

not covered by the act of 1875, by reason of the presence of more than 25 per cent. of cotton. The uncontroverted evidence shows that they are hat materials, and the paragraph covering such materials (paragraph 1300) is more specific than paragraph 1113. They should have been classified for duty at 30 per cent. ad valorem.

It is contended by defendant that plaintiff, whose protest was in the alternative (30 per cent. as hat materials, or not in excess of 50 per cent., under the proviso to act of 1875), cannot recover under both of two separate paragraphs, and that a liquidation already made under one is a bar to further prosecution under the other. The facts on which those objections are based are these: It appears that heretofore a suit was brought by the same plaintiff, through some other attorney, to recover excess of duties paid on the same goods, such suit being founded on some other protest. That suit was long since discontinued, the government about the same time refunding the difference between 60 per cent. and 50 per cent., the duty chargeable under paragraph 1113. In the suit at bar, plaintiffs claim only the difference between 50 per cent. and 30 per cent. It is difficult to understand upon what theory this transaction can bar the plaintiffs of their recovery here. There has been no adjudication, no release. There is not a scintilla of proof to show any accord and satisfaction. The discontinued action, which terminated in no judgment, is as if it were never begun. All that has happened is that the government has once conceded that the articles were not dutiable under any of the 60 per cent. paragraphs, and has voluntarily repaid 10 per cent. improperly exacted, without requiring any release or stipulation not to prosecute for the additional exactions. Had the former suit gone into judgment upon an offer, different questions might have been presented; but, as it is, we know of no principle on which the acceptance of this voluntary payment can operate as a bar or an estoppel. The judgment of the circuit court is affirmed.

LOEWENTHAL et al. v. UNITED STATES.

(Circuit Court, S. D. New York. December 17, 1898.)

No. 390.

1. CUSTOMS DUTIES—RATE AND AMOUNT—GALLOONS.

Narrow metal braid, bearing square beads of glass, used for trimming ladies' garments, and known commercially as "galloon," is dutiable as such under Act March 3, 1883, par. 427, and not as "bead ornaments," under paragraph 396, nor, under paragraph 216, as "manufactures of metal not otherwise specifically provided for."

2. SAME—LACES OF METAL.

Narrow metal braid, bearing glass beads, used for trimming ladies' garments, and commercially known as "metal lace," is dutiable as such under Act March 3, 1883, par. 427, and not as "bead ornaments," under paragraph 396, nor under paragraph 216, "as manufactures of metal not otherwise specifically provided for."

3. SAME—MANUFACTURES AND IMITATIONS OF JET.

Narrow cotton trimming, covered with black glass beads, known in trade as "jet headings or trimmings" or "imitations of jet," is dutiable

as "manufactures and imitations of jet," under Act March 3, 1883, par. 458, and not as "bead ornaments," under paragraph 396.

4. SAME—ARTICLES OR MANUFACTURES OF GLASS AND OF METAL.

Trimming made of glass beads, silvered, and also of tinsel and cotton, commercially known as "steel trimmings" or "steel-bead trimmings," is dutiable either under paragraph 135 or 143 of Act March 3, 1883, as "articles or manufactures of glass," or under paragraph 216, as "manufactures of metal, metal chief value," and not as "bead ornaments," under paragraph 396, nor, under paragraph 216, as "manufactures of metal not otherwise specifically provided for."

Albert Comstock, for the importers.

