

in it that the "bottles" were not vials was a plain objection to the assessment at the rate of vials; and the statement that they were "the envelopes of merchandise, and pay no separate duty," would seem to point out that they were claimed to be coverings, to be appraised with their contents, to make market value, although the statute was not named, nor the word "covering," of the statute, used. One definition of "envelope" is "a covering," and "envelope" in the protest meant the same as "covering" would. The collector appears to have understood well enough what the protest meant, but to have thought this understanding should not be followed because it had not been well enough expressed. The best form of expression is not required, and this seems to be sufficient. Decision reversed.

GIGLIO v. UNITED STATES.

(Circuit Court, S. D. New York. January 23, 1899.)

No. 2,594.

CUSTOMS DUTIES—OLIVE OIL—ASSESSMENT.

Olive oil imported in tins holding from about a quart to five gallons, the quantity of which when sold here is reckoned according to the quarts or gallons of the various sizes, without regard to exact measurement, and which is returned by the gauger according to the quantity of the various sizes, though this measure exceeds the true measure by about $\frac{1}{32}$, as testified by the gauger, and about $\frac{1}{12}$, as claimed by the importer, is properly assessed on the quantity so returned, in the absence of more exact testimony to furnish a guide for reliquidation.

This was an application by S. Giglio for a review of a decision of the board of general appraisers in respect to the amount of duties payable on certain imported olive oil.

Stephen C. Clarke, for appellant.

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

WHEELER, District Judge. This protest relates to a quantity of olive oil fit for salad purposes imported from Genoa, dutiable at 35 cents per gallon under paragraph 32 of the act of 1894. It is bought by the kilo there, and comes in tins in sizes of about a quart and from one to five gallons; and, when sold in the tins here, the quantity is reckoned according to the quarts or gallons of the sizes, without regard to exact measurement. The duties were assessed upon the quantity returned by the gauger, which corresponded with the sizes. The importer says this measure exceeds the true measure by about $\frac{1}{12}$, and the gauger by about $\frac{1}{32}$, part of the whole, generally, but in some cases not any; and that is as near right as is practicable. Quantity, and accuracy about it, are facts, and no evidence other than that before the board has been taken. The quantity returned would seem to exceed the exact quantity in standard gallons to some extent, but to what extent is not made to so appear as to furnish any guide for reliquidation. The finding cannot, with propriety, be disturbed. Decision affirmed.

FISHER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 19, 1899.)

No. 2587.

CUSTOMS DUTIES—CLASSIFICATION—ISTRIAN MARBLE.

Istrian stone or marble, quarried in Istria, some 10 miles from Trieste, was dutiable under paragraph 103 of the act of 1894, under the description "marble of all kinds," and not under paragraph 105½, as "limestone," etc.

This was an application by Fisher & Co. for the review of a decision of the board of general appraisers in respect to the classification for duty of certain marble or limestone imported by them. The facts are shown in the opinion of the board of general appraisers, which was as follows:

The merchandise is invoiced as "Istrian stone," and was assessed for duty at 50 cents per cubic foot, under paragraph 103, Tariff Act 1894, which reads as follows: "103. Marble of all kinds in block, rough or squared only, fifty cents per cubic foot." There are two claims made in the protest, viz. that the article in question is dutiable (1) under paragraph 105½ of said act, as "limestone, and other building or monumental stone, except marble, unmanufactured, or undressed, not specially provided for" in said act, 7 cents per cubic foot; or (2) under paragraph 106, which provides for the same varieties of stone, as described in said paragraph 105½, "hewn, dressed or polished," at 30 per cent. ad valorem. The first claim only was insisted on at the hearing, the second being abandoned by the importers' counsel.

The local appraiser, in his report to the collector, states that the article in question is commercially known as "Istrian marble." A member of the importing firm, who was examined at the hearing, stated that the merchandise was in the form of rough blocks, not hewn or dressed in any manner; that it was known as "Istrian stone," and was quarried in Istria, about ten or twelve miles from Trieste, on the opposite side of the Adriatic from Venice. He further stated that the article is unquestionably a species of limestone; that it is susceptible of a very good polish, but is not known abroad as marble, where it is found, but as "pierre d'Istria," or "Istrian stone." To the question, "Have you been in Venice, and seen it there?" he replied, "Yes, sir; the streets are paved with it; the Rialto Bridge is built with it, notably, and nearly all the ancient buildings in Venice were built of it." Question: "Is the board to understand that you pronounce on the question as to whether this is marble, in fact, or not?" Answer: "No, sir; I cannot answer. I question if any one can answer the question." The following may be regarded as approved definitions of the words "marble" and "limestone," as ordinarily understood. Century Dictionary: "Limestone is more or less crystalline or crystalline granular in condition. Any limestone, however, even if very compact or showing only traces of a crystalline structure, may be called 'marble' if it is capable of taking a polish, or if it is suitable or desirable for ornamental and decorative purposes." Again: "Marble is the name given to the more crystalline limestones, and especially to such as are solid and handsome enough to be used for ornamental purposes or in costly buildings." Worcester's Dictionary defines "marble" as "a limestone or carbonate of lime of many varieties, having a granular and crystalline texture, and capable of a high polish." The New American Cyclopaedia (volume 11, pp. 171, 172) gives the following definition: "Marble. A rock used as an ornamental building stone, for interior decorations and for sculpture. Generally, any limestone that can be obtained in large sound blocks, and is susceptible of a good polish, is marble, and the only marble that is not limestone is the serpentine and the verd antique (the latter a mixture of serpentine and limestone)." The last authority, under the title of "Venice," also states, in the nature of a well-known historical fact, that the famous Rialto Bridge at