The Papers of Charles Hamlin (mss24661)

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PAPERS
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PRINTED MATTER --
"REPORT OF THE FAIRCHILD
COMMISSION ON HAT
MATERIAL REFUNDS," JAN. 1894

REPORT OF
FAIRCHILD COMMISSION
ON
HAT MATERIAL REFUNDS.

Acc. 16, 154

5 millions refunded on Hat trimmings up to Jan. 1894. P. 101 Probable recoveries 16 millions. P. 13. Total claims 55 millions P. 12. 16.

I N D E X.

Letter atty G. Miller 44

ROOM OF THE SPECIAL COMMISSION APPOINTED TO INVESTIGATE THE ADMINISTRATION OF THE CUSTOMS LAWS IN THE PORT AND DISTRICT OF NEW YORK.

BARGE OFFICE, New York, December 9, 1893.

Hon. John G. Carlisle,

Secretary of the Treasury.

Sir:-

REFUNDS.

By Department letter 3104-E, dated July 3, 1893, we were instructed to investigate and report as to the methods governing refunds at the New York Custom House of duties paid in excess, and especially to include in such examination and report all cases settled or pending which belong to the class of refunds referred to in Department's letter of the 14th of January, 1893, addressed to the Collector of Customs at New York.

The object of these instructions was, chiefly, to direct an inquiry into those claims for refunds known generally as "the hat trimming cases". Before stating the results of our investigation of these cases, a general statement in respect to the procedure in claims for refunds is advisable.

Under the procedure prevailing before the Administrative Act of June 10, 1890, the importer filed his protest against the Collector's classification after entry and as long before liquidation as he pleased, but not later than ten days after the final liquidation, and within thirty days after the ascertainment and liquidation of the duties he appealed to the Secretary of the Treasury. The decision of the Secretary on such appeals was final and conclusive

unless suit was brought within ninety days after the decision of the Secretary or within ninety days after the payment of duties paid after the decision of the Secretary. If the Secretary of the Treasury delayed more than ninety days in making his decision on such appeals, suit might then be brought before the decision was made. Until about 1887 the method of receiving and docketing protests in the Collector's office in this port was very loose. Protests were dropped in a box, a clerk gathered them together, and when he had leisure, wrote on them the date of filing. Of course this method was very inaccurate. For several years, however, the protests have been carefully stamped with the date of receipt as soon as filed, and we have no reason to doubt that the records now kept of protests are in satisfactory condition and that the correct date of receipt is stamped upon every one.

These protests when received by the Collector were sent to the local Appraiser for examination and report in respect to the description of the merchandise and the classification, and when returned to the Collector from the local appariser, were, if an appeal had been taken, forwarded to the Department. Sometimes the local appraiser in returning these protests to the Collector, attached samples of the goods, but this was the exception, not the rule. If such samples were received by the Collector from the Local Appraiser they were sent to the Department with the protest and were not returned to the Collector, except where the sample was valuable and had been obtained from the importer. In such cases the sample was returned to the Collector to be re-delivered to the owner. Within ninety days after the appeal had been taken, if the Secretary had

not decided the appeal, or within ninety days after his decision, if he had, the importer brought an action, commonly called a common law action, for damages against the Collector personally. The damages claimed were the amount of duties which it was alleged the Collector had taken in excess of the lawful rate. These actions, termed in the statute "suits" were quite commonly brought in the State courts and were always moved by the U. S. Attorney into the Circuit Court of the United States for this District.

After the suit had been begun the Attorney filed a bill of particulars in which he set out the various items required by statute, viz: a description of the goods, the place from which imported, the name of the vessel from which they were landed, the date of the invoice, the date of the entry, the amount of duty illegally exacted the date of the payment of duties, the date of the filing of the protest, the date of appeal to the Secretary of the Treasury, and the date of the Secretary's decision, if any had been made. It has been always quite common in the complaints to demand damages in a ficticious amount, but the bills of particulars were expected to be a more accurate statement of the claim.

When one of these suits had been brought to trial and the plaintiff had recovered a judgment, if the Department adopted the decision as a rule for its action, instructions were sent to the Collector and the cases in question were then taken up by a bureau now in the Law Division, formerly in the Liquidating Division, known as the Bureau of certified Statements. In this bureau the invoices and entries covered by the suits which were to be settled, were gathered together, distributed by suit numbers and the invoices were

sent to the local appraiser to be reclassified by him in accordance with the decision of the court. On such reclassification this bureau bureau made up the certified statement which showed the amount to be paid, both principal and interest.

The bureau of certified statements both in the Collector's office and in the Naval office, deal only with suits. It has not been the custom to pay on certified statements claims covered by protests that have not been put in suit./ This latter class of claims was, of course, large in most of the important classes of refunds that have arisen from time to time. When the Department adopted a decision of the court on a particular issue as a rule of action, all those protests not yet in suit that were in the liquidating division upon which the Depaftment decided to pay refunds, were considered in that division. The practice was to send the invoices to the local Appraiser to be reclassified in accordance with the rule adopted by the Department, and on such reclassification these invoices were reliquidated in the liquidating division and the refund paid in the ordinary course.

The result of this system is that while there is an accurate classified record of all refunds paid on certified statements, there is no record at all classified by description of merchandise of the amounts of refunds paid on protests which were not in suit at the time of reclassification and reliquidation. There is only a record of the total sum paid. It is, therefore, impracticable to discover at this time what amount of refunds has actually been paid in the hat trimming cases, or in any other class of merchandise upon which large refunds were made arising under the tariff of 1883.

Under the present system, the notice of dissatisfaction with the Collector's classification is still commonly called a protest, and we shall use that term in this report. On receipt, it is immediately stamped with the date of receipt. Under the statute, the Collector's duty is to for-ward it with the papers in the case to the Board of General Appraisers. The Collector sends the protested entries first to the local Appraiser for his report, except where the protest belongs to a large class which have been under consideration and upon which the liquidating division can act without any further information. The local appraiser returns the invoice with the protest to the Collector with such report as the case may require in respect to the description of the goods and the proper classification. As under the previous procedure, it is only in exceptional cases that the local appraiser returns a sample with the protest. From the liquidating division of the Collector's office the papers are then forwarded to the Board of General Appraisers with such statement as the case may require.

The procedure by which these questions are brought before the courts under the Act of 1890, is radically different from any previous system. When the Board of General Appraisers have rendered a decision and within thirty days thereafter the importer who wishes to test the question files in the Circuit Court a petition setting forth the assignments or error of which he complains in the decision The court then makes an order calling upon the general Appraisers to return the record and testimony with a certified statement of their findings and decision. When the return has been filed, the statute permits either party to obtain an order to take additional

testimony. When the testimony has been completed the cause is heard on the record and the testimony and exhibits before a Circuit Judge sitting without a jury. Under the old system the action against the Collector was tried by a jury.

The Board of General Appraisers, where the protests on a particular issue are numerous, have adopted a practice if the Collector or importer petitions their first decision into the Circuit Court of suspending decision on all similar issues until the case has been decided. This plan is, not of rigid application, but the Board carries it out as far as is practicable. If the circuit court decides in favor of the importer and that ~~the~~ decision or some final decision of an appellate court adverse to the Collector's classification is adopted by the Department as a rule of action, the Board of General Appraisers then calls up all the suspended cases and decides them in accordance with the rule formulated by the Department.

At this stage of the procedure there is a division of duty with respect to reliquidating invoices between the Bureau of Certified Statements and the Liquidating Division, much similar to that which prevailed prior to the Act of 1890. All cases in which petitions have been filed are treated as actions were under the former procedure. If the Department's instructions are that those cases are to be settled, they are settled on certified statements made up by the Bureau of Certified Statements, as formerly. All the other similar cases decided by the Board of General Appraisers in accordance with the decision of the Court adopted by the Department, are taken up in the Liquidating Division where they are reliquidated and the refunds paid in the usual course.

In the Auditor's Division of the Collector's office a record

s kept of the total amount of these refunds paid on reliquidations ade in the Liquidating Division. This record does not separate he different articles or classes of merchandise upon which the efunds are paid. In respect to the cases in which petitions have been filed and which are paid upon certified statements, there is, of course, the same accurate record that there was in respect to "suit cases" , so-called, under the former procedure.

The total amount of refunds paid through the liquidating division and of which no classified record is kept is very great and constantly increasing. We will designate this class of refunds as refunds made upon decisions of the Board of General Appraisers, meaning thereby the refunds paid through the liquidating division without certified statement. The following table will show the course of this class of refunds:

Statement of Total Amounts of Refunds paid by the Collector at the Port of New York.

	On Board of U. S. General Appraisers' decisions.	On S.S. 4972.
From Oct.1/90 to June 30/91.	$31,269.32	$447,966.32
From July 1/91 to June 30/92.	70,890.95	134,330.40
From July 1/92 to June 30/93.	355,732.11	80,626.81
From July 1/93 to October 31/93.	549,155.07	67,728.96

This table shows that during the first year after the establishment of the Board of General Appraisers the refunds made in this way upon their decisions amounted to only $31,269.32, while

the refunds made in the liquidating division upon invoices unliquidated or already liquidated and covered by protest and appeal amounted to nearly $448,000. We have already described how these refunds were made upon reliquidations made in the liquidating division in respect to protested entries not covered by suits. But between July 1st and October31st, 1893, the total amount of refunds made upon reliquidations in the liquidating division without certified statements, upon decisions of the Board of General Appraisers, is $549,155.07; while the refunds upon reliquidations made in the liquidading division without certified statements and without a decision of the General Appraisers amounted to only $67,728.96. This shows that the reliquidation without certified statements are now to a great extent made upon actual decisions of the General Appraisers in specific cases. The continuous increase of the amount of this class of refunds based upon reliquidations made upon decisions of the General Appraisers shows also that the liquidating division keeps well up with its work in forwarding the protested entries to the Board of General Appraisers for action.

Mr. Esterbrook, the head of the Liquidating Division, reports that there are substantially no reliquidations of invoices for the purpose of refunds on hat trimmings or charges or tobacco now in his division; that all the protests on entries discovering these descriptions of merchandise are in suit and such refunds in future will nearly all be on certified statements.

The following schedule shows the total amount of certified statements transmitted to the Department between January and November, 1893:

"Memorandum of CERTIFIED STATEMENTS transmitted to the Treasury Department by the Collector at the Port of New York, from January 1, to November 30, 1893, inclusive.

Number of statements, 860.

Duties to be refunded, covered by said statements,...	$393,272.27 #
Interest.....	91,576.07
Costs.....	4,731.30
Total.....	$489,599.64

Charges and coverings included $80,145.65

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so that the refunds paid on reliquidations made in the liquidating division, without certified statements, and of which no classified record is kept, amount in four months to over $600,000.oo, while the refunds upon certified statements of which a completely classified record is kept, amount in eleven months to but $489,599.oo. Under the system of suspending decisions until the test case has been settled by the courts, it is likely that much the greater part of future refunds will be paid through the Liquidating Division acting upon specific decisions made by the General Appraisers. These comparative statements show that the amount of refunds paid on such reliquidations already greatly exceeds the amount paid on certified statements, and this disproportion must increase, because the number of petitioned cases, which alone are handled by the bureaus of Certified Statements, are comparatively few in number.

We suggest, therefore, that in order to render it praticable for the Department to learn the amount of refunds paid on any parti-

particular line of merchandise, or under any particular decision, the Collector be instructed to have a properly classified record kept of the refunds paid without certified statements.

HAT TRIMMINGS CASES.

We do not apprehend that the Department desires from us any statement of the history of these cases. The correspondence in respect to them is very voluminous and the reports made upon them by special agents and other officers of the Department, very numerous. In the actions in the Supreme Court decided in the spring of this year, the Solicitor General filed with his brief a pamphlet entitled "History of the Hat Trimmings controversy", which contains in a compendious form all the principal documents and is preceded by a brief and concise narrative explaining the history of the controversy.

We have directed our inquiries to discovering as far as practicable, the total amount involved in these claims as contained in the complaints and bills of particulars filed in the actions, and to estimating as far as practicable how much of this gross sum is claimed on articles which have up to this time, been determined by verdicts, to be hat trimmings. We have also made a special inquiry into four certain actions in which the plaintiffs are Fleitman & Co., a firm of New York importers, in which actions such proceedings were had between January, 1892, and the spring of 1893, that certified statements were prepared and refunds amounting in principal and interest to over $196,000 were apparently about to be paid, but payment of which has been suspended.

THE SUM CLAIMED BY THE PLAINTIFFS ON HAT TRIMMINGS.

In this inquiry we were greatly assisted by Mr. Nathaniel George, Head of the Bureau of Certified Statements in the Naval

office in this port. We found that Mr. George had made an estimate of the probable amount involved in these suits down to December, 1890. His basis of estimate was as follows:

He found that the hat trimmings suits were of two descriptions; those in which the claims for excess of duties collected were made upon entries involving hat trimmings alone, and another class, mixed ~~suits~~ suits, in which claims for excess of duties were made in respect to other merchandise as well as hat trimmings. In the class of mixed suits, however, Mr. George found that the claims for alleged excess of duties collected on merchandise other than hat trimmings were not a very considerable proportion of the claims in those suits. At that time, December, 1890, a considerable amount of refunds had been paid, distributed in greater or less amounts, among a large number of the plaintiffs. Mr. George divided the suits according to the attorneys of ~~the~~ record. He took the gross amount of the claims in the hat material suits, controlled by the same attorney, and the gross amount of that attorneys mixed suits, and, adding them together, arrived at the total sum demanded in suits brought by such attorney, including claims on hat trimmings. He then computed the percentage which the refunds paid to that attorney's client bore to the total claims in the hat trimmings suits in which these refunds had been paid. This percentage he then computed upon the total claims in the hat trimmings suits brought by the same attorney still unsettled; that is to say, in which no refunds had been paid up to December, 1890, when the estimate was prepared. We annex a schedule Exhibit 1, showing this computation.

The first firm of attorneys named in this statement is Tremaine & Tyler. The schedule shows that they control 554 suits involving

claims on hat trimmings only, to the gross amount of $26,489,647.90 and 116 mixed actions, in which the total claims amount to $10,579,216.73, making total claims in their suits of $37,068,864.63. Mr. George found that the refunds collected by these attorney's amounted to .298 of the total claims in the suits in which the refunds had been paid. This percentage would give them upon their total unsettled claims an estimated refund of $11,046,521.60. Mr. George continued this schedule down to July 31, 1893. The summary shows that there were pending 1687 suits; total claims in bills of particulars, $55,427,564.35; total estimated refunds, $18,073,459.97. Where an attorney controlling some of the pending suits had not collected any refunds, Mr. George estimated the probable refunds in such cases by the average percentage of all the payments made to the several attorneys or firms of attorneys who had collected refunds.

The percentages obtained in this schedule had been calculated on a comparison of the payments of principal only, exclusive of interest and costs. At our request Mr. George prepared a new schedule brought down to date, which we annex as Schedule Exhibit 2. This schedule in the upper half gives the number of certified statements prepared in the hat trimmings cases for each attorney or firm of attorneys of record, the total amount claimed in those suits, the principal of the refunds paid, the amount of interest and costs; then the total refund, then the percentage, which this total refund bears to the total claims in the suits in which certified statements were made up.

