

the case as favorably for the appellant as the facts warrant, there was simply a dispute upon the evidence before the board. They having reached a conclusion, which I think was amply sustained by the proof, it seems to me that their decision should be undisturbed. The decision of the board is affirmed.

FACHRI v. MAGONE.

(Circuit Court, S. D. New York. November 22, 1892.)

CUSTOMS DUTIES—ALLOWANCE OF TARE—JUTE IN BALES.

Under section 2898, Rev. St. U. S., which provides that "actual tare shall be allowed," an allowance must be made, in estimating the duty on jute in bales, for the weight of jute tie ropes with which the bales are bound up; it appearing that between buyer and seller these ropes are regarded as tare, and are never charged for, a deduction equal to their weight being made from the total weight of the bale, and only the net weight being billed.

At Law. Action to recover duties paid. Verdict directed for plaintiff.

Plaintiff imported at the port of New York, in 1886 and 1887, certain bales of jute secured by tie bands or ropes, also of jute, but so tangled, knotted, and broken as to be worthless except for paper stock. The bales were invoiced at prices per bale of 400 pounds; and the United States weigher reported to the collector of customs their gross weight only, omitting to report the weight of the tie bands and the net weight of jute in each bale. Duty was assessed by the defendant, as collector of customs, at 20 per cent. ad valorem on the value stated in the invoices, under the provision for "jute" contained in paragraph 333, Schedule J, Heyl, (Act March 3, 1883; 22 St. at Large, p. 507;) and the importer, having duly protested and appealed, as required by law, brought this action to recover the same percentage of the duty exacted which the weight of the tie bands represented of the total weight of the bales. The importer cited Rev. St. § 2898, which provides that in certain cases invoice tare, or an agreed tare, may be allowed, and then that "in all other cases the actual tare should be allowed." Upon the trial evidence was given, and not contradicted, that the tie bands weighed, invariably, six pounds per bale of jute; that they were useless except as paper stock,—for which the tariff act then in force provided free entry, (paragraph 754, Heyl;) that they were regarded by all weighers as "tare," and also by dealers in jute, who, selling it by the pound, always made an allowance of six pounds from the total weight of each bale, and charged only for the remainder.

Defendant's counsel then moved for a direction of verdict for defendant, and plaintiff's counsel made a similar motion in his behalf.

Comstock & Brown, for plaintiff.

Edward Mitchell, U. S. Atty., and Thomas Greenwood, Asst. U. S. Atty., for defendant.

LACOMBE, Circuit Judge, (orally.) I direct a verdict for the plaintiff for the amount of duty exacted on these tie bands.

KNOX ROCK-BLASTING CO. v. DRAKE et al.

(Circuit Court, S. D. New York, December 31, 1890.)

No. 4,596.

PATENTS FOR INVENTIONS—VALIDITY—PRIOR USE.

Letters patent No. 291,606, issued January 8, 1884, to John L. L. Knox, for "an improvement in methods of and tools for blasting rocks," was not invalidated by any prior use of the invention therein described.

In Equity. Bill by the Knox Rock-Blasting Company against Drake and Stratton for infringement of a patent. Decree for complainant.

The bill charged defendants with infringement of letters patent No. 291,606, granted on January 8, 1884, to John L. L. Knox, for an improvement in methods of, and tools for, blasting rocks. Defendants alleged that the patent was invalid by reason of prior use of the invention by others. The claims of the patent, of which infringement was charged, are: "(1) The within-described method of blasting rock, whereby the alignment of the fractures upon the opposite sides of the bore is insured, which consists, essentially, in forming longitudinal grooves in the opposite sides of a cylindrical bore, said grooves having equal sides, and so situated as that a plane bisecting two opposite grooves will bisect the axis of the cylindrical bore, substantially as and for the purposes described. (2) The within-described instrument for cutting grooves in cylindrical blasting bores, said instrument having a hexagonal flat cutting face, two sides, c, parallel, and of the length and distance apart, equal to the sides of a square inscribed within the circle of the cylindrical bore to be operated upon, and cutting edges, a, of equal length, and so situated as that a line joining the points, b, will pass through a point equidistant from the ends of the sides, c, substantially as and for the purposes described."

W. Bakewell & Sons and Kerr & Curtis, for complainant.
Arthur C. Butts, for defendants.

WALLACE, Circuit Judge, (after stating the facts.) It is altogether unlikely that an invention which is so useful and meritorious as the one which is the subject of the patent in suit, and which, as soon as it was patented, and introduced to the notice of quarrymen, was so immediately and generally recognized as an extremely valuable one, would have made no mark, and slumbered in obscurity, if it had been known and used by intelligent quarrymen any considerable length of time before it was patented. The defense of prior use made by the evidence for the defendants is an unusually weak one, tested by the rules which apply to such a defense, and falls far short of the satisfactory demonstration which is required to overcome the presumption of novelty arising from the grant of letters patent. *American Bell Tel. Co. v. People's Tel. Co.*, 22 Blatchf. 531, 536, 22 Fed. Rep. 309. A decree is ordered for the complainant.