

pyroxylin is the component material of chief value, sixty-five cents per pound, and twenty-five per centum ad valorem." 30 Stat. 152.

The importation was of sheets of collodion about 55x24 inches, for use by being cut up and made into combs and other things, and not otherwise as they were. They have been assessed at 65 cents per pound, and 25 per cent. ad valorem. This paragraph seems to so distinguish between collodion in such sheets and collodion made up into articles from such sheets as to divide the sheets from the articles, and to exclude the sheets from being considered articles made up, finished, partly finished, or of which collodion or any compound of pyroxylin is the component material of chief value. Collodion is not rolled into sheets; and rolled collodion is different from that in sheets, and that unpolished from that made into articles. The second clause of the paragraph seems to cover two classes of the substance when it is rolled or when in sheets, viz. that which is unpolished, and that which is not made up into articles, whether polished or not. So, these sheets, although polished, are not made up into articles, and seem to be dutiable at 60 cents per pound, and not as articles under the third clause of either kind, at 65 cents per pound and 25 per cent. ad valorem. Decision reversed.

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UNITED STATES v. HAHN.

(Circuit Court, S. D. New York. January 24, 1899.)

No. 2,716.

1. CUSTOMS DUTIES—CLASSIFICATION—AGATES.

Mineralogical specimens of agates in rectangular pieces, faced and polished, were free, under Rev. St. § 2503, as "agates, unmanufactured," and were not dutiable under section 2513, or, either directly or by assimilation, under the provision in section 2502 for "precious stones of all kinds."

2. SAME.

Small articles, such as cups, button hooks, penholder handles, paper weights, etc., manufactured from agate or onyx, were dutiable as non-enumerated manufactured articles, under Rev. St. § 2513, and not, either directly or by assimilation, as "precious stones of all kinds," under section 2502.<sup>1</sup>

3. SAME—SIMILITUDES.

Similitude is a fact, and when found by the board of general appraisers upon competent evidence, on a proper issue, the finding should not be disturbed. But whether there was any occasion in the particular instance for resorting to the similitude section is a question of law, which the court may determine.

This was an application by the United States for a review of a decision of the board of general appraisers in respect to the classification for duty of certain articles imported by Rudolph C. Hahn.

James T. Van Rensselaer, Asst. U. S. Atty.  
Everit Brown, for importer.

<sup>1</sup> As to interpretation of commercial and trade terms, see note to *Dennison Mfg. Co. v. U. S.*, 18 C. C. A. 545.

WHEELER, District Judge. By section 2502 of the Revised Statutes, as amended by the tariff act of 1883, "precious stones of all kinds" were made dutiable at 10 per cent. ad valorem (22 Stat. 514); by section 2503, "agates, unmanufactured," were made free (Id. 514); by section 2513, all articles manufactured in whole or in part, but not therein enumerated or provided for, were made dutiable at 20 per cent. (Id. 523); and by section 2499 every nonenumerated article which bore "a similitude either in material, quality, texture, or use to which it" might be applied, was made dutiable at the same rate as the enumerated article which it should most resemble, and nonenumerated articles, similar in all these respects to articles on the free list, and in the manufacture of which no dutiable materials should be used, were made free (Id. 491). The articles in question are mineralogical specimens of agate, in rectangular pieces, faced and polished; and cups, button hooks, penholder handles, paper weights, and other small, completed articles, manufactured from agate or onyx. They were all assessed at 20 per cent., as nonenumerated manufactured articles. The importer protested that they were free, under the paragraph making agates unmanufactured free, and that, in any event, none of it was dutiable at more than 10 per cent., under section 2513, or, either directly or by assimilation, under the paragraph relating to precious stones. The board sustained the protest, as to the specimens wholly; and so as to reduce the duty on the other articles to 10 per cent., as in similitude to agates.

The protests seem to well enough raise the question of exemption as agates, and of reduction of rate by similitude to precious stones, but not by similitude to agates or anything on the free list. The mere specimens of agate were still agates, however much they had been shaped or polished to show their qualities or to improve their appearance, and would seem to have been still free as agates. The other articles were manufactured articles of their various kinds. The expression "agates unmanufactured" implied that there would or might be agates manufactured, which were left to some other part of the act. Nonenumerated manufactures were not limited at all, as to material of which they might be made, and the provision for them would as well include those of agate as anything; and these other articles well appear to have been of agate manufactured, not provided for or enumerated anywhere as such, and so were manufactured articles not elsewhere provided for, within section 2513. *Erhardt v. Hahn*, 5 C. C. A. 99, 55 Fed. 273. As well argued for the importer, similitude is a fact, and when found by the board upon warrantable evidence, on a proper issue, the finding should stand. But whether there was any occasion for resorting to the similitude section is a question of law, and, when none existed, the finding was immaterial. Decision affirmed as to specimens, and reversed as to residue.

## SMITH et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 27, 1899.)

No. 2,617.

## 1. CUSTOMS DUTIES—CLASSIFICATION.

Glass jars containing preserves, and holding one pint or less, are not "vials," in the meaning of paragraph 88 of the act of 1894, but were dutiable as part of the market value of the merchandise contained in them, as provided in section 19 of the customs administrative act of 1890.<sup>1</sup>

## 2. SAME—SUFFICIENCY OF PROTEST.

The collector having classified certain glass jars containing preserves as "vials," under paragraph 88 of the act of 1894, the importers protested that under said paragraph there was no duty on any filled bottles, or on "bottles exceeding  $\frac{3}{4}$  of a cent per pound. Our bottles are not vials. They are not merchandise, but the envelopes of merchandise, and pay no separate duty." *Held*, that this was a sufficient protest.

This was an application by James P. Smith & Co. for the review of a decision of the board of general appraisers affirming the action of the collector in respect to the classification for duty of certain imported merchandise.

Edward Hartley, for appellant.

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

WHEELER, District Judge. Paragraph 88 of the act of 1894, after providing for a duty on bottles, demijohns, and carboys, provided for one on "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; and vials holding not more than one pint and not less than one quarter of a pint, one and one-eighth cents per pound"; and section 19 of the customs administrative act of 1890 provided for the assessment of duties on the market value of the merchandise in the condition in which it is bought and sold for exportation to the United States, "including the value of all coverings." The articles in question are glass jars containing preserves, holding one pint or less, and were assessed at  $1\frac{1}{2}$  cents per pound, under the last clause quoted from paragraph 88. The importers protested that, under paragraph 88, there was no duty on any filled bottles, etc., or on "bottles exceeding  $\frac{3}{4}$  of a cent per pound. Our bottles are not vials. They are not merchandise, but the envelopes of merchandise, and pay no separate duty." The collector stated that the importation did not include any glass bottles; that the jars were "properly dutiable as the usual coverings of the merchandise; but as the importers have failed to make a proper claim, this office affirms the assessment." The board found the facts stated to be true, and overruled the protest. The jars, not being bottles, would seem to have been dutiable with the preserves, as coverings. *U. S. v. Dickson*, 19 C. C. A. 428, 73 Fed. 195. The principal question seems to be as to the protest. The statement

<sup>1</sup> For interpretation of commercial and trade terms, see note to *Dennison Mfg. Co. v. U. S.*, 18 C. C. A. 545.