The lower half of the schedule gives the gross claims in suits brought to recover excessive duties claimed on hat materials only,

the gross claims in mixed suits, the total gross claims, then the percentage arrived at as shown in the upper half of the schedule, then the estimated refund obtained by applying this percentage to the total gross amount of the claims. From this schedule it appears that the amount of certified statements prepared to date on hat trimmings is $2,828,176.74. This amount is arithmetically accurate, both in respect to the sum and in respect to the class of materials upon which refunds were paid. Of this sum $196,435.82 being the total refunds with interest and costs in the four Fleitmann suits already mentioned, has not yet been paid. The lower half of the schedule shows the total estimated refund to amount to $19,405,667.64. The increase over the amount in the computation in schedule No. 1, is due to the increased percentages obtained by including the interest and costs, as well as the principal of the refund. Deducting from this gross estimated refund the amount of the certified statement, we obtain a net probable refund of $16,577,490.90. This deduction is made because in many of the suits in which refunds were paid there was only a partial discontinuance, and the suits were continued as to the articles upon which refunds had not been allowed. Therefore a large part of the total claims in the suits in which refunds were paid, is included in the total of claims pending.

In estimating the probable refund on the suits of attorneys in whose cases no refunds had been paid, an average percentage, computed as already described, was taken. In the first schedule, in which interest and costs were omitted, this average percentage

was .319, and in the second schedule, which included interest and costs paid, the average was .345.

In estimating the probable amount of refunds for which the Government may be liable in these hat trimming cases, interest is a very important consideration. Interest runs from six per cent from the date of payment of duties on all claims protested prior to Feb. 1, 1888. In cases in which protest was filed after that date, by a special act of congress the interest is three per cent. As the interest runs until the claim is paid, a corresponding addition must be made to all estimates of liability.

Now these are undoubtedly the most accurate computations that have yet been made of the probable refunds to be paid in these cases And yet they involve much uncertainty. In both schedules the amount of refunds paid includes only those paid on certified statements and excludes all the refunds paid on protests not in suit at the time of reclassification and reliquidation.

The practice of partial discontinuance, to which we have referred, creates another uncertainty. The gross amount of claims in suits pending, as stated in these schedules, by reason of that practice includes a considerable amount of the gross sum included in the suits in which refunds were paid and from which the percentage of claims is calculated. It would have been a work of great difficulty to have extracted from the suits in which refunds were paid those items only upon which the payments were made and to have estimated the percentage upon the total amount of such items; but by estimating the percentage upon the total claims in those suits, the

resulting rate is obviously too low. This practice of partial discontinuance became a gross abuse, and later instructions in respect to hat trimmings refunds provided for a total discontinuance on payment of any refunds.

The most serious uncertainty of all however, in these computations, arises from the practice of repeating claims in subsequent suits. Of course the gross estimated amount of probable refund in these schedules is worth a good deal as an intelligent estimate, because the same uncertainties and duplications existed in the suits in which the refunds were paid as exist in those suits in which no refunds have been yet paid. But we found that it was a common practice to duplicate claims in half a dozen continuous suits. For example, quite commonly on entries for warehouse the importers duly protested against the Collector's classification and took their appeal to the Secretary and afterwards withdrew the goods entered on several withdrawal entries at different times. It has been quite common to commence suits after the payment of duties on each withdrawal, and in every suit to include the prior payments for which other suits had previously been commenced. There are cases where there have been four or five withdrawal entries of goods originally entered for warehouse, a suit begun on the payment of duties on each withdrawal and the claim in the first suit duplicated in the second, and the claims in the first, second and third suits all repeated in the fourth.

Of course no claim can be collected more than once lawfully. This system of duplication increases the total amounts claimed so enormously and may vary so much, that any computation arrived at in

this method may be very far astray. At the same time, these results are not mere guess work. They are based upon some actual transactions and have a reasonable amount of probability in their results.

The schedules show with certainty that there are still pending 1690 suits in which claims for excess of duties paid on hat trimmings are made; that there are 1084 suits claiming excess of duties on hat trimmings only to the amount of $38,118,724.10, and 606 suits pending in which claims for excess of duties on hat trimmings and other merchandise are made to the amount of $17,700,156.85; that these mixed suits involve chiefly claims on hat trimmings and that the gross amount of pending claims is $55,818,880.95.

We found that there was nobody in the Customs Service here who had any reasonable idea of the various classes of claims in these hat trimmings suits in respect to the different materials included in them. Nobody had the slightest idea how many millions of the claims were on ribbons, how many million on piece goods, and of the latter class of million how many were on velvets, how many on silks, how many on cotton back satins, &c. The invoices and entry papers were not assorted by suit numbers, but were distributed through the files of the Custom House and merely to get at the papers and assort them by the suits would be a work of immense labor, consuming a long period of time. We deemed it desirable to put in operation some plan of work by which this immense liability of the Government could be more accurately estimated. It seemed desirable if practicable, to find out to what extent this duplication of claims had prevailed and to reduce the claims to a proper basis. It seemed advisable ~~als~~ also to have the protests and the appeals examined for the purpose

of ascertaining if any of the protests were late, or if the appeal was late, or of there was any other technical objection to the prosecution of these suits or any part the claims involved in them.

After obtaining this information in respect to any suit, the next desirable step would be to have the claims analyzed according to the class of merchandise upon which they were made, and if, in making this analysis of the claims according to the description of the merchandise, it should be practicable to indicate what proportion of them should be classified as hat trimmings under the decision of the courts as they stand at present, that would be a most advantageous thing to do.

We therefore prepared certain schedules, of which we enclose copies. The first form, being Exhibit 3, is directed to disclosing all the information which is obtained from the face of the papers according to the headings of the columns on the schedule. The first column gives the number of the entry, then follows the name of the vessel, then in separate columns the dates of entry, payment of duties, of liquidation, and of the invoice. The next two columns give the amount of duties paid covered by the protest and the liquidated duties as ascertained on the final liquidation. Then follow the date of the protest, number of the protest, date of appeal, number of appeal, the date of the decision of the appeal, if any decision has been made. A comparison of the date of protest with the date of liquidation indicates whether or not the protest was was filed in time; and so with the date of appeal, when compared with the date of protest, and with the date of commencement of suit compared with the date of decision. The following columns show,

first, the amount of the duties claimed alleged to be excessive. This column is simply the total possible amount of claim. It is the difference between the 50% duty assessed by the Collector, and the duty of 20% on hat trimmings which the plaintiffs claim was the lawful rate.

The next column, however, is of more importance. It shows the amounts actually claimed in the bills of particulars.The totals of the figures in this column will give the total amount of claims as they are shown in the bills of particulars. The succeeding columns show whether or not any refund has been paid in any suit and the amount of it, and the class of merchandise on which it was paid.

The last two columns are directed to disclosing the amount of duplicated claims, ~~and the total amount of the claims~~, so that the total amount of the claims can be reduced to a proper basis. The last column gives the number of the prior suit in which the entry under consideration is duplicated, and the column immediately preceding it gives the amount of the duplication. If, therefore, the figures in the column headed "Amount claimed in the Bills of Particulars" be added up and the total of the figures in the columns headed "Amount claimed in any previous suit or suits", be subtracted therefrom, we will have a fairly accurate estimate of the total amount of claims.

To obtain the information indicated by this schedule was the first step in carrying out the plan that we proposed. The next step is shown by the form attached hereto as schedule Exhibit 4.This schedule gives the entry number, the name of the vessel, the date of entry, and then a series of columns divided into the different

classes of merchandise upon which these hat trimmings claims are made. The headings of the columns sufficiently indicate the character of the information written upon the schedule. If the invoices are accurately analyzed, these columns will show the total value of the merchandise protested, the amount of ribbons included in each entry which, under the present decisions of the court, should be considered hat trimmings, and the next column will indicate the value of ribbons that in the judgment of experts should not be treated as hat trimmings. And so on, through laces, crepe, velvets and plushes, plain velvets, fancy velvets, plushes, cotton back satins, chinas and marcellines and various other classes of merchandise. In the last three columns there is a summary which shows the total value of the merchandise in the entry which, in the judgment of the expert preparing the schedule, should not be classified as hat trimmings and the amount which should be so classified. The last column headed "Excess of duty Claimed" will be simply 30% on the value stated in the preceding column as the value of the merchandise protested which should have been classified as hat trimmings.

In respect to the first of these schedules Exhibit 1, the information is certain. It is simply an analysis of the actual papers in the suit and can easily be made under the supervision of a competent officer like Mr. George. It will be, of course, if carried throughout the whole number of hat trimmings suits, a work of immense labor. The other schedule rests for its value on expert judgment. The basis upon which the several classifications in the second schedule are made is very important.

Having prepared these schedules we proceeded to induce the

Custom House Officials in this Port to go to work on the cases. We met with great opposition in the Collector's office. Mr. Couch contended that before any analysis could be made of these suits the Department must formulate a rule of payment. He contended vigorously that the only way to do was for the Department to state plainly on what classes of merchandise it would pay and that then the invoices could be reliquidated accordingly, or better still, that the Department and the plaintiffs should come to an agreement as to the articles of merchandise on which payments should be made, and that then the invoices should be reliquidated on that basis. Our position was that we understood that the Department could not make any proposition of settlement or entertain any proposition until it knew something about the total amount of all the claims and the amount of the several claims upon the principal articles of merchandise alleged to have been classified erroneously; any proposition of settlement would be likely to be made upon a basis of including certain articles of merchandise as hat trimmings and excluding certain other articles; if the department was called upon to entertain a proposition to settle upon ribbons of a certain kind, or upon satins of a certain kind, the importers agreeing to exclude velvets and plushes, or chinas and marcellines, or vice versa; it could not tell what the result of such an agreement would be, because nobody knew, except perhaps the importers and their attorneys, what the value of the goods to be included in the settlement was, compared with the value of the goods to be excluded. Obviously in the confused condition in which the cases were, the acceptance of any offer by the Department would be a leap in the dark, and our

plan was to attempt to obtain the information necessary to enable the Department to decide understandingly whether it would settle or litigate in any case.

The Department, at our instance, instructed Mr. George of the Naval office to prepare a list of the suits pending in which four of the principal claimants were plaintiffs, viz: Fleitman & Co., Dreyfus, Kohn & Co., W. H. Graef & Co., W. H. Oppenheim & Sons. These importers are plaintiffs in 173 suits involving claims $7, 870,916.70. We selected them because their invoices will cover all the principal articles of merchandise which are included in the controversy. Mr. George then proceeded to make up the schedules in the form of schedule No. 1, in the Fleitman cases, 47 in all, including the four suits on which certified statements were sent to the Department and on which payment was suspended. It should be clearly understood that it is only schedule No. 1 that is prepared in the Naval office that is the schedule giving the information obtained on the face of the papers in respect to the date of entry, the amounts claimed, the date of liquidation and protest, and the duplication of claims.

The accompanying schedules for each suit, analyzing the merchandise and classifying it as hat trimmings or otherwise, have been prepared under our supervision by special agent Hanlon and a force of clerks. At the date of this report, Mr. George of the Naval Office, has completed his schedules, in all the Fleitman cases and has almost completed similar schedules in the cases of Dreyfus, Kohn & CO. Mr. Hanlon has completed his analysis and classification in

the four special suits in which Fleitman & Co. are plaintiffs, viz: Nos. 11,402, 12,184, 12,545, and 16,289. These are the four suits upon which the certified statements were prepared and the payment of the refunds suspended in the spring of this year. We instructed Mr. Hanlon to obtain accurate samples of the various classes of merchandise involved in these suits, and to prepare his classification in such a way that we could report to the Department a sample of each class of goods described on the schedule; that is to say, that there should be samples of the ribbons which Mr. Hanlon classified as hat trimmings and of those ribbons which he classified "Not hat trimmings"; and so of velvets and satins and other piece goods. Mr. Hanlon also produced before us several witnesses professing to be experts in the business whose testimony we took upon the samples presented.

We do not pretend to have investigated or to be able to express an opinion upon the accuracy of special agent Hanlon's classification of this merchandise. We could not have carried out such an inquiry to any satisafctory result without giving an enormous amount of time to the subject and without having examined a great number of witnesses. To try one of these causes before a jury where only two or three descriptions of material are involved has taken weeks. We are anxious that this should be distinctly understood. We did not enter at length into an inquiry directed to finding out whether or not the samples produced by Mr. Hanlon should properly be classified according to his judgment or otherwise. We took the testimony of the witnessess he produced and we report it herewith. It certainly supports his conslusions in all important respects. It was taken

entirely ex parte; otherwise we would have been compelled to enter into a trial of these cases, without having any judicial authority whatever. Undoubtedly the importers will declare that Mr. Hanlon's classifications of these materials is entirely unjust. They will declare further, undoubtedly, that it is not in accordance with the decisions of the Committee of General Appraisers. For example, Mr. Hanlon classifies as "Not hat trimmings" the cotton back satins, which formed so large an item in the refunds in the four Fleitman cases amounting to $105,925.72 out of a total principal of $155,851.00. (ie. 68%!)

The point is, however, that this classification is made by a Government official on behalf of the Government, and who contends that he can support in court his conclusions in respect to this merchandise. He places on this schedule the information which he would give to a District Attorney preparing one of these cases for trial. He indicates to the Government what he considers to be its liability to these importers, and he points out also the claims upon which he considers the government is not liable and upon which in his judgment in a properly tried suit the government will succeed in defeating the importers. Mr. Hanlon claims also to have classified as hat trimmings in these schedules all merchandise identical with the articles upon which importers have obtained verdicts in all the cases that have gone to the Supreme Court.

It has been suggested that a statement prepared in this manner would be of more use for purposes of defense than for "amicable adjustment". There can be no doubt that if the schedules are

prepared in the manner planned by us and begun under our supervision, the Department will have the information it needs both for purposes of defense and for purposes of amicable adjustment. The information thus obtained will be as useful and is as necessary for the one purpose as the other. Now, in respect to the time required to do this work. As we have stated, Mr. George of the Naval Office has completed his schedule of all of Fleitmann & Company's suits. There are forty-seven of these suits, two of which have no relation to hat trimmings, so that there are 45 schedules. Mr. George has almost finished his schedules of the suits in the Dreyfus, Kohn & Company cases, 34 in number. He has still to complete his work on the suits of William H. Graef & Co., 32 in number; and upon those of William Openhyn & Co., 60 in number. He states that it has required the work of four men during 43 working days to prepare the schedules in the Fleitmann cases, and that with the same force, and making allowance for unavoidable interruptions, he will not complete the schedules in the remainder of the suits of these four importers much before the 1st of April, 1894. Mr. Hanlon states that with such clerical assistance as he needs he can prepare his schedules of the different articles and their proper classification within the same period. Of course if Mr. Georege is given a larger force and provided with a fit room in which to work and in which all the clerks assigned to this work can be kept together, he can do his part of the work more quickly.

The total number of suits in which these four importers are plaintiffs is 173. We do not think the work suggested by us needs to be extended beyond their suits. 173 suits, involving claims of

nearly eight millions of dollars, probably a fifth of all the claims covering every important class of merchandise involved in the controversy, will provide a broad enough basis for satisfactory approximate calculations as to the amount involved upon each class of merchandise throughout the total number of suits pending, which is about 1690. The percentage of duplication in these suits will provide a sufficiently accurate approximation of the per-centage of duplication in the whole number of suits, and the proportion of claims upon each class of merchandise in these suits can with reasonable accuracy be accepted as the proportion which the claims upon each article in all the suits bears to the total amount of claims. We strongly urge upon the Department to continue this work throughout these 173 suits on the lines we have planned.

With the schedule of each set of suits Mr. Hanlon should be instructed to file a complete line of representative samples with some satisfactory proof or carefully prepared statement showing that the samples filed are representative of the different classes of goods described in the invoices and in respect to which claims for refunds are made. If this is done, his statement that the articles are or are not hat trimmings, which is of course a matter of expert opinion, can be tested and verified by the Department.

APPEALS STILL PENDING UNDECIDED.

There are still a large number of appeals in the hat trimmings cases pending undecided by the Department. Before the Department can be certain that any calculations in respect to these claims are final, it must dispose of these appeals. Undoubtedly a very large number of the protests upon which undecided appeals are pending

have been put in suit. Our schedules of the Fleitman cases show this; but it is very important to bring all these hat trimmings proceedings upon which additional claims may be founded, to an end. It is not at all fanciful to suggest that actions may still be brought in respect to the claims for refunds on hat trimmings. The annexed schedule, Exhibit 5, shows that between February and June, 1893, seventeen new suits, claiming refunds on hat trimmings, were begun, involving claims of several hundred thousand dollars. We enclose this schedule to show how important it is to bring this business to an end. The value of these elaborate schedules which we have prepared, and the continuance of which we propose, will be greatly impaired if month by month hundreds of thousands of dollars are to be added to the claims already pending. The same criticism is true in respect to charges, (if there are any appeals pending undecided on that subject under the old law) and, in fact, to all appeals taken under the old procedure.

These appeals should not be decided by the Department whether in suit or not. Those that are in suit may be sued upon again so long as the appeal is undecided, and any decision extending the basis upon which claims for refunds may be made will render it advantageous to the importer in many cases to discontinue and bring a new suit making a more extensive claim. The interest which forms now such an important part of those controversies runs from the date of payment, and no interest is lost by discontinuing an action that has been pending several years, and bringing a new one. It was the failure of the Department to keep up with its work in deciding ap-

appeals that caused the virtual break-down of the old system of procedure in respect to protests.

REFUNDS ON HAT TRIMMINGS BETWEEN 1888 AND DECEMBER, 1890.

The cast of Hartranft, plaintiff in error, against Langfeldt was decided in the U. S. Supreme Court in March, 1888. In April, 1888, the Department notified at the collector at Philadelphia, where the case had arisen, to proceed to apply the decision in the Langfeldt case to all similar cases. (Synopsis 8803)

During the summer of 1888 there was a conference of local appraisers in the city of New York, called by the Department for the purpose of determining a uniform classification of hat trimmings. This conference acted upon the sample books prepared at a previous conference in 1886. On August 31, 1888, the Department notified the collector at Philadelphia that it had received the report of this conference of appraisers, and instructed the collector that the classifications established at this conference should be followed. (Synopsis 9003) This letter was quickly modified by a communication from the Department to the collector of customs at New York on November 26, 1888. (Synopsis 9136) It appeared that the Collector and the Naval Officer and the Appraiser at this port had decided that merchandise consisting of silk ribbons and other manufactures of silk was dutiable at fifty per cent, under their construction of T.I. 383 and 448. This letter notified them that their decision was accepted and that they should be governed thereby in the liquidation of entries at this port. There was some reclassification of invoices between 1888 and 1890 and refunds were made to a considerable amount. In January, 1890, the case of Robertson, plaintiff in

error, against Edelhoff, was decided by the Supreme Court of the United States, 132 U. S., 614. The class of merchandise involved in this suit when it reached the Supreme Court was ribbons composed of silk and cotton, silk, chief value. The case was decided in favor of the importer, and on February 11, 1890, the Department through Assistant Secretary George C. Tichenor, notified collectors that the decision must be followed thereafter, regardless of the fact that the ribbons or merchandise was of silk, or of silk and cotton, silk, chief value. (Synopsis 9854) In this letter the Department instructed collectors to reliquidate in accordance with this decision entries embraced in other suits involving the same questions, and then instructed them in all cases first to submit the invoices to the U. S. Appraiser for his report as to the character of the merchandise. The letter instructed collectors further that this reliquidation should proceed not only in suit cases, but in the liquidation of entries as yet unliquidated, and in respect to entries already liquidated, with due protest and appeal pending, but in which no suit had yet been begun.

A conference of appraisers was ordered to meet in New York to arrive at a uniform classification. This conference met in New York in March, 1890, and reported to the Department a schedule a schedule of materials which they thought should be classified as hat trimmings. This schedule was formulated in Department letter (Synopsis 9915) as a rule of action for collectors. The schedule is as follows:

"Class 1.---Ribbons, commercially known as trimmings.

"All ribbons of silk and silk and cotton; silk, chief value

"from twenty lines to sixty lines inclusive, except gauze
"ribbons.
"Gauze ribbons of every description.
"Satin- back velvet ribbons.
"Hat bands.

"Class 2.--Laces specially enumerated in paragraph 448.
"Fancy colored laces (excepting all black) not exceeding sixty-
"five lines in width, of which silk is the component of chief
"value.

Class 3.-- Piece goods, known as millinery materials,
"but not commercially known as trimmings (in the condition in
"which imported), but conceded to be intended chiefly for mak-
"ing and ornamenting hats, etc., comprising--
" Plain velvets not exceeding 18-1/2 inches in width.
" Cotton-back satins, not exceeding 24 inches in width or
"valued at not exceeding 4 francs per metre, subject to trade
"discount.
" Millinery gauzes, except veilings."

This conference of local appraisers seems to have gone very much beyond what the decided cases, up to that time warranted. The case of Hartranft, plaintiff in error, against Langfeldt, involved, according to the reported decision of the supreme court, velvet ribbons made of silk and cotton, and the decision of the Court seems to be directed to such articles. It is well known that the case really involved "piece goods made of silk and cotton", the jury having by their verdict found in favor of the Government on the velvet ribbons. The case of Robertson, plaintiff in error, against Edelhoff, involved in the Supreme Court only ribbons composed of silk and cotton in which silk was the component material of chief value, and it was conceded on the trial that such ribbons were used exclusively as hat trimmings. The whole argument for the U. S. in that case was that articles in which silk was the component material of chief value did not fall within T.I.448. Yet this conference established a schedule of articles to be classified as hat trim-

trimmings in which were included a great many descriptions of merchandise which had not been determined to be within T.I.448, by any decision, and which collectors had been classifying at fifty per cent. Undoubtedly they considered that their classification of a great many of these articles had rested upon the contention that ~~th~~ though they were chiefly used for hat trimmings, yet, silk being the chief value, they did not fall within T.I.448, and the case of Robertson against Edelhoff had determined the law differently. Notwithstanding this, it seems at this time very extraordinary that this conference of appraisers should have included some articles itemized in class three of their schedule. We refer especially to the clause in that schedule "Cotton-back satins, not exceeding 24 "inches in width or valued at not exceeding 4 francs per metre, "subject to trade discount."

It will be noticed that class three of the foregoing schedule begins by stating, "Piece goods, known as millinery materials, but not commercially known as trimmings (in the condition in which imported) x x x x". Certainly at that time this was supposed to be a very important point, and one which, if determined in favor of the Government, was the end of the importers' case. Until the decision in Hartranft, plaintiff in error, verses Meyer, et. al., decided in May, 1893, it had been supposed that it was of fundamental importance for the plaintiff in these cases to prove that the articles in question had been commercially known as trimmings at the time of the passage of the tariff act of 1883; but this conference of local appraisers seems to have disregarded that point entirely and to have classified as hat trimmings, on the sole test

of chief use, classed of articles which they admit in their statement were not commercially known as trimmings in the condition in which imported. The law may be now that the test of chief use determines evefything; that if the proof shows that the articles were in fact, chiefly used for trimming hats, then they are within T.I. .448, whether they were known as trimmings when imported or not. It is by no means clear, however, that the Supreme Court in Hartranft vs. Meyer, et. al., meant to take this position so broadly.

The reclassification and reliquidation of invoices and entries proceeded rapidly throughout 1890 on the basis of Synopsis 9915. Great numbers of invoices were sent from the Collector's office in

We inquired carefully into the methods followed in the United States Appraiser's office in this Port in making this reclassification.

Arnold, Vol. IX, pp.23-116.)

Mr. Corbett describes the method pursued. They took the schedule of articles set forth in Synopsis 9915 as their guide absolutely, according to the instructions of the Department. Mr. Ludlam a clerk in the third division of the Appraiser's office, at the head of which was Assistant Appraiser Corbett, performed most of the clerical work. His system was to read the invoices, and where he found goods falling within the schedule of March, 1890, to draw a red ink bracket and write in front in red ink a capital "A". These invoices were then sent back to the collector, where, if they were covered by a suit, they were sent to the Bureau of Certified Statements where certified statements were prepared. If they were invoices included in entries as yet unliquidated, or liquidated with protest and appeal pending but not yet in suit, they were sent to the Liquidating Division and there liquidated or reliquidated according

to the new classification. This work of reclassification was not based to any great extent on a comparison or examination of samples. This will not be evident at first in reading Mr. Corbett's testimony; but if his testimony be read through on this point, it will be found that he admits that the clerks did the most of it, and were guided chiefly by the description in the invoices. They did use some samples that they had in the office, and in some cases they obtained samples from the importers. In fact, it may be said that substantially all the samples that they did use were provided by the importers.

We examined Mr. Corbett very minutely on this point, and though his testimony is indefinite and lacks positiveness, he admits substantially that the description in the invoices was what they followed. All that he did personally was to decide questions of doubt when consulted by the clerks who did the work of reclassification. Mr. Ludlam testified that he was guided chiefly by the description in the invoices; that sometimes he got samples from the Examiners and sometimes from the importers; he thought he might have obtained samples a half-dozen, possibly a dozen times. This of course was a trifling proportion to the immense number of invoices reclassified. It is noticeable too, that no examiner was called upon to reclassify under Synopsis 9915, but the work was left to clerks. Mr. Corbett and Mr. Ludlam both stated quite positively that they were perfectly familiar with the description in the invoices, and that the description was sufficiently full to enable them to identify the goods under the schedule contained in Synopsis

9915. Mr. Ludlam stated that he had no knowledge as an expert at all, and that the samples obtained by him were of no use to him, but that when he could not satisfy himself from the description in the invoice, he took such samples as he could obtain to Mr. Corbett for his decision. Mr. Ludlam by our directions searched for a number of samples he had obtained from importers with such affidavits of verification as were obtained from the importer at the time. He sent us six of these affidavits, and we annex them all. (Exs. XV and XVe) It will be seen that some of them merely state that the goods imported by them were used for millinery purposes; others state that the chief use of their goods was for trimming hats, bonnets and hoods. Of course these affidavits, coming from the parties directly interested, and drawn in such a general form, are of little value.

We think the precautions taken to identify the goods described in the invoice by actual samples shown by some sufficient proof to be truly representative, were very inadequate indeed.At the time we think that Mr. Corbett and his clerks could to a considerable extent identify the invoice description with the articles in the schedule in Synopsis 9915 without samples. It would, however, have been much more satisfactory if carefully proved samples of these goods had been obtained and had been attached to the invoices and reported to the collector on the return of the invoices. These officials all knew the immense importance of the work they were doing. They were necessarily aware, having the invoices before them, that millions of dollars were involved, and yet they proceeded to do all this important work of reclassification in a slip shod and careless manner. There was a partial check upon the reclassification made

by the local appraiser under Sun. 9915 of March, 1890. That order in respect to certain important classes of goods states that the limit of classification either by measurement or by prices. We are assured by the heads of the Bureau of Certified Statements in the collector's office and the Naval Office that a careful comparison of the invoices with the appraisers reclassification was made upon these points, and if it appeared that the appraiser had reclassified any of these articles not within the limits of size and price stated in S. 9915, theinvoices were sent back for corfection.

The schedule of articles contained in Synopsis 9915 involved an immense amount of merchandise that had been classified at a rate of fifty per cent. The refunds kept growing immensely. Import ers accepted the refunds on the articles stated in the schedule, upon the basis of which reclassification was made; but instead of discontinuing the suits in which refunds were made, they continued the suits in respect to the other articles claimed upon, which they had not yet succeeded in persuading the courts or the Department should be classified as hat trimmings.

On December 29, 1890, Secretary Windom issued an order suspending reliquidations of protested articles claimed to be hat trimmings. At that time there were a very large number of invoices in the appraisers office awaiting reclassification in the manner already described. Between December 1890, and September, 1891, there were no reliquidations of hat trimmings invoices. The claimants and their attorneys, however, were actively engaged in negotiating with the Government, having become fully alive since the decision in Robetson against Edelhoff, to the opportunities now afforded for immense

refunds.

In July, 1891, a case was tried in the Circuit Court for the Eastern District of Pennsylvania, Meyer against Cadwalader, 49 Fed. Reporter, 26, 32. This case involved gauzes, velvets and other materials, among them cotton-back satin piece goods. This case was tried with great care, taking over two weeks, and the Government obtained a verdict. This was the first case actually tried in which the satin piece goods were involved. This case became known as the "Philadelphia case". The verdict was set aside in December by the court on evidence that certain newspaper articles published during the trial had possibly unduly influenced the minds of the jury, but this verdict has a very important relation to subsequent proceedings.

On September 22, 1891, two months after the verdict in the Philadelphia case, and before that verdict had been set aside by the court, the Department issued Synopsis 11,798.

By this letter of September 22, 1891, (Synopsis 11,798) the former rule of action contained in Synopsis 9,915, formulated for the guidance of collectors the schedules of articles established by the Conference of Appraisers in March, 1890, was revoked and an entirely new method of deciding these hat trimmings cases was established:

Treasury Department, September 22, 1891.

Sir:- The instructions of thisDepartment of December 29, 1890, suspending the reliquidation of protested articles claimed to be hat trimmings, are hereby revoked, and upon the reclassification by the local Appraisers as to "chief use", subject to the limitations hereinafter specified, and in accordance with the principle an-

announced in the circular dated February 11, 1890, (Synopsis 9854) the entry shall be reliquidated, and certified statements shall be prepared and forwarded to this Department upon discontinuance of suits. The return of the local appraisers will be accompanied by samples of the merchandise passed as hat trimmings in each case referred to the general Appraisers and in other cases if required by the Department. Invoices, however, covering plushes, velvets, and satins, and all other piece goods, shall, as to those articles, be submitted to "General Appraisers Tichenor, Ham, and Jewell for their determination as to whether they are covered by paragraph 448 of the Act of March 3, 1883, and can properly be classified as hat trimmings.

This reference to the above named general appraisers shall not include the articles or goods identical with the articles which were found not to be hat trimmings by the verdict in the case of Meyer et. al, vs. Cadwalader, tried at the April Term of the United States Circuit Court at Philadelphia (the same being held by the Department not to be hat trimmings.)

