

der the old practice, I should send it to the jury to determine whether, by the ordinary processes of manufacture, the article had been advanced, in the meaning as understood in trade and commerce, outside of and beyond the group of articles included in paragraph 350; and their verdict, on such evidence as there is here, I should not disturb, whatever it might be. Under these circumstances, I shall not disturb the finding of the board of general appraisers. Decision affirmed.

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COMBS *et al.* v. ERHARDT.

(Circuit Court, S. D. New York. November 24, 1891.)

CUSTOMS DUTIES—ACT OF MARCH 3, 1883—METALLIC BEDSTEADS.

Certain bedstead mounts, brass and iron castings, bedstead tubes, bedstead knobs, vases, castors, etc., for use in the manufacture of metallic bedsteads, held not dutiable as "house and cabinet furniture in piece or rough, and not finished," at 30 per cent. *ad val.*, under Schedule D, par. 229, Act March 3, 1883, but at 45 per cent. *ad val.*, as "manufactures of metal," under Schedule C, par. 216, of said act.

At Law.

The plaintiffs, Henry W. Combs & Co., in July, 1890, imported into the port of New York certain brass and iron castings, iron tubes, brass knobs, castors, etc., for use in the manufacture of metal bedsteads. The defendant, collector of customs at the port of New York, levied and assessed a duty of 45 per cent. *ad valorem* upon the importation as "manufactures of metal," under paragraph 216, Schedule C, of the tariff act of March 3, 1883. The plaintiffs protested, claiming that the merchandise was dutiable as "house and cabinet furniture in piece or rough, and not finished," at the rate of 30 per cent. *ad valorem*, under paragraph 229 of Schedule D of the same act. The articles in suit were manufactured at Birmingham, England. They were not made in the same factories in Birmingham where metal bedsteads or metal furniture of any kind were manufactured. The manufacture of such articles as those in suit is in England a separate trade from the furniture. They did not constitute, on their arrival, all the completed parts of metallic bedsteads, and were not then in a condition to be put together, without further manipulation, to form completed metal bedsteads. At the close of the testimony the United States attorney, in behalf of the defendant, moved for a direction of a verdict in his favor, on the grounds (1) that the articles in suit, in the condition in which they were imported, were not "furniture" in any proper or correct sense of the term, and were not, therefore, covered by paragraph 229 of Schedule D; and (2) that the articles in suit, being manufactured entirely of brass, iron, or other metal, were not covered by the furniture paragraph, (229,) which relates only and exclusively to furniture made of wood, or of which wood is the component material of chief value.

*Hoffman Miller*, for plaintiffs.

*Edward Mitchell*, U. S. Atty., and *Henry C. Platt*, Asst. U. S. Atty., for defendant.

LACOMBE, Circuit Judge. I shall grant the motion of the defendant upon the ground that the articles imported are not within the meaning of the tariff phrase, "house furniture in the piece or rough."

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UNITED STATES *v.* LOEB.

(Circuit Court, S. D. New York. February 23, 1892.)

INTERNAL REVENUE—CONSTITUTIONAL LAW—TRADE-MARKS.

Rev. St. U. S. § 3449, making it an offense to ship spirituous or fermented liquors or wines under any other brand or name than that known to the trade as designating the kind or quality thereof, is not unconstitutional, within the principle of the *Trade-Mark Cases*, 100 U. S. 82, because it incidentally acts in some cases as a protection to trade-marks.

Petition for a Writ of *Habeas Corpus* to release Morris Loeb, held under commitment for violating the internal revenue laws.

*A. J. Dittenhoefer*, for petitioner.

*Maxwell Evarts*, for the United States.

LACOMBE, Circuit Judge. Under the authority conferred by the first clause of section 8 of article 1 of the constitution, to-wit, to "levy and collect taxes," and to "make all laws which shall be necessary and proper for carrying into execution that power," congress has levied a tariff upon foreign goods, and also taxes certain domestic products, under a comprehensive plan of internal revenue. The government of the United States collects duties upon spirituous and fermented liquors and wines, brought from abroad, and lays taxes upon such as are manufactured here, and also upon the business of manufacturing and dealing in them. It has elaborated in great detail a system by which it practically takes control of the manufacture of alcoholic spirits for the purpose of managing the collection of the revenue assessed therefrom, and exercises a surveillance over their manufacture and sale. The constitutionality, generally, of such legislation is not assailed. Without rehearsing the details of this system, it is apparent that it may be very desirable, perhaps necessary, to its success that all casks or packages containing distilled spirits shall be truthfully marked, such marking affording to the officers of the government a convenient means both of checking the returns of the manufacturing distiller and preventing the smuggling of untaxed products into the general market of the country. In the last paragraph of section 29 of the act of congress approved July 13, 1866, and entitled "An act to reduce internal taxation and to amend an act entitled 'An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes,' approved June 30, 1864," (now section 3449, Rev. St. U. S.,) it is provided as follows: