where "satisfactory evidence" is produced that the value of the pure metal of such foreign coin has either appreciated or declined 10 per cent. as compared with its proclaimed value. As there is no evidence on this point in this case, the proclaimed value must stand, and the collector should have liquidated the duties on that basis.

We understand, from the brief of counsel and the later instructions of the treasury department, that the government relies mainly on the proviso in section 25 for justification of the collector's action. In two letters, however, to the collector, bearing date, respectively, May 12, and June 17, 1896, in reply to an inquiry for instructions, the secretary of the treasury says that the rupee must be regarded as a depreciated currency, upon the ground, apparently, that its nominal value, as he states, is $.444, and that, therefore, entries of merchandise covered by invoices made out in such currency should be liquidated at the value certified by the consul. There seems to be nothing in the facts of the case which warrant the treatment of the silver rupee at the time of this importation as a depreciated currency, under the law. The provision respecting depreciated currency first appears in the proviso of the sixty-first section of the act of 1799. "This proviso has always continued in force, and now constitutes section 2903 of the Revised Statutes." Cramer v. Arthur, 102 U. S. 612, 617. Speaking of this proviso, Mr. Justice Bradley said (page 618), in that case:

"It was passed at a time when the nations of Europe were at war and the United States were neutral. In England and France, and perhaps other countries, specie payments had been suspended, and currencies based on government credit had been adopted. The law seems to have had in view artificial money of this kind; a depreciated currency, not based on specie, but still 'issued and circulated under authority of the government.' "

The president, acting through the secretary of the treasury, has established regulations on the subject. The treasury regulations (Ed. 1874, art. 993, as amended by circular, S. S. 1870) were as follows:

"First. Where the standard value of a foreign currency has been proclaimed by the secretary of the treasury in the manner provided by law, or, not having been so proclaimed, has been fixed by special enactment, that value is to be taken in all cases in estimating customs duties, unless collectors have been otherwise instructed, or unless a depreciation of the value of the foreign currency expressed in an invoice from the standard of that currency shall be shown by consular certificate thereto attached. Secondly. Where the standard value of a foreign currency has not been proclaimed by the secretary of the treasury, in the manner provided by law, an invoice expressed in such currency must be accompanied by a consular certificate, showing its value in standard gold dollars of the United States."

In 1891 the provision was amended as to depreciated currency (S. S. 11,661) so as to read:

"If that currency be depreciated, each copy of the invoice should be accompanied by a consular certificate (Form No. 144) stating the precentage of depreciation of the currency actually paid as compared with the corresponding standard coin currency, and the value in such standard coin currency of the total amount of the depreciated currency paid for the merchandise mentioned in the invoice."

Form No. 144 is as follows:

"I, ——, consul of the U. S. of America, do hereby certify that the true value of the currency of the —— of ——, in which currency the annexed

invoice of merchandise is made out, is —— per cent. as compared with the corresponding standard coin currency, and that the value in such standard coin currency of the total amount of the currency actually paid for the merchandise is ——."

In this case the consular certificate was not in the form required for a depreciated currency. So far as appears, the rupee was not treated as a depreciated currency coming under the regulations of the president, as provided in section 2903, and which calls for a particular form of consular certificate. On the contrary, on January 1, 1896, the value of the silver rupee in money of the United States was fixed, for the three months following, by estimate of the director of the mint, and so proclaimed by the secretary of the treasury, as provided in section 25 of the act of August 27, 1894. There is no evidence in this record that at the date of the importation the silver rupee was other than a foreign standard coin of India, and so coming under section 25. To say that a currency was depreciated when its value, as certified by consular certificate, was more than 20 per cent. greater than its proclaimed value, would seem an unwarranted construction of section 2903, as it has always been interpreted.

The second question raised by the government under the assignment of errors is that the board of general appraisers had no jurisdiction to review the action of the collector in estimating the value in United States money of foreign coin. This case is not one of disputed appraisement of the value of imported merchandise, as to which the decision of the board of general appraisers is made final under section 13 of the customs administrative act of June 10, 1890. U. S. v. Klingenberg, 153 U. S. 93, 102, 14 Sup. Ct. 790; Hilton v. Merritt, 110 U. S. 97, 3 Sup. Ct. 548. The dutiable value in rupees of the merchandise in this case is admitted under the agreed statement of facts; the only issue being whether this court or the board of general appraisers has jurisdiction to review the action of the collector in reducing to United States currency the value of the rupees. Such jurisdiction, if any, must be found in sections 14 and 15 of the act of June 10, 1890. The jurisdiction conferred upon the circuit court by section 15 is co-extensive with the jurisdiction conferred on the board of general appraisers by section 14. This was so held by the supreme court in the Klingenberg Case, 153 U. S. 93, 14 Sup. Ct. 790, in the following words:

"The subjects of review by the circuit court, provided for by section 15, extend to all questions of law and fact in respect to which the board of general appraisers have appellate jurisdiction, except the decision of that board as to the dutiable value of merchandise, which is provided for by section 13, and is made conclusive against all parties interested."

In construing section 14, the court says:

"By section 14 the collector's decision on rate and amount of duties, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), may be the subject of appeal to the board of general appraisers."

The Klingenberg Case decided that where the collector was simply called upon, under the statute, to follow the estimate of value made by the director of the mint, and proclaimed by the secretary of the treasury, his action was not subject to review by the board of general appraisers. If, for example, in the present case, the collector had adopted

the proclaimed rate for the rupee on January 1, 1896, of $.233, his decision would have been final. This conclusion of the court was based upon the rule laid down in Collector v. Richards, Cramer v. Arthur, and Hadden v. Merritt, ubi supra. These authorities show the absolute conclusiveness of the value estimated by the director of the mint and proclaimed by the secretary of the treasury of the standard coin of foreign countries. After holding that the collector's construction of the value as proclaimed was correct, the court said:

"This being the proper construction to be placed upon the proclamation of July 1, 1892, we are of opinion that the collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the board of general appraisers, under the principle laid down in the authorities already referred to."

All the Klingenberg Case decided was that when the collector followed such proclaimed value his action was not the subject of appeal, under section 14. The present case is the reverse, for here the collector refused to be governed by the proclaimed value.

As was said by the circuit court of appeals for the Second circuit, speaking through Judge Sherman, in the case of Wood v. U. S. (1896) 18 C. C. A. 553, 72 Fed. 254, in which the question arose whether the collector should liquidate the duties according to the value of the silver ruble proclaimed October 1, 1891, or according to the value proclaimed January 1, 1892:

"In the Klingenberg Case the collector was simply called upon by the statute to follow the estimate made by the director of the mint, and proclaimed by the secretary of the treasury, and his action was not the subject of reversal. In this case the collector was compelled to construe the statutes, and determine which proclamation he should observe. The Klingenberg Case is not an authority in favor of the proposition that an act of the collector in regard to valuation of foreign coins which is or which may be in violation of the statutes cannot be the subject of review or of reversal by the board of general appraisers. On the contrary, the opinion asserts that, by section 14 of the customs administrative act of June 10, 1890, 'if the decision of the collector imposes an excessive amount of duties, under an improper construction of the law, the importer may take an appeal to the board of general appraisers, whose decision on such questions is not made conclusive, as it is in respect to the dutiable value of the merchandise, and, not being conclusive, is subject to review [by the circuit court] under the express provisions of section 15.'"

The question in this case has reference to the "amount of duties," and is therefore reviewable, under sections 14 and 15 of the act of June 10, 1890, by the board of general appraisers and by the circuit court. The amount of duties liquidated at the proclaimed value of the rupee would have been less than the amount liquidated at the exchange value. The Klingenberg Case is not an authority upon the proposition that where the collector declines to accept the proclaimed value of a foreign standard coin, and adopts another standard, thereby increasing the amount of duties upon imported merchandise, his action is not the subject of review, under the act of 1890. Our conclusion is that the board of general appraisers and this court have jurisdiction, and that the decision of the board reversing the action of the collector should be affirmed. The decision of the board of general appraisers is affirmed.

BOUR et al. v. UNITED STATES.

(Circuit Court, S. D. New York. December 9, 1898.)

No. 2,272.

1. CUSTOMS DUTIES—CLASSIFICATION—DESIGNATION OF ARTICLE.
Where the evidence as to the commercial designation of an article is conflicting, the ordinary name given it in common speech, when proper under the definition given by the dictionaries, will govern in making classification.[1]

2. SAME—PLACQUES.
Flat, rectangular porcelain panels decorated by means of paints known as mineral colors, as distinguished from oil and water colors, and completed by firing, are dutiable, under paragraph 85 of the tariff law of 1894, as placques, and are not free, under paragraph 575, as "paintings in oil or water colors, * * * not otherwise specifically provided for, * * * and not made wholly or in part by stenciling or other mechanical process."

This is an appeal by Bour & Bouillon from the decision of the board of general appraisers affirming the classification for duty of certain imported merchandise.

Albert Comstock, for importers.
Henry C. Platt, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The articles in question are flat, rectangular porcelain panels, decorated by means of paints composed of powders mixed in oil or water, and known as mineral colors, as distinguished from oil and water colors. The decoration of these articles is then completed by a process of firing. The evidence is very strong that the articles are commercially known as placques; but, in view of the finding of the board of general appraisers, as I understand that finding, that it is not satisfactorily shown that they are commercially known as placques, I do not feel disposed to disturb that finding. The utmost, however, that can be claimed on behalf of the importers is that it has not been shown that these articles are commercially known as placques. We are, then, brought to the question as to what they are in fact, and how they are known and designated in common speech. The testimony of the appellant himself and of his witnesses, and the ordinary understanding of people, as the court understands it, fortified by the dictionary definition, all seem to show that these articles are placques in common speech. Webster says a placque is "any flat, thin piece of metal, or clay, or ivory, or similar material, used for ornament, or for painting pictures on, * * * and hung upon the wall," or words to that effect. Inasmuch, therefore, as there is a conflict of testimony as to commercial designation, and as the whole evidence tends to show that these articles are, and are ordinarily known as, placques, they are specifically provided for under paragraph 85 of the act of 1894, and were properly classified for duty at 35 per cent. ad valorem as "placques, painted or otherwise decorated in any manner," and are not free, under paragraph 575 of said act, as

[1] For interpretation of commercial and trade terms generally, see note to Dennison Mfg. Co. v. U. S., 18 C. C. A. 545.