The general appraisers shall pass on the classification of the merchandise submitted to them, and their determination shall be final, and the reliquidation shall be made upon such finding.

No payments will be made under this order until suits shall be discontinued in full as to all articles protested as hat trimmings, and the attorneys of record, or the importers, shall sign a stipulation that no further suits shall be instituted to recover refunds on articles claimed as hat trimmings covered by invoices heretofore the basis of such suits.

Application having been made by Messrs. Charles Curie, Tremain & Tyler, and Alexander T. Ketchum, attorneys for various plaintiffs, for settlement upon the foregoing conditions, you are instructed to prepare and forward certified statements in accordance with this order in the cases in which said parties appear as attorneys and apply for a refund.

You will also pursue the same course with reference to the claims of any other attorneys who may signify their willingness, in writing, to have their cases adjusted on the basis of this letter.

Synopsis 9915 is hereby revoked.

Respectfully yours,

CHARLES FOSTER,

Secretary."

Collector of Customs,

New York.

(3104-E)

It will be noticed that except in respect to velvets, plushes, satins and all other piece goods this order referred the local Appraisers to the Department letter of February 11, 1890, (Synopsis 9854), issued immediately after the decision in Robertson against Edelhoff, by which they had been instructed to reclassify according to that decision. The letter of February 11, 1890, having been followed within a month by the report of the Conference of local Appraisers and the schedule of articles set forth in S. 9915, had left very little to the discretion of the local appraisers.

This conference had established a description of the articles which were chiefly used as hat trimmings, and all that the local appraisers in the several ports had to do afterwards was to follow that list. But by this letter of September, 1891, the local appraisers were prohibited from following any longer Synopsis 9915, and were instructed to determine the chief use for themselves. This letter calls for no determination of the question whether the articles of merchandise were commercially known as trimmings in the condition in which imported.

In respect to the piece goods, three of the General Appraisers established by the Administrative Act of June 10, 1890, were appointted a committee, to whom under the procedure set forth in this letter all invoices of piece goods should be submitted for their determination in respect to the proper classification of such goods. This letter stated that the determinations of these General Appraisers should be final, and that reliquidation should be made upon their findings. It further provided that no refunds should be made in any suit under this procedure until a discontinuance in full as to all articles protested as hat trimmings was filed and a stipulation signed that no further suits should be instituted to recover refunds on articles described in the invoices included in the suits in which refunds were paid. The attorneys named in this letter, Charles Currie, Tremain & Tyler, and Alexander P. Ketchum, controlled five-sixths of the suits as will appear from either of the schedules 1 or 2.

In respect to merchandise other than piece goods, it will be noticed that this order instructs the local appraiser to reclassify

on the basis of chief use, and that on such return the entry should be reliquidated and certified statements prepared and forwarded to the Department upon discontinuance of suits. This order, therefore, permitted no further reliquidation of entries in which due protest had been made and appeal taken, but not yet in suit. It applies to suits only. This order having been issued before the verdict in the Philadelphia case had been set aside, contains the following restriction:

> "This reference to the above named General Appraisers shall not include the articles, or goods identical with the articles, which were found not to be hat trimmings by the verdict in the case of Meyer and others against Cadwalader, tried at the April Term of the United States Circuit Court at Philadelphia (the samebeing held by the Department not to be hat trimmings)."

We are unable to give the Department much information in respect to the negotiations that led to this order of September 22, 1891. The scheme appears to have been planned by the attorneys named and the late Assistant Secretary Spaulding. Mr. Tichenor, The President of the Board of General Appraisers, testified (Vol. A, Dry Goods Chronicle Charges, p 329-33) that being in Washington in the late summer of 1891, the proposition was made to him by Mr. Spaulding; that he was at first rather averse to undertaking it as it was not within the line of their legal duties, but finally agreed to come back to New York and consult with his colleagues. He did

consult with them and the result was obviously their consent to act. There appears to be no formal records of these negotiations or proceedings. But the correspondence forwarded to us by the Department contains various propositions made from time to time by Messrs. Tremain & Tyler in respect to some settlement of their cases, and we suppose the plan formulated in September, 1891, was the result of these negotiations. The General Appraisers who acted first were Tichenor, Ham and Jewell. Afterwards General Appraiser Ham apparently became ill and General Appraiser Lunt was, by the consent of attorneys named, substituted in his place.

The order of September 22, 1891, indicated as a procedure to be followed, a return from the local appraiser to the collector of the invoices reclassified according to his judgment, and accompanied by samples in all cases to be submitted to this committee of three General Appraisers. The samples were not required upon the return of the local Appraiser in other cases, unless ordered by the Department. The Collector, it was intended, should then send this report of the local appraiser, with the samples, to the General Appraisers, who should, when they made their findings, report it to the collector. On October 2, 1891, Mr. N. W. Cooper, then U.S.Appraiser, wrote to the Department the following letter:

PORT OF NEW YORK,
Appraisers Office,
402 Washington Street, October 2, 1891.

Hon. Charles Foster,
Secretary of the Treasury.

Sir:

In connection with the Department's letter (A.J.) of the 22nd ultimo on hat trimmings, I would suggest that the disputed goods mentioned therein may be submitted at once to the Committee of General Appraisers for their determination as to the questions involved, in order to facilitate a more orderly and speedy dispatch of the business connected therewith.

This office could act at once on the invoices to be reclassified upon the decision of the Board and thereby save them a repetition and action on each invoice covering the same line of goods. I would also suggest that authority be given me to refer to the committee disputed goods claimed by the importers as hat trimmings, such as laces, ornaments, &c., not mentioned in your letter, as a means of more satisfactory settlement of the whole subject.

Very respectfully,

M. W. Cooper.

Appraiser".

It will be noticed that Mr. Cooper suggests that the local Appraiser should send the invoices and samples directly to the general appraisers in cases involving merchandise to be submitted to them pursuant to the letter of September 22, 1891, and that the decision of the Board should be reported directly to the local Appraiser, who should act thereupon immediately in all similar cases. He also asks authority to submit to the Board for their decision other classes of merchandise than piece goods claimed to be hat trimmings.

On October 6, Assistant Secretary Spaulding wrote to General Appraiser Tichenor enclosing a copy of the letter of September 22,

repeating the restriction in respect to the classes of goods found not to be hat trimmings in the Philadelphia case and stating Mr. Cooper's suggestions in his letter of October 2nd, with permission to the general Appraisers to adopt such suggestions if they deemed it advisable to do so. The General Appraisers immediately proceeded to act in accordance with the proceedure suggested by Mr. Cooper in his letter of October 2nd, both in respect to piece goods, to which they were restricted by the order of September 22nd, 1891, and also in respect to other classes of merchandise referred to them by the U. S. Appraiser.

Very early in the proceeding a question arose as to the meaning of the phrase "identical with" in the letter of September 22nd, and in the paragraph restraining the board from acting upon articles "identical with" those involved in the Philadelphia case. The local appraiser had naturally interpreted that phrase to mean articles of the same general description, theimporters, however, with their usual liberality, contended that it must be restricted to articles in all respects the same as those in that case.

On October 16th General Appraiser Tichenor asked for the construction of the Department, in respect to this phrase, enclosing a long letter from Mr. A. P. Ketchum, in which that attorney supported the claim of the importers, and on October 23d, the Department, through Mr. Spaulding, wrote to Mr. Tichenor as follows:

> "You are respectfully informed that it was not intended to employ the phrase "identical with" in its narrow sense, but as indicating in a concise manner goods of the same general character or description."

In this letter the General Appraisers are informed that it was the desire of the Department that the local Appraiser should in all cases of doubt consult them.

We call attention to this approval and extention of the restriction in the letter of September 22, 1891, as late as October 23rd of the same year, because it seems to us of importance in view of the way in which by later instructions in special cases that restriction was removed.

The local Appraiser kept referring large numbers of invoices to the General Appraisers which were considered and returned to him with their decisions. The procedure was for the local Appraiser to write a letter to the General Appraisers stating the invoices and samples sent and for the General Appraisers, when they had decided the case, to return to him the samples with their decision upon each sample. The local appraiser then proceeded to reclassify all similar goods and to forward the entry papers to the collector for reliquidation.

The result of this procedure, it will be observed, was that the local appraiser did not decide the question of fact as to chief use, but that this was determined by the Board of three General Appraisers in every instance upon the samples submitted.

We have obtained from the General Appraisers copies of all their correspondence with the Department and with Mr. Cooper in respect to the cases submitted to them under the letters of September 22, 1891, and October 6, 1891, and forward them herewith.

On December 9, 1891, the Attorney General, by letter "S.G.7551-

1886" to the Secretary of the Treasury, reported that the Court had granted the motion for a new trial in the Philadelphia case. In this letter the Attorney General states::

> "The verdict was set aside, not on the merits of the case, but simply because of certain newspaper articles which were inspired by special agent Hanlon and held by the court to have influenced the jury. On the basis of the verdict rendered in Philadelphia, you issued an order to the General Appraisers to adjust the claims known as the hat trimmings claims, many of whom were involved in the Meyer and Dickenson suit. The veridct having now been set aside which was the basis of your order, I recommend and seriously urge upon you the necessity of suspending any action under that order pending the re-trial of the case. It is my deliberate opinion that the evidence produced on behalf of the importers in all cases of this class, is wholly untrustworthy and ought not to be acted upon. I do not think that without the the verdict in lines which were marked out by the Meyer and Dickinson case, it will be at all safe for the interests of the Govdrnment to entrust the settlement of the matter to the General Appraisers. Practically, the only testimony available for them will be that of the importer and of the local appraiser, who are all saturated with a prejudice in favor of the importers,

and whose knowledge of the use of these articles is not from any business experience, but from the statements made to them by those who are interested to bring the goods in at a low rate of duty. In my opinion nothing but the sifting process of a long jury trial can ever establish the exact facts, with regard to the use of these articles, and I respectfully urge upon you and your Department, that no steps whatever be taken to pay money out of the Treasury of the United States on these claims pending a retrial, but that the order above referred to be promptly revoked.

Yours respectfully,

W. H. Miller,

Attorney General".

We have not received from the Department any copy of the answer made to this letter, but we find that on December 16, 1891, Mr. Spaulding wrote to the General Appraisers instructing them to suspend reclassifications of marcellines and chinas pending further consideration of the subject. This order was undoubtedly brought about by the letter of the Attorney General of December 9th, and the letter of Special Agent Hanlon to the Secretary of the Treasury of December 12th. In that letter Special Agent Hanlon states that "Examiner Wiswall" by direction of General Appraisers Tichenor, Ham and Jewell has been classifying as hat trimmings, chinas and marcellines similar to those involved in a case tried in Philadelphia, and then be-

before the U. S. Supreme Court. But the full recommendation of the Attorney General that reclassifications under this order of September 22, 1891, should cease, was apparently not adopted because reclassifications under that letter continued.

It is proper here to comment briefly on the procedure by which invoices were reported from the local Appraisers to the General Appraisers under these letters of September, 1891, and October 6, 1891. In our report on the Dry Goods Chronicle Charges, we have shown the relations which Examiner Wiswall bore to the local Appraiser and the General Appraisers in respect to the reclassifications of these hat trimmings invoices. Further light is thrown upon it by Mr. Corbett's testimony in respect to hat trimmings. (Vol.IX, p 79[e] and seq.)

Mr. Wiswall was apparently an agent of this Board of General Appraisers in the local Appraiser's office. He was an examiner and had been suspended by Mr. Cooper, reinstated by order of the Department, and assigned to this special work. Apparently, he had nothing to do with reclassifying the invoices. That was done in the third division, under Mr. Corbett's supervision. But Mr. Wiswall appears to have had the power to take any of the invoices from the local appraisers office to the Board of General Appraisers and submit them for a decision, and his relations, with the Board, are not contained in any record. He did not correspond with them but connected with them personally, and when the U. S. Appraiser had, in a formal way, referred certain invoices and samples to the General Appraisers by letter, Wiswall was commonly consulted by the Board of General

Appraisers in respect to the samples and sent around by them among the importers to obtain information for them and to get them additional samples if needed.

Here again we are constrained to comment upon what seems to us the dangerous looseness of procedure in respect to claims involving millions of dollars. The General Appraisers were fully aware of the immense magnitude of these claims and should not, we think, have allowed Mr. Wiswall to have nearly so much power in respect to the cases to be brought before them for decision. We asked Mr. Corbitt (Vol IX p) in what order these invoices were taken up for reclassification. He replied that it was done when they got samples and that was about as definite an answer as could be obtained. Apparently, they were sent according to the preferences of Mr. Corbitt and the U. S. Appraiser, or according to the preferences of Mr. Wiswall. This afforded an immense opportunity for favoritism, and was, we think, a loose and unsatisfactory method.

After General Appraiser Lunt became one of this Committee of General Appraisers, he apparently did most of the work. Mr. Tichenor, who was the executive officer of the Board of General Appraisers, did not take so active a part in the examination and decision of the cases. We brought General Appraiser Lunt and Gendral Appraiser Jewell before us to testify on this subject, and Mr. Lunt has testified at length (Vol. IX, ppl24) in respect to their method of investigating these cases.--infra pp 78-84; 108-113.

THE FOUR FLEITMAN SUITS NUMBERS 11,402, 12,184, 12,545, 16,289.

We are now in a position to consider specifically these four suits. The letter of September 22, 1891, had restrained the General Appraisers from considering and the local Appraiser from reclassifying any articles of merchandise identical with the articles before the jury in the Philadelphia case. We have shown that the order was reaffirmed and the phrase "identical with" given a liberal and proper interpretation by the Department on October 23d; and further we have shown that in December, 1891, when the Circuit Court set aside the verdict in the Philadelphia case on grounds not bearing upon the merits at all, the Attorney General urged upon the Secretary of the Treasury that he should revoke his order of September 22, 1891.

These four suits, and suits in which certain other importers were plaintiffs, were considered under exceptional orders issued by the Department through Assistant Secretary Spaulding. We find among the papers sent to us by the Department, a letter dated New York, January 25th, 1892, addressed to the Secretary on behalf of Messrs. Fleitman and Company and signed by Mr. John Proctor Clarke and Mr. Benjamin Barker, Jr., as special counsel for these importers. In this letter it is stated that the merchandise involved in these suits falls into three classes: first, ribbons; second, satin piece goods, marcellines and chinas; third, velvet piece goods. Reference is then made to the conference of Local Appraisers, March 11, 1890, in which these piece goods were decided to be hat trimmings. These attorneys then offered as follows:

1. The claims on ribbons to be allowed without further dispute.

2. The claims on velvet to be abandoned by the plaintiff, and

3. The satin piece goods to be submitted with the invoices and samples to any expert in the Treasury, or in the Appraiser's office in New York, or to any special agents in whom the Government had confidence, for investigation.

The offer concludes as follows:

"With this agreement and understanding that if the report of such a person shall show that our contention is correct, the Department will with reasonable dispatch refund to us the excessive duties, sought to be recovered in these suits upon the ribbons and satins of the kind, nature and use before mentioned; we on our part to totally discontinue said suits, for payment, abandoning all claims upon the velvets involved therein."

