

similar, either in material, quality, texture, or the use to which it may be applied to any article enumerated, shall pay the same rate of duty as the article enumerated. This article is ferro-chrome. The board has found "that ferro-silicon, ferro-manganese, and ferro-chrome are employed in making hard or tough iron or steel; but each is used for a distinct and different purpose, the silicon to get rid of carbon, the manganese for excess of sulphur, and the chrome to eliminate phosphorus"; and that "it is not similar to the articles named in paragraph 110." The witness who testified to the mode and purposes of use said that it was, to some extent, interchangeable with ferro-manganese. Although similitude is, necessarily, a fact, and findings of fact by the board upon warrantable evidence are not to be disturbed by the court upon any view of the same evidence, the latter finding seems to be rather a conclusion of law from the former ones than the finding of an ultimate fact from the evidence, and that conclusion may be reviewed. The difference in value appears to have been allowed much weight; but that is not made any criterion by the statute; and that testimony as to interchangeability was not contradicted. The question here now seems to be whether, in view of the uncontradicted evidence, and the general finding of similitude of use in making iron and steel, and of the differences found, the conclusion of want of similarity to the articles named in paragraph 110 takes this article out of the similitude, of the statute, to ferro-manganese. Similarity is not identity; it implies differences as well as it expresses likenesses. The differences found do not appear to so meet and overcome the likenesses as to neutralize them, and exclude the similarity in use, of the statute. Decision reversed.

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## HENSEL et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 18, 1899.)

No. 2,740.

## CUSTOMS DUTIES—CLASSIFICATION—PICTURE FRAMES.

Picture frames of wood, fitted to the pictures, are incidents of the pictures, and dutiable at the same rate, as part of their value, and not separately, as manufactures of wood.

This was an appeal by Hensel and others from the decision of the board of general appraisers in respect to the classification for duty of certain picture frames attached to pictures which were imported by them.

Howard T. Walden, for appellants.  
Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. These are "frames attached to" pictures, assessed as manufactures of wood, at 35 per cent., instead of at 20 per cent., with the pictures, as a part of their value, or at the same rate as cases for them. Section 19 of the customs administrative act of 1890 provides that duties shall be assessed upon the market value of merchandise in the condition in which it is bought and sold for ex-

portation to this country, "including the value of all cartons, cases, crates, boxes, sacks and coverings of any kind." Picture frames are fitted to the pictures for their protection in handling, and for holding them in place. They would seem to be incidents of the pictures to which they are attached, and dutiable at the same rate, as a part of their value, and also to fall within the description of a case "of any kind" for them in said section 19. In either case the rate of duty would be the same. In *U. S. v. Gunther*, 71 Fed. 499, the frame was itself an object of ancient art, and was in question on a claim that it was one of a collection of antiquities of which the picture was another; and it would have been quite "unusual," within the exception of this section 19. That case does not seem to be controlling here, where the frames are merely such, and usual. Decision reversed.

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KOSCHERAK et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 18, 1899.)

No. 2,634.

**CUSTOMS DUTIES—CLASSIFICATION—BOTTLES FOR MINERAL WATERS.**

Siphon bottles for mineral waters, having private names, trade-marks, and directions etched ornamentally upon them, not for the purpose of identifying the wares of the importers, but for sale to persons who may want them so decorated for their own use, were dutiable, under paragraph 90 of the act of 1894 (28 Stat. 513), as ornamented or decorated glassware.

This was an application by Koscherak Bros. for a review of the decision of the board of general appraisers in respect to the classification for duty of certain siphon bottles for mineral waters, imported by them.

Albert Comstock, for appellants.

Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. These siphon bottles for mineral waters appear to be decorated by having private names, trade-marks, and directions etched ornamentally upon them. They are claimed to be without ornamented or decorated glassware as provided for in paragraph 90 of the act of 1894 (28 Stat. 513) on account of the private nature of the ornamentation. They are not, however, the names, trade-marks, or directions of the importers for identifying their wares, but appear to be imported for sale to others who may want the bottles so decorated for their use. The decorations may limit the purchasers to but few, but this limitation does not change the character of the importations which come within that paragraph. Decision affirmed.