

Beans are vegetables, and are mentioned as examples of such in Webster's Dictionary. They are raised for food, and properly fall under the head of provisions. They are not specially enumerated or provided for anywhere in the act, unless they are under the general name of "seeds" or "garden seeds." A few only of all that are raised are used for seed. They are not commonly spoken of as seeds, but are known as an article of food by their name of beans. Those not edible are free by the other provision of the act. If that division had not been intended for the purpose of leaving those edible dutiable with other provisions, it would be useless. The fair meaning of all these provisions of this act seems to be to make all ordinary beans dutiable at 10 per cent. The verdict, being in accordance with this view, appears to be right as to this question.

The payment of 20 per cent., for which the verdict was rendered, was not made until after this suit was brought, but this fact was not made known, and no question which it would affect was raised at the trial; but, by an apparent mistake in computation, the verdict was for \$715.29, when the excess actually paid, with interest, amounted to only \$571.50. The defendant insists that the verdict should be set aside unless the plaintiffs remit the excess; and that then it should be, unless the recovery would be a bar to any future recovery for the same payments. Of course the excess should be remitted or the verdict set aside. The plaintiffs do not claim to the contrary of this. And it is the former recovery, not the recovery upon any particular form of pleading, or order or regularity of procedure, that satisfies the right of recovery and constitutes the bar. No error was committed at the trial in this respect, and this irregularity, if one, furnishes no ground for a new trial.

On the filing of a remitter of \$143.79 within 10 days, let judgment be entered on the verdict for the balance; and on failure to file such remitter within that time, let an order be entered setting aside the verdict.

HARRISON and others v. MERRITT.

(Circuit Court, S. D. New York. May 8, 1885.)

CUSTOMS DUTIES—BONE-BLACK—REV. ST. § 2504.

Bone-black is not included in the clause, "bones crude, and not manufactured, burned, calcined, ground, or steamed," in the free-list of section 2504 of the Revised Statutes.

At Law.

Henry E. Davies, for plaintiffs.

Elihu Root, U. S. Atty., and Sam'l B. Clark, Asst. U. S. Atty., for defendant.

WHEELER, J. The question in this case is whether bone-black is included in the clause, "bones crude, and not manufactured, burned, calcined, ground, or steamed," in the free-list of section 2504 of the Revised Statutes. The evidence showed that it is made by subjecting bones, after being steamed and cleaned, to destructive distillation by heat in close vessels, until all is expelled but the carbon, and then crushing that, and assorting the pieces into proper sizes for clarifying sugar. The jury has found thereupon that bones so treated, are not manufactured more than by being burned, calcined, ground, or steamed. The defendant has moved for a new trial, principally upon the ground that this finding is not supported by, and is contrary to, the evidence. Bones are understood to be calcined when they are subjected to heat in open vessels so as to produce bone-ash, by being made friable; and to be burned when subjected to the direct action of fire. This distillation appears to be different from either. And the crushing and assorting is an important part of the process. By the whole a new article is made from bones. They are not treated thus for the purpose of securing them, or making them portable, as grass is made into hay, without becoming manufactured, as was held in *Frazer v. Moffitt*, 20 Blatchf. 267; S. C. 18 FED. REP. 584; or as apples are cut and dried, as in that case mentioned. The bones are manufactured into bone-black by processes of several steps. *Schriefer v. Wood*, 5 Blatchf. 215; *Peters v. Robertson*, 20 FED. REP. 818. These steps amount to more than either of those allowed by the statute without making the result dutiable. The verdict for these reasons appears to be contrary to the weight of the evidence, and ought, therefore, to be set aside.

Verdict set aside, and new trial granted.

LEECH, Assignee, v. DAWSON and others.

(District Court, D. Kentucky. July 28, 1884.)

BANKRUPTCY—STATUTE OF LIMITATIONS—ACTION BY ASSIGNEE AGAINST BANKRUPT CLAIMING LAND AS HOMESTEAD.

The limitation prescribed by Rev. St. § 5057, applies to a suit by an assignee in bankruptcy against the bankrupt, to recover land fraudulently claimed and retained by the bankrupt as his homestead.

In Bankruptcy.

Gilbert, Reed & Darby, for defendants.

Henry Burnett, for complainant.

BARR, J. B. N. Dawson was adjudged a bankrupt in May, 1876, and James H. Leech, now deceased, was appointed his assignee, and the register made deed in June, 1876. The assignee, in October, 1876,