There were undoubtedly preliminary negotiations leading up to this preliminary proposal for it otherwise could hardly have been acted upon within twenty-four hours after the date of this letter, as it will appear was the case.

TREASURY DEPARTMENT,

3104-E. Office of the Secretary,

Washington, D.C., January 26, 1892.

Collector of Customs,

New York.

Sir:

You will please regard as recalled the letter of instructions

addressed to you yesterday, regarding certain suits of Herman, Fleitman & Co., and will accept the following directions as a substitute for those contained in said letter.

'You are hereby directed to at once take up and investigate the invoices covered by the suits of Herman, Fleitman et al, vs. the collector, Nos. 12,184, 11,402, 16,289, and 12,545, confining your your investigation thereon to the satin piece goods heretofore classified by the appraiser as hat materials and report with all convenient dispatch on these goods as follows:-

1st. Their description as fully as possible, width, quality, method of manufacture, and particularly as to whether "dyed in the piece" or "dyed in the skein".

2nd. Whether or not these goods were imported or used for dress goods.

3rd. Whether the particular goods in these cases are trimmings in the condition in which imported, and whether their chief use is for making or ornamenting hats, bonnets or hoods for men, women and children.

You will examine the importer and such evidence as he may adduce before you, and make your report to this Department as soon as completed.'

Your action in this case will be in accordance with the mode of procedure set forth in the first paragraph of Synopsis 11,798. The goods which are to be affected by these instructions are satins, chinas, and marcellines, and after the report of the Appraiser has

been made upon the same, they will be submitted with samples to General Appraisers Tichenor, Ham and Jewell for their determination as to their classification as hat trimmings. See also Department's letter of September 22, 1891, addressed to the appraiser at your Port.

Respectfully, yours,

O. L. Spaulding,

Acting Secretary.

J.M.C.

This letter, it will be observed, instructs the collector to take up and investigate the invoices in these four suits, confining his investigations to the satin piece goods heretofore classified by the Appraiser as hat materials. It is evident, therefore, that these invoices had already been classified by the local Appraiser under"synopsis 9915 of March, 1890, in which the schedule adopted by the Conference of local Appraisers had been formulated. After specifying the propositions to be determined in respect to these goods, the letter continues:

"Your action in this case will be in accordance with the mode of procedure set forth in the first paragraph of S. 11,798".

The collector is then instructed, after receiving the report of the local appraiser, to submit them with samples to the General Appraisers Tichenor, Ham and Jewell, for their Determination and classification as hat trimmings. This committee consisted at that

time of General Appraisers Tichenor, Ham and Jewell, but shortly afterwards Mr. Lunt was substituted for Mr. Ham. Pursuant to this instruction, the collector sent 121 invoices to the local appraiser enclosing a copy of the letter of January 26th.

OFFICE OF THE COLLECTOR OF CUSTOMS,

Port of New York,

January 29, 1892.

Mr. M. W. Cooper, Appraiser,

Sir:

Referring to the enclosed letter of the Hon. Secretary of the Treasury, I submit herewith, one hundred and twenty-one invoices (121)which are included in the four suits of Messrs. Fleitman & Co., quoted, with the request that you take the required action.

Very respectfully,

F.Hendricks,

Collector."

(One hundred and twenty-two (122) enclosures.)

Mr. Corbetts testimony, Vol. IX, p. 58, shows that these invoices were received and that the re-examination of them took about one hour. This does not necessarily show any negligence on the part of the local appraiser, because these invoices had already been classified after the letter (S. 9915) of March, 1890, had been issued. All that was done in the local appraisers office at this time was to run hurriedly over the classification to see if it was correct. If, as Mr. Corbett testifies, the work was done in one hour, the invoices were not subjected to any re-examination at all worth speaking of; nor was it necessary that they should be.

On February 4th, the local Appraiser returned these invoices to the collector with certain samples. The following is the letter accompanying the invoices when returned to the collector:

Appraiser's Office, February 4, 1892.

M. W. Cooper, Esq.,

Appraiser.

Sir:

Respectfully referring to Department's letter (J.M.C.) of the 26th ultimo, in reference to certain invoices of Herman, Fleitman & Co., I have to report that the satins reclassified on these invoices consists of satins woven in the grey with silk warp and cotton filling, 18 to 24 inches wide, and dyed in the piece, known as piece dyed satins and also termed hatters' satins. These goods were not imported or used for dress goods.

Their chief use, in my judgment, was for ornamenting and trimming hats, bonnets and hoods.

Invoice and samples returned herewith.

Very respectfully,

M. J. Corbitt,

Assistant Appraiser.

Respectfully forwarded to the collector approved.

M.W.Cooper,
Appraiser.

The important phrase in this letter is the statement made by Mr. Corbitt in the last paragraph, approved by Mr. Cooper:

"Their chief use, in my judgment, was for ornamenting and trimming hats, bonnets and hoods."

We have examined Mr. Corbett with respect to the information upon which he based this opinion. It is a very important statement of opinion. Mr. Corbet could give no other sources of information in support of that opinion except that he had asked some importers, including Messrs. Fleitman & Co., what the chief use of these goods was, and they had told him for trimming hats, bonnets and hoods. He did not make any especial examination at the time of writing this letter, but he had acquired this information during the pendency of the controversy. And yet he was confronted with the fact that prior to the decision of Robertson against Edelhoff and the meeting of the Conference of local Appraisers in this port in March, 1890, the collector, the Naval Office and the Appraiser at this port had decided that these goods were not hat trimmings and should be classified under T.I.383, and that they had been in fact so classified until March, 1890.

Mr. Corbett had testified in July, 1891, on the trial of the Philadelphia case and had distinctly refused to state that the chief use of this class of satins was for making or trimming hats. He testified that that was one of the uses to which this class of merchandise was put, but said that he would not state that that was the chief use. He testified that he had not information enough to express an opinion on that point.

(Testimony, Meyer et al. against Cadwalader, Vol., 2 pages 772, to 775)

Mr. Corbett's teestimony in that case and his testimony before us (Vol IX, pages 76) supports the conclusion that he classified these goods as hat trimmings only because the conference of local

appraisers had declared them to be hat trimmings in March, 1890. He did not act upon any conclusion of his own, reached after a careful investigation. He had not, in our opinion, any sufficient foundation of experience or information in support of this opinion.

It will be noticed that this letter of January 26th refers to the General Appraisers not only the question of chief use, but also the question "whether the particular goods in these cases are trimmings in the condition in which imported!

The Collector on receiving these invoices from the local appraiser with the last mentioned letter, on February 5, 1892, forwarded the invoices and samples to the Board of three General Appraisers:

Office of the Collector of Customs,

Port of New York, February 5, 1892.

The Board of General Appraisers,

New York City.

Gentlemen:

Referring to Department's letter of the 26th ultimo, and to report of Assistant Appraiser M. J. Corbett, dated the 4th instant, both enclosed, I transmit herewith the one hundred and twenty-one invoices covered, with three sets of samples, for your consideration and report in accordance with above mentioned letter.

Very respectfully,

J. J. Couch,

Special Deputy Collector.

(One hundred and twenty-six enclosures.)"

In this letter the collector states that he encloses three sets of samples. The first hitch in these proceedings occured when the Board of General Appraisers received the Collector's letter. The satin piece goods referred to there were within the restrictions of the letter of September 22, 1891, prohibiting them from considering articles similar to those that had been before the jury in the Philadelphia case. Mr. Tichenor, therefore, on February 12, 1892, wrote as follows to Assistant Secretary Spaulding:

OFFICE OF THE U. S. GENERAL APPRAISERS,

534 Canal Street, New York, February 12, 1892.

Hon. O. L. Spaulding,

Acting Secretary of the Treasury,

Washington, D.C.

Sir:

The committee of General Appraisers consisting of Messrs. Ham, Jewell and myself, which was designated by the Department in its letter of September 22, 1891, to the collector at thisPort, to consider the subject of hat trimmings, and was confirmed by Department's letter addressed to me under date of October 6, 1891, has received from the collector at this port Department's letter (J.M.C.) of the 26th ultimo, in relation to certain suits of Herman, Fleitman & Co., invloving the question of classification of certain merchandise claimed to be dutiable as hat trimmings under paragraph 448, Act of March 3, 1883, and also invoices and samples of the merchandise in question, which is found to consist of piece dyed satins of various colors, ranging in width from 19 to 24 inches.

Before taking final action in this matter the committee desires to be informed whether in the determination thereof, it is to be governed by the terms and limitations contained in the Department's aforesaid letters of September 22nd and October 6th. That is to say, whether goods of the same general character as those involved in the Philadelphia case mentioned, are to be excluded from consideration, or whether we are to ascertain and determine the chief use of these goods independent of or without regard to that case.

We have been led to infer fromthe statement made to us by the attorney of the importers, that those particular invoices and samples were specially submitted under some stipulation or agreement to compromise the suits in question.

The local Appraiser has reported that the satins in question are woven in the grey with silk warp and cotton filling and are dyed in the piece, and known as piece and also as hatter's satins, but they were not imported or used for dress goods, and that their chief use in his judgment was for ornamenting and trimming hats, bonnets and hoods.

It is desired we shall limit our inquiries to the chief uses of the particular descriptions, of satins in question or to the uses for which these particular importations were sold, the determination of the matter can be reached without great difficulty.

Before proceeding thereto, however, we desire to be fully advised by the Department upon the points presented.

Respectfully yours,
Geo. C. Tichenor,
General Appraiser."

It will be noticed that Mr. Tichenor in this letter calls for an express instruction whether in considering these four suits goods of the same general character as those involved in the Philadelphia case are to be excluded from consideration or whether the Board should proceed without regard to that case. He also asks whether the Board should limit its inquiries to the chief use of the satins submitted to them, or to the uses for which Fleitmann's particular importations were sold.

The first answer to this letter was dated February 23rd, from Mr. Spaulding to Mr. Tichenor:

TREASURY DEPARTMENT,
Office of the Secretary,
Washington, D.C., February 23, 1892.

Col. George C. Tichenor,
U. S. General Appraiser,
No. 534 Canal Street, New York, N.Y.

Sir:

The Department is in receipt of your letter of the 12th instant in which you inquire whether the Committee of General Appraisers designated by the Department in its letter of September 22nd, last, to consider the subject of hat trimmings, is to be governed, as regards the suits of Herman, Fleitman & Co., by the terms and limitations contained in the Department's lettefs of September 22nd and October 6th last, or whether goods of the same general character as those in the Philadelphia case are to be excluded from consideration, or the committee is to ascertain and determine the chief use of the goods, independent of, or without regard to that case.

In reply, I have to state, that you are requested to ascertain and determine in the case specified, the chief use of the goods which are referred for the consideration of your committee, without regard to the Philadelphia case.

Respectfully yours,

O. L. Spaulding,

Acting Secretary.

J.M.C."

In that letter he was instructed to ascertain and determine in these four cases the chief use of the goods which are referred for the consideration of the Committee without regard to the Philadelphia case. Two days afterwards Mr. Spaulding telegraphed as follows to Mr. Tichenor:

"Replying further to your inquiry as to Fleitmann cases, have to advise you that your inquiries are to be limited to the particular goods in these particular cases and their chief use."

We must interrupt the course of correspondence in these cases to describe what the Committee of General Appraisers did. On February 17th, Mr. Spaulding had telegraphed to Col. Tichenor granting permission to replace General Appraiser Ham by General Appraiser Lunt. Mr. Lunt and Mr. Jewell appeared before us to explain their procedure upon these cases and in general under the letter of September, 1891. Mr. Jewell had nothing to add to Mr. Lunt's testimony and it appears clearly that Mr. Lunt made the investigation in these cases. Mr. Lunt's testimony will be found in Vol. IX., pp. 124

In the first place Mr. Lunt testified that the testimony was taken orally but not written down; that the general appraisers had copies of their written communications in which they stated their opinions or gave their advice with the names of the parties whose merchandise was under consideration. These letters are the only records of the case. The Committee of Appraisers kept no formal records; Vol. IX., p. 128 ect.

Mr. Lunt was aksed to state in detail the method of inquiry made by this Committee in these four suits. His testimony on this subject begins at page 131. The attorneys for the importer produced witnesses before the Committee who were examined by the General Appraisers, and in addition to that the General Appraisers requested parties engaged in various trades likely to consume such material to appear before them. The members of the Committee also interviewed others engaged in similar lines of business in other cities. Having been instructed also to inquire into the particular use of Fleitmann's importations, the Committee inquired into that subject. A general letter was sent by the Committee to the principal claimants requesting them to make a detailed statement of their importations of these satin piece goods, showing the quantities imported and the persons to whom they were sold, with the nature of the business of the buyers. (Vol. IX., p.134) (The circular will be found at page 185 of this report.) This circular brought out statements more or less complete from Fleitmann & Co., and other large importers of these goods. Mr. Lunt produced before us the statement furnished by Fleitman & Co. It was a very voluminous statement

and purported to show the disposition of all the satin piece goods imported by them since 1883. The recapitulation of Fleitmann's invoices show total importations 39,417 pieces; sold to hatters, 20,355; sold for millinery uses 6,802; and for uses other than trimmings for making hats, the remainder. The percentage of the total sold to hatters was 51.64 and for millinery 17.26, making 68% of the importations sold for hat trimmings.

Mr. Lunt presented a similar statement from Dreyfus, Kohn & Co. The certification of this statement consisted of having Mr. Wiswall examine a directory to find out the business carried on by the persons stated in Fleitmann's schedule as the buyers of these goods. Mr. Lunt stated that they did not rely exclusively on these statements of importers in respect to the use made of their own importations, but that they considered them as some evidence bearing on the question of the chief use of this class of merchandise.

Mr. Wiswall did all that work, which involved the comparison of the description of business in which the alleged purchasers were engaged, with the directories of those particular trades, and made his statements to the Committee. Many of the alleged purchasers had become known to the Committee in the course of their examination of the question, having been witnesses. In short, Mr. Wiswall alone verified these statements. (page 151) None of the samples submitted to this Committee run as high in price as four francs per metre, which was the limit stated in the schedule adopted by the Conference of Appraisers in March, 1890. An important statement in Mr. Lunt's testimony (p. 152) is in respect to the comparison made by the Gen-

General Appraisers between the samples and the invoices. Mr. Lunt states that they made no more use of the invoices "except that they were casually examined in comparing the marks on the samples with the marks on the line in the invoice; that the Committee could not do any more than to accept the official samples furnished by the Appraiser as samples of the goods covered by the invoices which he sent."

Now, Mr. Lunt claims that he made a very careful examination of this question, and that he had no doubt of the correctness of his conclusion based upon the samples submitted to the Committee. Beyond that he did not go, and it is necessary to state, in justice to this Committee of General Appraisers that their findings are absolutely restricted to the samples submitted to them for consideration. We have already shown from Mr. Corbett,s testimony how loosely the samples were obtained. We do not mean even to insinuate in this report that the samples were not truly representative of the goods described in the invoice. We desire, however, to pint out the extremely loose method by which these samples were chosen in the local appraiser's office. The Committee of General Appraisers appear to have reached their decision in respect to the Fleitmann cases in March. Mr. Lunt explained that the letter containing their decision was written in March, but that Fleitmann's statement of the use of his importations had not been received; that it was not received until early in April, and that the decision was actually sent to the collector on April 30th.