James T. Van Rensselaer, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The merchandise in suit comprises four exhibits imported and dutiable under the act of March 3, 1883. Exhibit 1 is a narrow braid, made of metal having square beads of blue glass thereon, and is used for trimming ladies' garments. It is universally known commercially as a "galloon." Exhibit 2 is of similar material, but lighter fabric, and is used for the same purposes as those for which Exhibit 1 is used, and is commercially known as "metal lace." Exhibit 3 is a narrow, black cotton trimming, covered with black glass beads, and is known in trade as "jet headings or trimmings" or "imitations of jet." Exhibit 4 is a trimming made of glass beads, silvered, and also of tinsel and cotton, and is commercially known as "steel trimmings" or "steel-bead trimmings." The merchandise was assessed for duty at 50 per cent., as "beads and bead ornaments," under the provisions of paragraph 396, and as "manufactures of metal not otherwise specifically provided for," under paragraph 216, both of said act. The importers protested, claiming that Exhibits 1 and 2 were dutiable under the provisions of paragraph 427, as "galloons" and "laces of metal," respectively; that Exhibit 3 was dutiable under the provisions of paragraph 458 as "jet, manufactures and imitations of"; and that Exhibit 4 was dutiable either under the provisions of paragraphs 135 and 143 for articles or manufactures of glass, or under the provisions of paragraph 216, as "manufactures of metal not otherwise specially provided for." While paragraph 216 would cover Exhibits 1 and 2, as manufactures of metal, if not otherwise provided for, yet the provisions of said paragraph must yield to the provisions of the more specific paragraphs. The term "bead ornaments," in commercial designation, comprises collars, yokes, or pieces for backs of dresses, and other similar articles, made in a single piece, and ready to put on the garment; but it does not comprise these classes of trimmings which come to be sold by the yard or meter. All four of these articles are used for trimming ladies' dresses, and are known generally as "trimmings," but specifically under the names already stated. The articles Exhibits 1 and 2 are dutiable under the provisions of paragraph 427, as "galloons" and "laces of metal." In view of the decision of *In re Goldberg*, 56 Fed. 818, affirmed 20 U. S. App. 604, 9 C. C. A. 380, and 61 Fed. 91, Exhibit 3 is properly dutiable under paragraph 458, as "manufactures of jet" or "imitations of jet"; and Exhibit 4 should be assessed for duty either under the provisions of paragraph 135 or 143, as "articles or manufactures of glass," or under paragraph 216,

as "manufactures of metal, metal chief value," as claimed by the importers,—the article not being an imitation of jet, and there being no evidence that articles of this shape are known in trade as "galloons." The decision of the board of general appraisers is therefore reversed

AMERICAN SUGAR REFINING CO. v. UNITED STATES (two cases).

(Circuit Court, S. D. New York. January 21, 1899.)

CUSTOMS DUTIES—VALUATION—BRAZILIAN SUGARS.

Moist or green sugars imported from Brazil, which are well known to lose from 14 to 16 per cent. in weight on the voyage by drainage and evaporation, without any loss of value, whereby the market value per pound is correspondingly increased, may properly be increased in value by this percentage by the appraisers.

This was an application by the American Sugar Refining Company for a review of a decision by the board of general appraisers in respect to the valuation of green or moist sugars imported from Brazil.

John E. Parsons, for importers.

Henry C. Platt, for the United States.

TOWNSEND, District Judge. Certain moist or green sugars were brought from Brazil into the port of New York while the act of 1894 was in force, upon which duty was assessed at 40 per cent. ad valorem, under the provisions of paragraph 182½ of said act. 28 Stat. 521. It appears that there is an understanding, acquiesced in generally by shippers, importers, and appraisers, that, as the moist sugars from Brazil lose from 14 to 16 per cent. in weight on the voyage by drainage and evaporation, this percentage of loss shall be generally accepted as a basis of settlement of value at the port of entry. The board of appraisers, acting upon the basis of this so-called settlement, assumed such a loss of weight, and found, not the actual market value of the green sugar as shipped from Brazil, but the increased market value of the dry sugar when it reached the port of New York. Thus the appraisers advanced the valuation of the sugar in the first importation from 6s. 8d. per cwt., 87°, the market value when shipped, to 7s. 9d. per cwt., 87°, owing to its increase in value from drainage on the voyage, and made similar advances in the other importations. The question presented by these appeals is whether the appraiser was authorized in thus advancing the valuation of the sugar, and whether the assessment of duty upon such advanced valuation is valid.

Section 10 of the customs administrative act of 1890 provides, inter alia, as follows:

"That it shall be the duty of the appraisers of the United States to ascertain, estimate and appraise the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported." 26 Stat. 136.

Counsel for the importer contends that this language refers to the merchandise in its condition in the foreign port and its actual value