

SOHLESINGER AND OTHERS *V.* BEARD.* (NO.
1546.)
UNITED STATES *V.* SCHLESINGER AND
OTHERS.* (NO. 1548.)

Circuit Court, D. Massachusetts. December 29, 1882.

DUTIES ON IMPORTS—WROUGHT SCRAP-IRON.

The punchings and clippings of wrought-iron boiler-plates and wrought sheet-iron, left after the manufacture of the boiler-plates into boilers, though it is waste iron, fit only to be manufactured, cannot be deemed scrap-iron for dutiable purposes, because it has not been in actual use.

George P. Sanger, U. S. Atty., for the United States.

L. S. Dabney and *W. S. Halt*, for Schlesinger and others.

LOWELL, C. J. These cases are submitted on agreed facts, which require me to decide whether the punchings and clippings of wrought-iron boiler-plates and wrought sheet-iron, left after the manufacture of the boiler-plates into boilers was completed, is dutiable at eight dollars a ton as wrought scrap-iron. If so, the importers are right; if not, the duty charged by the collector is rightly charged. The statute, is Rev. St. § 2504, Schedule E, p.,466: "Wrought scrap-iron of every description, eight dollars per ton. But nothing shall be deemed scrap-iron except waste or refuse iron that has been in actual use, and is fit only to be remanufactured."

It is agreed that this is waste iron, fit only to be remanufactured. The only question is whether it has been in actual use. I do not find any recognized meaning of the words "actual use" which can be fairly applied to this new scrap-iron. The plates from which it was punched or clipped were new, and had been in no actual use, and I cannot discover any use to which the clippings have been put, any more than I can any

to which they may be put hereafter until they they are remanufactured.

The statute seems irrational and harsh, but plain. The subject is thoroughly considered, and the various statutes, down to the Revised Statutes, are compared by Judge DEVENS in his opinion on one of these cases, in 16 Op. Atty. Gen. 445, with which I concur. The orders will be:

In No. 1546, judgment for the defendants for costs.

In No. 1548, judgment for the plaintiffs for \$1,611.92, and interest and costs.

* Reversed. See 7 Sup. Ct. Rep. 546.

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