OFFICE OF THE U. S. GENERAL APPRAISERS,

534 Canal St., New York, March , 1892.

Hon. Francis Hendricks,

Collector of Customs, New York.

Sir:

We return herewith the Department's letter of January 26,1892; also letter of February 4 last from the Appraiser of the port relative to certain suits of Herman Fleitmann & Co., respecting so-called hat materials or trimmings. We also return invoices and samples of satins, &c., to which the correspondence relates and concerning which we have to report as follows:

1st. The merchandise represented by all the samples except the one marked 'serge' consists of satins varying from about 18 inches to 24 inches in width, woven in the grey, with silk warp and cotton filling, dyed in the piece, and is known in the trade as hatters' satins.

2nd. In our judgment, satins of this class are not suitable for use as dress goods, or for lining garments, or for other purposes where strength and durability are required, being too light and flimsy for such uses. They appear to be specially designed and adapted for use in lining or otherwise trimming hats, bonnets and hoods;for lining cottons, fancy boxes and neckties, and for making small articles, their chief use having been for lining or trimming hats, bonnets, and hoods.

3rd. According to the information we have obtained much the larger proportion of the particular satins, subject of these suits, were imported, sold and used for lining mens hats, and in such use are generally designated as trimmings in the hat making trade.

4th. Goods of the class represented by the sample marked 'serge' are sometimes used for lining hats or caps, we are of the opinion that they are chiefly used for other purposes.

Respectfully yours,

George C. Tichenor,

W. F. Lunt,

J. A. Jewell,

General Appraisers."

It will be noticed that this decision makes a finding favorable to the importers both in respect to the chief use of the merchandise represented by the samples, and also a finding favorable to the importers in respect to the particular use made of Fleitmann's importations. It was only the latter finding that by Mr. Spaulding's telegram of the 25th of February they were required to make. The Committee of General Appraisers make no direct decison of the first question submitted to them in the letter of January 26th, to-wit: "Whether the particular goods in these cases are trimmings in the condition in which imported." The only reference to that question is in the 3d paragraph of their decision, in which, referring to the use made of Fleitmann's particular importations, they say:

"x x x x x were imported and used for lining mens
"hats and in such use are generally designated as trimmings in
"the hat making trade."

On this question the Conference of Local Appraisers in March, 1890, in their schedule of articles chiefly used as hat trimmings

had stated that these cotton back satins were not commercially known as trimmings in the condition in which imported.

In their letter the General Appraisers state that they return the samples to the Collector. We made a diligent inquiry about these samples, but Mr. Crawford, the head of the Bureau of Certified Statements of the Collector's office, stated that they had been destroyed after the certified statements had been made up, being considered of no further use.

(See his letter hereto annexed as Exhibit 6.)

On May 3d the Collector reported to the Department as follows:

Hon. Charles Foster,

Secretary of the Treasury,

Washington, D.C.

Sir:

Referring to your letter of January 26th last, I submit herewith the report of the Appraisers under date of Febraury 4th, and the report of the Board of General Appraisers dated the 30th ultimo, as to the invoices covered by the suits of Fleitmann against the Collector, Nos. 12,184, 11,402, 16,289, and 12,545, involving the classification of certain merchandise as hat materials."

Apparently no action was taken by the Department upon this ~~repo~~ report until January, 1893, and on January 14th, 1893, Assistant Secretary Spaulding wrote to the Collector at New York, as follows:

TREASURY DEPARTMENT,

January 14th, 1893.

Collector of Customs,

New York.

Sir:

Upon the filing of the proper discontinuance and the special stipulations required by the Department's instructions of September 22, 1891, you will please forward to the Department certified statements of the amounts of refund due the plaintiffs in the cases of Herman Fleitman and others against the Collector, suits Nos. 11,402, 12,445, 12,184 and 16,289.

The statements should be based upon the reclassification of the plaintiff's invoices which has already been made, and upon the report of the Committee of General Appraisers, dated April 30, 1892, but shall not include a statement of any refunds on invoices of velvets.

Respectfully, yours,

O. L. Spaulding,

Assistant Secretary".

On the same day the Secretary wrote to Mr. John Proctor Clark, Attorney for Fleitmann & Co., in these four suits as follows:

John Proctor Clarke, Esq.,

New York, N. Y.

I have to inform you that instructions have been sent to the Collector at New York to forward to the Department certified statements of the amounts due plaintiffs in suits of H. Fleitmann & Co. against the United States, 11,402, 12,545 12,184, 16,289, but said statements are not to include refunds of velvets.

O. L. Spaulding."

These certified statements were made up and transmitted to the Department. The proper discontinuances and special stipulations were filed.

At the Department the statements passed the Customs Bureau, the Auditors Division and had reached the Commisioner of Customs for his signature when the order was received on February 3, 1893, suspending further action.

This completes the statement of facts in respect to these four cases. Before making any further comment in respect to these cases we desire to complete the history of these refunds.

On January 14, 1893, a circular letter was sent by the Department as follows:

Circular.

H A T M A T E R I A L S.

1893.
Department No.
Division of Custom.

TREASURY DEPARTMENT,
Office of the Secretary,
Washington, D. C., January 14, 1893.

To Collectors and other Officers of the Customs:

Upon the filing of total discontinuance of suit and of a stipulation that no further suits shall be instituted to recover refunds on articles claimed as hat trimmings, covered by invoices included in said suit refund will be made upon such of the following specified articles and such other articles as have been or may be found by the Committee of the Board of General Appraisers to be chiefly used in making or ornamenting hats, bonnets, hoods, &c.

Ribbons commercially known as trimmings, manufactured of silk or of silk and cotton, silk chief value, from 20 lines to 60 lines inclusive except gauze ribbons.

Gauze ribbons of every description.

Satin back velvet ribbon, 13 lines to 60 lines, inclusive.

Hat Bands.

Laces, other than cotton, linen or metal laces, not exceeding 65 lines in width.

Silk laces all of which silk is the component material of chief value, not exceeding 65 lines in width.

Satins woven in the grey with silk warp and cotton filling, known in the trade as piece dyed satins or hatters' satins, not exceeding 24 inches in width, and not costing above 2.50 fr. per aune less trade discount.

Silk faced velvets (not chappe) known in the trade as millinery velvet, of light weight, short and loose pile, which shir easily and are designed rather for show than wear, not exceeding 18-1/2 inches in width.

Fancy millinery peice goods, such as tufted gauzes and other millinery novelties made of silk or of silk and cotton, silk chief value, all wool silk or wool silk and wool or wool and cotton, not exceeding 18 inches in width. Crepe francaise not exceeding 55 centimeters in width, costing not above 75 centimes per aurne less trade discount.

China, manufactured of silk and cotton, silk chief value, not exceeding 32 inches in width and costing not above 60 centimes per aurne, less trade discount.

Marcellines, not exceeding 19 inches in width, costing not above 90 centimes per aune, less trade discount.

Malines not exceeding 27 inches in width, costing not above 40 centimes per meter, less trade discount.

O. L. Spaulding,
Assistant Secretary."

Before any refunds had been made under this circular and on

February 2, 1893, by telegram followed on the 3d, by a letter, all refunds in hat trimmings cases were suspended, as we understand, no refunds have since been made.

The amount of refunds, according to the certified statements in these four suits is as follows:-

Principal	$155,851.00
Interest	40,544.82
Costs	40.00
Total	$196,435.82

This summary has been furnished to us by Mr. George of the Naval Office. Mr. George has completed his work on the schedules herinbefore described upon all the Fleitmann cases including these four and Mr. Hanlon has completed his analysis of the merchandise.

On an examination of Mr. George's schedules, we find in these four suits a number of protests that were late and a number of entries to which other technical objections could be made.This, however, is unimportant, because none of these objectional entries have been included in the certified statements. Our investigation does not disclose any entry included in the certified statements which had already been refunded upon, or which was open to any technical objection in respect to the date of filing of protest, taking the appeal or commencing the suit.

Mr. Hanlon has analyzed all this merchandise in the manner hereinbefore described with the following result:

U. S. CIRCUIT COURT. No. suit 11,402.

HERMAN FLEITMANN &c.

vs. Instituted January 3, 1887.

EDWARD L. HEDDEN.

Total value of of merchandise dutiable at 50% : :
in this suit which can reasonably be classified : :
as hat materials, : $17,300.

Amount of refunds due plaintiffs on this basis-principal, $5,190

interest

U. S. CIRCUIT COURT. No. S. 12,545.

HERMAN FLEITMANN

vs. Instituted June 7, 1888.

DANIEL MAGONE.

Total value of merchandise dutiable at 50% in : :
this suit which can reasonably be classified : :
as hat materials, : $2,410.00

Amount of refund due plaintiffs on this basis, principal $723.00

interest, _____

U. S. CIRCUIT COURT. No. Suit 12,184.

H. FLEITMAN & CO.

vs. Instituted March 6th, 1888.

DANIEL MAGONE.

Total value of merchandise dutiable at 50% in: :
this suit, which can reasonably be classified: :
as hat trimmings, : $1,720.00

Amount of refund due plaintiffs on this basis, principal $516.00

interest _____

U. S. CIRCUIT COURT. No. of suit 16,289.

H.Fleitman & CO.

vs. Instituted March27, '90.

Daniel Magone.

Total value of merchandise dutiable at 50% in this suit which can reasonably be classified as hat trimmings,	$33,078.00
Total value of merchandise dutiable at 35% in this suit which can reasonably be classified as hat trimmings,	$319.00
Plushes, Hat Trimmings	147.00

Amount due plaintiff on this basis of refund, principal, $10,015.35

interest.

Mr. Hanlon finds just $54,974.00 as the value of merchandise covered by these suits upon which refunds should, in his opinion, be paid. He includes in that all the articles upon which the importers have obtained verdicts in the several suits up to this date decided by the Supreme Court. He excludes the cotton-back satins which it will be seen are the chief item in these four suits, and excludes also the velvets upon which no refunds were to be made. The total amount of refunds on this examination, according to Mr. Hanlon's computation, is $16,444.35, exclusive of interest and costs. This, of course, is a very small pro-

proportion of the sum allowed in the certified statements, amounting in principal alone to $155,851. The refunds on cotton-back satins in these four suits amount to $105,925.72. The amount of plain velvets not over 18-1/2 inches wide, included in these four suits, and which the importers abandoned as the basis of their proposed compromise, was, according to Mr. Hanlon's estimate #$30,055.61, and of this quantity of velvets Mr. Hanlon claims that none can properly be classified as hat trimmings.

#The value of all the velvets not over 18-1/2 inches wide in all the entries in the former suits was $82,544.00. Some of these entries were not included in the certified statements be cause they do not include merchandise subject to refunds.

Mr. Hanlon's summary of his analysis of the suits is annexed; and the schedules have been forwarded with the exhibits and samples.

The upper half of these pages marked "1st schedule" is immaterial. It is the result of an earlier examination and should have been left out of the summary.

Recapitulation.

Fleitmann & Co.,
vs.
Daniel Magone.

Suits 11,402, 12,148, 12,545, 16,289.

Excess of duty in certified statements principal, $155,851.00.

1st schedule.

Excess of duty allowed on satins.....$105,925.72
Value of satins.....$353,085.74.

Excess of duty on ribbons not H. T.....$23,594.72

Value of ribbons not H.T.....$78,649.08

Excess of duty on ribbons H.T.....26,097.46

Value of ribbons H.T.....86,991.52.

Excess of duty on plushes H.T.....233.10.

$155,851.00

Value of plain velvets 18-1/2 inches and less $30,055.61.

2nd Schedule.

Value of ribbons, &c. H.T.....$54,508.00.

Excess of duty " .....$16,352.40.

Value of 35% " .....319,00.

Excess duty 35% " .....47.85.

Value of ribbons not H.T.....$128,839.36.

Value of plushes H.T.....147.00.

Excess of duty on plushes H.T.....44.10.

Value of plain velvets 18-1/2 inches and less $82,544.00.

Value of plain satins &c. 24 inches and less..345,075.00

Included in the above satins there are satins costing 1 franc per meter and less, subject to trade discount, value. $47,028.00 $16,444.35.

H. Fleitman & Co., Suit 11,402.
vs.
Daniel Magone.

Excess of duty in certified statements principal, $53,767.55.

1st Schedule.

Excess of duty allowed on satins.....$33,632.42

Value of satins.....$112,108.07.

Excess of duty allowed on ribbons not H.T.....15,308.21.

Value of ribbons not H.T.....51,027.37.

Excess of duty on ribbons H.T.....4,826.92.

Value of ribbons H.T.....16,089.73.

Value of plain velvets, 18-1/2.....19,102.00.

2nd Schedule.

Value of Ribbons, &c., H.T.....$17,300.00.

Excess of duty on ribbons H.T.....$5,190.00.

Value of ribbons not H.T.....69,114.36.

Value of plain velvets 18-1/2 inch
and less49,126.00.

Value of satins 24 inches or less.130,715.00.

Included in the above satins there are)
satins costing 1 franc per meter))
and less subject to trade discount) 8,118.00.
value.) $5,190.00.

H. Fleitman & Co.

vs. Suit No. 12,184.

Daniel Magone.

Excess of duty in certified statements, principal.....$12,397.70.

1st Schedule.

Excess of duty allowed on satins.....$8,383.10.

Value of satins.....$27,943.67.

Excess of duty allowed on ribbons not HT.....2,058.60.

Value of ribbons not H.T. .....$6,862.00.

(12,397.70)

Excess of duty on ribbons H.T..... .....$1,956.00.

Value of ribbons H.T..... 6,520.00.

41,325.67.

Value of plain velvets 18-1/2
inches and less..1,573.61.

2nd Schedule.

Value of ribbons, &c., H.T.....$1,720.00.

Excess of duty on ribbons &c.H.T.....$516.00.

Value of ribbons not H.T..... 2,113,00.

Value of plain velvets 18-1/2
inches and less..7,043.00.

Value of satins,24 inches
and less.....16,466.00.

$516.00.

H. Fleitman & CO.

vs. Suit 12,545.

Daniel Magone.

Excess of duty in certified statements, principal.....$9,074.70.

1st Schedule.

Excess of duty allowed on satins.....$4,704.60.

Value of satins.....$15,682.00.

Excess of duty allowed on ribbons not H.T.....2,985.10.

Value of ribbons not H.T.....9,950.34.

Value of ribbons 35% $216 included in value of ribbons H.T. below.

Excess of duty on ribbons H.T..... 1,385.00.

Value of ribbons H.T..... 4,724.66.

Value of plain velvets 18-1/2
inches or less...1,177.00.

2nd Schedule.

Value of ribbons &c. H.T.....$2,410.00.

Excess of duty on ribbons &c., H. T.....$723.00.

Value of ribbons not H.T.....$2,242.00.

Value of plain velvets 18-1/2

inches and less..5,065.00.

Value of satins,24 inches and less 7,867.00.

$723.00..

H. Fleitman & CO.

vs.

Daniel Magone. Suit No. 16,289.

Excess of duty in certified statements, principal, $80,611.05.

1st Schedule.

