluded from classification under paragraph 445, and that, unless it was dutiable under paragraph 454, it was properly classified by the collector, under paragraph 108, as manufactures of glass not specially provided for. The articles were, in both popular and in commercial language, beads. The two Morrison importations, which were used for trimming, were also called, apparently for convenience sake, "jewels," but this subname has no bearing upon the classification for tariff purposes. The term "imitations of precious stones" is not a commercial term, and has no especial commercial meaning. All these articles were in fact imitations of precious stones, and are known to be such by the people who deal in them. The term, "imitations of precious stones, unset," implies that there were imitations which were set; that is, made into or arranged as ornaments or imitation jewelry. A natural suggestion is that the two Morrison importations were to be exclusively used for trimming ladies' hats or apparel, and were not to be set into ornaments for the person; but there can be no practical tariff distinction between imitations of precious stones, made of glass or paste, unset, which are to be set into articles of jewelry, and those imitations which are to be used as ornaments upon ladies' hats or apparel. Inasmuch as the only glass beads which are named in the tariff act are unstrung beads, these strung beads are not classified by name, and their position for tariff purposes must be within some paragraph of general description. The only two paragraphs that can be discovered which describe them are Nos. 454 and 108. They are imitations of precious stones, composed of glass or paste, of the designated size, and are unset, and they are manufactures of glass, and, if not specially provided for, must fall into the general receptacle for glass articles which have escaped other classification. But adequate provision seems to have been made for them by the terms of paragraph 454. The decision of the circuit court, so far as it related to the articles in question, is reversed.

UNITED STATES v. KAUFFMAN et al.

(Circuit Court of Appeals, Second Circuit. January 7, 1898.)

No. 33.

CUSTOMS DUTIES—CLASSIFICATION—HULLED MILLET SEED.

Hulled millet seed, which is adapted for use as food, and in which the germinating power has been destroyed, was dutiable, under section 3 of the act of 1894, as an article "manufactured, in whole or in part, not provided for in this act," and not as "seeds," under paragraph 206½. 78 Fed. 804, reversed.

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

This was an appeal by Kauffman Bros. from a decision of the board of general appraisers affirming the decision of the collector of the port of New York in respect to the classification for duty of certain merchandise imported by them. The circuit court reversed the decision of the board (78 Fed. 804), and the United States have appealed.

Henry C. Platt, for the United States.

Everit Brown, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. The firm of Kauffman Bros. imported, in November, 1894, into the port of New York, 200 bags of hulled millet seed. The collector assessed the merchandise for duty at 20 per cent. ad valorem, under section 3 of the tariff act of August 28, 1894, which provides as follows:

"That there shall be levied, collected and paid * * * on all articles manufactured, in whole or in part, not provided for in this act, a duty of twenty per cent. ad valorem."

The importers protested against this assessment upon many grounds. The one now relied upon is that the article was dutiable under paragraph 206½ of the same act, which is as follows:

"Garden seeds, agricultural seeds, and other seeds not specially provided for in this act, ten per centum ad valorem."

The board of general appraisers affirmed the decision of the collector, and the circuit court reversed the decision of the board upon the ground that by commercial designation the article was known as a "seed." From the decision of the circuit court this appeal was taken.

The merchandise is millet pulp, from which the hull has been removed, and therefore it will not germinate, and cannot be used for agricultural purposes. It has been destroyed as a "seed," according to the common understanding of the word, or according to the meaning given to it by lexicographers, and has been removed, by the removal of the hull, to a different condition, and to be used for different purposes. It is used largely, especially by persons of German birth, for food, as oatmeal is used, and it is also used for food for birds. Millet seed, not hulled, is not used for human food. Hulled millet seed is not dealt in by seedsmen, but it is sold by grocers, especially by dealers in fancy groceries and canned goods. The hulled and the