Excess of duty allowed on satins.....$59,205.60.

Value of satins.....$197,352.00.

Excess of duty allowed on ribbons not H.T.....3,242.81.

Value of ribbons not H.T.....10,809.37.

Excess of duty on ribbons H.T.....17,929.54.

Value of ribbons H.T.....59,965.13.

Excess of duty on plushes H.T.....233,10.

Value of plain velvets 18-1/2 inch..8,203.

2nd Schedule.

Value of ribbons &c. H.T.....$33,078.00.

Excess duty ribbons &c. H. T.....$9,923.40.

Value of 35% ribbons &c. H.T.....319.00.

Excess of duty on 35% ribbons &c.,.....47.85.

Value of ribbons not H.T.....$55,370..00.

Value of plushes H.T.....147.00.

Excess of duty, plushes H.T.....$44.10.

Value of plain velvets 18-1/2
inches and less...21,310.00.

Value of satins 24 inches and less
less..190,027.00.

Included in the above satins)
)
there are satins costing one)
) $38,910.00.
franc per meter and less sub-)
)
ject to trade discount value) $10,015.35.

UNUSUAL PROCEDURE IN RESPECT TO THESE SUITS.

We are unable to find in the papers submitted to us any satisfactory explanation of Assistant Secretary Spaulding's letter of January 26th, and his subsequent letters in respect to these suits. We have shown that much the greater part, almost two-thirds, of the total refunds in these suits was upon cotton-back satins. That class of goods had been before the jury in the Philadelphia case in which the Government obtained a verdict. There was no other judicial decision in respect to that variety of merchandise. The letter of September 22, 1891, restrained the Committee of General Appraisers from considering any articles "identical with" those which had been before the jury in that case. This prohibition had been extended to include articles of the same general nature as

those involved in the philadelphia case; but Mr. Spaulding when the Committee of General Appraisers asked for an express instruction on this point after they had received from the Collector the letters and samples, instructed the Committee that they were to decide the questions in these suits without regard to the Philadelphia decision. It is true that in December the verdict obtained by the Government in the Meyer and Dickenson suit had been set aside; but it is a matter of record that it was [redacted] set aside because in the opinion of the judge certain newspapers articles had possibly influenced the minds of the jury. After this verdict had been set aside, the Attorney General in the letter of December 9, 1891, already quoted in fulll, strenuously urged the Secretary of the Treasury not to proceed even under the restricted letter of September 22, 1891, Therefore when Mr. Spaulding instructed the Committee of Appraisers to proceed without regard to the decision in the Philadelphia case, he instructed them, in substance, to disregard a ruling in favor of the Government, which he had formulated in the letter of September 22, 1891, and to disregard the only judicial decision that had been made in respect to a class of merchandise upon which immense claims against the Government were pending. It may be [redacted] that the paragraph in the letter of September 22, 1891, restraining the General Appraisers from considering such classes of merchandise as had been before the jury in the Philadelphia case was not a ruling or decision within Section 2, of the Act of March 3, 1875, requiring the consent of the Attorney General to the reversal or modification adversely to the United States of a ruling or decision once made by the Secretary giving construction to any law

imposing customs duties, but the Department endeavored to obtain from the Attorney General his concurrence before instructions were sent in January, 1893, to the Collector at this port to prepare the certified statements in these four suits. On December 29th, 1892, the Attorney General wrote to the Secretary of the Treasury two letters, one referring specifically to the proposition of Mr. John Proctor Clarke in the Fleitmann cases, and another relating generally to the whole class of hat trimmings suits, as follows:

"S.G. W.J.H.
"7551--1886.

DEPARTMENT OF JUSTICE,

Washington, D.C., December 29, 1892.

"The Honorable,

" The Secretary of the Treasury.

Sir:-

I have the honor to acknowledge the receipt of your letter of "October 4th, containing the proposition submitted by Mr. John Proc- "tor Clarke in behalf of Messrs. Fleitmann & Co., for settlement of "their suits involving refunds of duty paid on goods alleged to be "hat trimmings. In my opinion this involves a question of adminis- "tration, not calling for a legal opinion on my part, and I there- "fore decline to express any, further than I have done in my letter "of December 9, 1891, and in my letter of this date upon the gener- "al subject of the litigations known as "The Hat Trimmings cases".

I am, very respectfully yours,

H. H. H. MILLER,
Attorney General.

"S.G. W.J.H.
"7551--1886.

DEPARTMENT OF JUSTICE,

Washington, D.C., December 29, 1892.

"The Honorable,

The Secretary of the Treasury.

"Sir:

I have received your several communications enclosing various propositions made by Messrs. Tremain & Tyler looking to a settlement "of the so-called "hat trimmings litigation". A reference to my "letter of December 9, 1891, shows the attitude of this Department "toward this litigation, and no facts have since come to my know- "ledge leading me to change the position then taken. Your letters "present no question of law for my action.Under the decisions, the "questions in each case are questions of fact, and therefore do not "call for an opinion by me. The determination of one case is not "necessarily decisive of any other.

"With reference to the cases where statements for refund have "been completed at the date of your Department's letter of December "29, 1890, in my opinion the same answer must be made. Such ques- "tions are matters of administration, for which you alone are re- "sponsible, and I have neither the right nor the disposition to in- "terfere therewith.

Very respectfully yours,
W.H.H.Miller,
Attorney General.

The papers show that after the Fleitmann cases had been submitted, and before they had been decided, the proposition was made to the Department by Tremain & Tyler and by H. E. Tremain on behalf of William Openhym & Sons, suggesting that their cases be submitted to this Committee. Similar letters were written by Mr. Tremain on behalf of his clients Hoenighaus & Curtis, and W. H. Graef & Co. In these letters Mr. Tremain suggests that the invoices in the cases in which these importers were plaintiffs should be submitted to the Committee of General Appraisers to ascertain the chief use of the articles described in the invoices, and all these cases were from time to time submitted to the Committee and reports were made upon them by the Committee similar in form to the report in the four Fleitmann cases.

We annex a copy of Mr. Tremain's letter to Mr. Spaulding,dated February 2, 1892, in respect to the Openhym cases. His letter in

respect to the cases of Hoenighaus & Curtis, dated February 26,1892, to Mr. Spaulding, was similar in form, and so we presume was the letter in respect to the cases of Graef & Co., though we have not a copy of that before us. We quote the letter of February 2, 1892, so that you may note that these reports of the Committee were to be"without prejudice to the rights of either party, plaintiff or defendant". It is clear therefore, that these reports were to be advisory only, not binding upon anybody. The General Appraisers understood that their findings were to be advisory merely. (Testimoney of Mr. Lunt, Vol. IX, page 149, in which he refers in support of that opinion to Mr. Tremain's letter of February 2, 1892, already referred to.

"Law Office of Tremain & Tyler,

146 Broadway, New York, February 2, 1892.

Sir:

Referring to my interviews at the Department yesterday and today with yourself and your subordinates in reference to a possible compromise or settlement on the part of one of our clients (Messrs. Wm. Openhym & Sons) of all the suits brought by that importing house against the various collectors, Robertson, Hedden, Magone and Erhardt, for excessive duties on hat materials; and understanding that under the circumstances detailed the department deems it necessary to ascertain for itself the particulars of the importers' several claims as well as the aggregate thereof, and the several articles of merchandise upon which the importerclaims refunds, it is

respectfully submitted for official consideration:

That all of the articles claimed upon in the suits brought by said plaintiffs be submitted together with the invoices if that should be deemed necessary, or representative invoices to the appraiser and the Committee of General Appraisers designated in the order of September 22, 1891, (S.S.11,798) with a request to ascertain the chief use of all said articles; and that upon said articles found to be chiefly used for hats, bonnets and hoods as prescribed by the statute the collector estimate and report to the Department the aggregate amount (without interest) that might be refundable in all of said suits, indicating separately as far as practicable the merchandise upon which the excess of duty arises.

It is believed that upon the coming in of such report (which it should be understood is to be without prejudice to the rights of either party, plaintiff or defendant) a basis might be furnished whereby a compromise with a view to final settlement of all of said suits of said firm may be proposed to and entertained by the Department in case its officers shall ultimately conclude that any part of said claims ought not to be paid.

The physical impossibility of trying before successive juries within any reasonable time the upwards of sixty suits of this house involving over two thousand invoices, without considering the interest account now running against the treasury upon these overpayments, would seem sufficient reason to commend the foregoing to the favorable consideration of the Department.

Yours respectfully,

H. E. Tremain,

in behalf of Wm. Openhym & Sons.

To Hon. O. L. Spaulding,

Aacting Secretary of the Treasury.

(Draft proposed order.)

Washington, D.C. &c.

Sir:

Application having been made in behalf of Wm. Openhym & Sons that the Department ascertain sufficient particulars to enable it to ascertain a proposal to compromise and settle all the suits of that firm against your predecessors arising out of excessive duties exacted on hat materials, you will please submit the invoices or representative invoices involved in said suits to the appraiser with a request that the committee of General Appraisers designated in Department's instructions of September 22, 1891, (S.S. 11,798) ascertain the chief use of the articles claimed upon.

Upon the articles thus found to be chiefly used for hats, bonnets and hoods as prescribed by the statute, you will estimate and report to the Department the aggregate amount (without interest) that would be refundable in all of said suits, indicating separately as far as practicable the merchandise upon which the excess of duty arises.

To The Collector of Customs,

Secretary.

New York.

How thoroughly the Committee of General Appraisers investigated this question of chief use of this class of satin piece goods, it is difficult for us to determine. We have pointed out that they made no decision upon the question whether this class of merchandise was commercially known as trimmings in the condition in which imported. General Appraiser Lunt stated that he felt that he had made a very thorough investigation of the question of chief use; but the only evidence remaining of record was the statements made up by the importers in reply to the circular letter sent out by the General Appraisers on March 24, 1892, of which the following is a copy:

"OFFICE OF THE U. S. GENERAL APPRAISERS,

534 Canal Street, New York, March 24th, 1892.

"Dear Sir:

"We who have under consideration the claims of sundry importers for "refunds on piece dyed satins, in view of the magnitude of the "interests involved, do not feel justified in making a report upon "the questions of fact involved, unless the importers will present to us more detailed information than they have heretofore done.

" We suggest, therefore, in order that our information may be "comprehensive and our investigation reasonably exhaustive, that several importers in New York, having claims for refunds, should furnish us as soon as possible with a detailed statement showing "the dates and amounts of their importations, their sales, giving "dates of sales, names residence and place of business of purchasers "nature of business, number of pieces and prices.

" From such statements, supported by the affidavit of persons "cognizant of the book entries and other facts therein stated, we "believe a speedy and just decision may be reached and our findings, "if ever questioned, could be demonstrated to be correct by the "evidence upon which we acted. It would not be sufficient for us to take the sales of one or two houses , who have dealt perhaps "with only one or two classes of trade.

" If all the New York importers of piece dyed satins would comply "with this request, the result will go far to finally settle these vexed questions.

Very truly yours,

GEO. C. TICHENOR.

The copy of the decision of the General Appraisers in these suits sent to us by them was dated in March, and Mr. Lunt testified that it had been prepared, but that they held it back until they obtained from the importers statements in reply to the circular letter. Apparently, therefore, this Committee of General Appraisers had concluded in March to report as they finally did report on the 30th of April, but, distrusting the correctness of their own conclusions, they called upon the importers to obtain for them some further evidence in support of their decision. They say in their letter that if they can obtain such statements, they believe that their findings, "if ever questioned, could be demonstrated to be correct by the evidence upon which we acted."; and further: If all the New York importers of piece dyed satins would comply with this request, the result would go far to finally settle these vexed questions."

Mr. Lunt testified that the Committee on receiving these statements did not treat them as conclusive evidence, but merely as evidence on the question at issue. We do not think that this Committee of General Appraisers obtained all the evidence on this question that was available. On the trial of the Meyer and Dickenson case in Philadelphia, twenty witnesses testified for the plaintiffs that this class of satins was hat trimmings, and sixty-two witnesses testified for the Government that the chief use of such satins was not for hat trimmings. All this evidence should have been repeated before the Committee of General Appraisers.

Immediately after the order of September 22, 1891, was issued,

Mr. Hanlon, under instructions from the Department called on the Board of General Appraisers. He gave them a copy of the minutes of the testimony in the Philadelphia case and the samples used on the trial. Mr. Hanlon called upon the General Appraisers two or three times, and on one occasion took with him Mrs. Barradale, a Special employee, who had been of great service in preparing the Philadelphia case for trial and knew how to find the witnesses who had testified for the Government in respect to these satin piece goods. Mr. Hanlon showed the General Appraisers his letter of instructions and offered them his services, but was never called upon by the Committee of Appraisers, or by their Examiner, Mr. Wiswall, to render any assistance in the matter.

When the four Fleitmann suits were before the Committee, under the letter of January 26, 1892, Mr. Hanlon was not sent for, and the Board made no use apparently, of the experience which the Government officials had obtained from the elaborate preparation and long trial of the Philadelphia case. The services of Mrs. Barradale were not availed of by the Committee in any respect. Mr. Lunt, (Vol. Ix, pages 153 and 154) testified in answer to our question whether he knew that the classes of satins considered by him in the Fleitmann cases was precisely the class of goods that had been before the jury in the Philadelphia case, as follows:

"A. I have never had the clearest notion, but in a general
"way I understood that they considered some piece dyed satins
"in that case in Philadelphia. As to what the value per meter
of those Philadelphia goods was, I do not now remember, and I

"do not know that I had my attention called to it, but I have "some samples here."

Mr. Lunt testified that he understood that they were to conduct their investigation in respect to the chief uses of the piece dyed-satins without regard to the Philadelphia case. Of course that instruction was that they were to conduct it without regard to the verdict. It did not mean that they were not to avail themselves of all the information which the officials who had conducted that case could furnish. Though the Committee had a copy of the minutes in the Philadelphia case before them, it is very evident from Mr. Lunt's answer, just quoted, that they had not made themselves at all familiar with the testimony, otherwise they would have known more about the class of goods that was before the jury on that trial.

We do not feel assured that the verification of the statements furnished by the importers was as thorough as should have been made in a controversy of such great importance. Mr. Lunt testified (Vol. IX, page 151)

"Mr. Wiswall did all that work which involved the com-
"parison of the description of business in which the alleged
"purchasers were engaged with the directories of those parti-
"cular trades and made his statements. Many of them became
"known to the members of the Board, because of their examina-
"tion of witnesses in person."

Q. Mr. Wiswall was the only person, as I understand you, who
"made any investigation to authenticate the statements of the

"importers with respect to the persons who had purchased from
" them their importations of these satin piece goods? A. Yes,
"sir; outside of what examination the General Appraisers them-
"selves may have given to the papers. This did not go to
"look up the nature of the business. Mr. Wiswall was the ac-
"credited officer in charge of that business."

The verification of these statements should have been very thorough in view of the great weight which, judging from the circular calling for them, was given to them by the Committee.

The importers contend, we are informed, that whatever action the government may take in respect to other hat trimmings suits there was an agreement in respect to these four which the Government is morally bound to perform. There appears to be no express acceptance of the offer made on behalf of Fleitmann & Co. in January, 1892. It may be claimed, however, that the letter of Mr. Spaulding to Mr. Clarke, one of Fleitmann's attorneys, on January 14, 1893, informing him that the collector had been ordered to prepare and forward to the Department the certified statements, and the action of the Collector upon receipt of such instructions, taking from the importers the discontinuances and stipulations required pursuant to the letter of September, 1891, was a complete acceptance of the proposed compromise.

Irrespective of the effect of that letter and the acceptance of discontinuances, and stipulations, the action of the General Appraisers seems to have been merely advosory. Their report made to the collector and forwarded by him to the Department in May, 1892, and no action was taken upon it by the Department until

January, 1893.

When the present administration began, the correspondence shows that attempts were made by other attorneys representing Fleitmann & Co. to collect the refunds in these four suits and on receiving notice that payment had been suspended, Tremain & Tyler, the attorneys of record for Fleitmann & Co. telegraphed to the Department that unless payment was made, all their discontinuance stipulations should be vacated and the cases set for immediate trial, and on April 4th they telegraphed to the Department requesting action or cancellation of their stipulations without further delay. The Department then telegraphed to them that no objection would be interposed to the reinstatement of their cases upon the Calendar, and on April 4th the Department instructed the collector of customs at New York as follows:

Collector of Customs,

New York.

Sir:- I return herewith four certified statements for refund of duties on hat materials in favor of Fleitmann & Co., submitted with your letter of February 1, last.

Messrs. Tremain & Tyler, the attorneys of record in the said cases, having declined to await the decision of the Supreme Court on cases now pending, this Department will interpose no objections to the reinstatement of the above mentioned suits.

Respectfully yours,

Assistant Secretary.

AS TO RECOMMENDATIONS.

The Department letter instructing us to investigate this subject suggested that we should report recommendations in regard to the methods prevailing at this port in respect to estimating and paying refunds.

The Bureaus of Certified Statements in the Collector's office and the Naval Office appear to us to be in very competent hands and to do their work very carefully and accurately. The same is true of the Liquidating Division in reliquidating protested entries. We have no suggestions to make in respect to these methods, except that for purposes of information a record be kept in the Custom House, classified according to descriptions of merchandise, of the refunds paid upon reliquidations of entries made in the Liquidating Division without certified statements. It is likely that the amount of refunds paid on such reliquidation will continually increase, while the amount paid on certified statements, except in old cases, will continually decrease.

In respect to samples, the General Appraisers in their new quarters have established a place for samples and are likely to preserve them carefully.

The letter of September 22, 1891, provided that attorneys on receiving refunds should stipulate that no further suits shall be instituted to recover refunds on articles claimed as hat trimmings, covered by invoices heretofore the basis of such suits. We enclose copy of this stipulation, Exhibit 7, If this procedure is followed in the future, either in respect to cases already determined by the Committee of General Appraisers and in which refunds have not been

paid, or in respect to other cases, the form of this stipulation should be changed. Our examination of this subject has shown that a large number of the entries in a particular suit may be included in other suits previously commenced, and it is doubtful whether this stipulation would prevent an attorney from recovering on a claim covered by a suit commenced at an earlier date than the suit in which the refund is paid.The stipulation is merely that "no further suits shall be instituted" to recover on articles covered by the invoices; but if prior suits included items in those invoices upon which no refunds were paid, the attorney could hardly be said to be instituting a further suit, if he merely brought on for trial a prior suit in which were included articles covered by the same invoices. That is to say, that the stipulation only bars future proceedings and does not meet the case of a prior suit including other articles covered by the same invoices as those included in the suit in which the refunds were paid. Of course the plaintiffs cannot recover twice on the same item in a particular invoice, but the object of this stipulation was to obtain a discontinuance or release of all claims that could be based upon such invoices, not only in respect to the articles upon which the refund was paid. That would have been simply perpetuating the old evil of partial discontinuances. The stipulation in its present form does not release the Government from all claims upon the invoices, but only stipulates not to institute further suits upon them; and, as we have suggested, this might not meet the case of a prior suit.

A rule laid down by the Supreme Court in the cases of the United States against Schlesinger, 120, U. S . 109; Porter against

Beard, 124 U. S. 429; Rossman against Hedden, 145 U. S. 561 which has never been followed by the collector in this port in estimating the amount of refunds payable either on reliquidations made in the Liquidating Division, or on certified statements prepared in suits. The rule laid down in these cases is that under Section 3011 of the Revised Statutes, now repealed, an action to recover excess of duties paid was maintainable only when the duty was paid in order to get possession of the goods; that is to say, in addition to due protest and appeal, as prescribed in Section 2931, R. S., the importer must have paid the duties before he had obtained his merchandise, and in order to get it. Under these decisions, therefore, whenever on the final liquidation in consumption entries there was an increas of duty over the amount estimated at the time of entry and paid on the preliminary deposit, the importer could not recover any part of this increased duty if at the time of paying it he had already obtained possession of his merchandise. If he had obtained possession of his merchandise, he could refuse to pay this increased duty claimed by the Government on final liquidation, and if sued by the United States, could set up in defence an erroneous classification. It appears to have been the practice, however, in reliquidating invoices for the purpose of estimating the amount of refunds to be paid, to have estimated the percentage unlawfully collected upon the whole amount of duties paid both at the time of entry and after the final liquidation. There may have been some reason for not applying the doctrine of these cases prior to the Act of 1890. Importers when notified that the Government claimed an increase of

duties on final liquidation would in all cases where they were protesting against the classification, have refused to pay, and the Government would have been compelled to sue in such cases for every increase of duty established by the final liquidation of the entry. The Act of 1890, however, repeals these sections of the Revised Statutes (Section 14) and requires that the importer shall in all cases pay the full amount of duties before his notice of dissatisfaction or protest which entitles him to take his case to the Board of General Appraisers become effectual. How much money might have been saved (or may still be saved) by applying the rule established by the Supreme Court in the cases cited to those entries under the tariff of 1883 upon which claims for refunds are pending but have not (yet) been paid can be determined only by a careful reexamination of the entries by experienced liquidators, a work involving much labor, but quite practicable.

The decisions have always been followed by the U. S. Attorney for the Southern District of New York, in suits. He has a regular form which is filled out in the Law Division of the Collector's office, stating the entry number, the name of the vessel by which imported, the date of entry, whether on the final liquidation there was any increase of duty, and whether at the time of payment of such increased duty the importer had received all his merchandise. These forms, however, do not state the amount of the increased duty. The U. S. Attorney's office apparently leaves that until the suit comes on for trial and the entry papers are in court open to inspection. Obviously the amount paid after final liquidation is

considerable where the classification or rate of duty established at the time of a final liquidation is greater than the classification upon which the goods were entered. If we take the hat trimmings cases as an illustration, the amount of increased duty paid after final liquidation would be very large if there are many entries upon which at the time of entry the rate was fixed at 20 per cent. and thereafter by the Appraiser and the liquidators raised to 50 per cent.

It is probable that there are some hat trimmings entries in which the rate at the time of entry was 20 per cent, raised at the time of final liquidation to 50 per cent. There are also a great many entries in which increased duties were established by the final liquidation on account of increased valuations made by the Appraiser.

On examining the statements made for the U. S. Attorney in the four Fleitmann cases, Nos. 11,402; 12,184; 12,545 and 16,289, we found that on nearly every entry there were some increased duties paid after final liquidation, and after the importer had obtained all his merchandise. We have had all the entries in the certified statements in these four cases examined in order to discover the amount of refunds allowed but objectionable under the Schlesinger case (See Schedule Ex. 8).

The amount of excess of duty paid after final liquidation and after the goods had been delivered was $7,052.95 out of a total excess allowed in certified statements of $155,851.00 i.e., about 4.5 per cent. These four suits are wholly insufficient to afford a basis for an approximate estimate of the amount that may be objec-

objectionable under the cases cited. There were only two or three unimportant entries in these four suits made at 20 per cent and raised to 50 per cent. Recarries in suits including large entries, at top, finally raised to 50 per cent, may be greatly reduced in amount by the application of this rule. Mr. George of the Naval Office might wisely be instructed to make a similar examination of a larger number of the suits which he is now analyzing for another purpose.

APPLICATION OF SCHLESINGER CASE TO TOBACCO REFUNDS.

In respect to the tobacco refunds under the Blumlein decision the increased valuation made at the time of final liquidation is perhapslarge. It is likely that some entries of tobacco were made at 35 cents, and in such cases, under the system of classification adopted at that time in this port, a considerable portion of the merchandise was raised from 35 cents per pound to 75 cents on the final liquidation. If any of this increased duty was paid by the importer after he had received all his merchandise, the decisions hereinbefore cited prevent him from recovering any part of this increase. On the other hand, in these tobacco entries it must be remembered that a very large proportion consisted of warehouse entries. In much the larger number of warehouse entries the final liquidation has taken place before there have been any withdrawals. In such cases the importer would have paid the increased duties before obtaining his merchandise, or rather, in order to obtain possession of it, and the principal of the Schlesinger case would not apply.

Upon reliquidations made in the Liquidating Division since July 1st, 1893, upon tobacco entries refunds have been paid to the amount of $99,808.15 (Sch. ex. 9). All these entries were reliquidated under decisions of the Board of Appraisers pursuant to Section 14, Act of June 10, 1890. The protests were all under that Act having been filed subsequent to August 1st, 1890. The Schlesinger case, therefore, does not apply to these entries.

Upon certified statements tobacco refunds have been estimated as follows:

33 Cert. sts. forwarded to Dept...	$94,181.32	
Cert. sts. completed and held for discontinuances.....	97,055.20	
Cert. sts. prepared but not yet verified by Naval Office.....	759,361.53	
	$950,598.05	
There have been paid from C. S. sent to Department.....	$7,178.46	
Without Cert. St.....	99,807.15	$106,985.61.
Adding to the total amount of certified statements.....	$950,598.05	
The amount of refunds without certified statement.....	99,807.15	
The total refund upon tobacco payable and paid is.....	$1,050,405.20	

Probably all the antries have been reliquidated by this time and are included in the foregoing figures.

The application of the Schlesinger case to the Entries included in the $950,598.05 (of which as yet only $7,178.46 has been paid) can be determined only by having the entries in each suit examined

as has been done in the four Fleitmann hat trimmings suits. In this way the number of consumption entries will be disclosed as well as payments (if any) on liquidations of warehouse entries after all the goods had been withdrawn.

OTHER SUBJECTS OF REFUNDS.

The principal subjects of refunds besides hat trimmings are at present charges and tobacco, both arising under the act of 1883. The charges refunds appear to be made under the decision in the Oberteuffer case made in 1886, and under the Bradbury case, decided in December, 1889. The tobacco refunds are being made under the decision in the case of A. Blumlein & Co., decided by the Circuit Court of Appeals in April, 1893, communicated on June 12, 1893, to the Collector by the Department, with instructions to settle on the basis of that decision.

The annexed schedule, Exhibit No. XI shows the total amount of refunds on charges by certified statement to the end of the year 1892.

The conjectures frequently made in respect to the probable amount of refunds on charges appear to be grossly exaggerated. From 1886 to 1892, inclusive, the amount of refunds on charges and coverings was $2,029,628.11 by certified statements. During the year 1893 $80,145.65 have been paid in refunds on the same subject. We do not know what amount was paid through the Liquidating Division without certified statements, but we do not believe that it was very large. These protests and appeals were almost all in the hands of attorneys, and after the Oberteuffer decision the attorneys hurried

to get all their protests in suit. Their object in preferring to have them in suit was to recover interest and costs. Mr. Crawford, the head of the Bureau of Certified Statements in the Collector's office, who had had great experience in every class of refunds, says that the Charges and Coverings refunds have nearly all been paid. He informed us that he was willing to be quoted as predicting that the refunds and coverings in the future will not exceed $25,000. Of course this is to a certain extent conjectural, but Mr. Crawford has satisfied us that there is no probability that any very large sum will have to be paid in the future on charges and coverings.

Schedule, Exhibit No. XII, shows the merchandise imported under the Act of October 1st, 1890, on which certified statements have been issued up to August 10, 1893, together with the classification, court decisions, date of Department instructions, and amount of refunds paid. This schedule shows that under the Mc.Kinley Act, up to August 10th, 1893, certified statements to the amount of $22,029. 15 only had been issued.

We have pointed out already that refunds under the present procedure will be paid principally upon reliquidations made in the Liquidating Division, upon decisions rendered by the General Appraisers. As shown in this schedule, the amount paid by certified statements, which include only the cases actually petitioned into court, is very small.

Schedule, Exhibit No. XIII shows the nature and amount of refunds by certified statements during the year 1892, divided according to materials.

Schedule Exhibit XIV shows the refunds, principal, interest and costs paid in twelve years upon certified statements only. A very large amount must be added for refunds paid on liquidations without certified statements.

Charges refunded during the years 1886 to 1892.

1886	1886.....$125,082.63.	
	1887.....453,587.78.	On certified state-
	1888.....660,531.38.	ments only.
	1889.....218,009.10.	
	1890.....84,404.84.	
	1891.....235,892.58.	
	1892.....252,119.80.	
	$2,029,628.11.	

IN CONCLUSION.

The enormous sums repaid to importers as refunds naturally suggest the question whether it is not possible to establish some method of classifying merchandise which will either put an end to refunds or at least greatly reduce the amounts to be paid.

Schedule Exhibit XIV shows that on certified statements alone in twelve years $13,549,596.00 have been paid. A sum very nearly as large must be added to cover refunds made without certified statements. Estimating the possible amount still to be paid on hat trimmings in even a conservative manner it appears that there is a

probable liability of over fifteen millions in addition to five millions (estimated) already paid.

On tobacco over a million of dollars is due and payable.

The most deplorable characteristic of this system is that the consumer pays twice. Almost invariably the importers (for all are treated alike) receive the whole duty in the price for which the goods are sold; and when the Government has to pay back the amount levied in excess, the people pay again in the form of taxes.

Generally the refund is all gain to the recipients.

The broker or attorney who has worked up the question, collects the cases from the importers, guaranteeing them frequently against all cost and expenses. The importer agrees to pay a percentage, commonly 50 per cent of the recovery to the broker or attorney or to both to be divided between them. The importer can usually afford also to pay additional percentages to other attorneys or agents who can be useful in facilitating collection.

The first and most important thing to be done to put a stop to refunds is to make the conclusions of the General Appraisers conclusive on all questions of fact, as now proposed. It is reasonable to assume that this will reduce the opportunities for extensive refunds very greatly. If this suggestion becomes law, and the system works well, it may be found advisable to make the conclusions of the General Appraisers final both in law and in fact and to prohibit all further review of classifications.

This is a much more practicable method than to make the importer's right to a refund of duties unlawfully exacted depend upon

proof that the excess did not enter into the price of the merchandise. The latter may be pure justice, but it appears to be almost impracticable to establish a satisfactory method of obtaining such proof.

The true solution of the problem is to put an end to the opportunity to litigate endlessly the accuracy of the original classification; and this will largely be accomplished by prohibiting any review beyond the Board of General Appraisers.

Dated at New York, January 4th, 1894.

Charles S. Fairchild, Chairman.

D. Magone.

Wallace Macfarland.

Poindexter Dunn.

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