

ing, and payment of duties, a natural construction of the language used would determine the precise date expressed by the phrase, "the day when this act shall go into effect," by the going into effect of the act touching the subject-matter with which the section is wholly concerned.

An analysis of the section lends support to this construction. If interpreted as the appellee contends, the act would (by that and other sections) provide for duty as follows: (1) On goods imported and entered prior to October 6th, the old rate; (2) on goods imported and entered after October 6th, the new rate; (3) on goods imported prior to October 1st, but not entered prior to October 6th, the new rate; (4) on goods imported subsequent to October 1st, but prior to October 6th, and not entered prior to October 6th, the old rate. It is difficult to see why merchandise included in the fourth of these categories should be privileged over merchandise included in the third.

The judgment of the circuit court should be reversed, and case remanded to that court, with instructions to affirm the decision of the board of United States general appraisers.

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In re GOLDBERG.

(Circuit Court, S. D. New York. January 23, 1893.)

CUSTOMS DUTIES—CLASSIFICATION—"GLASS-HEADED PINS."

Pins of different sizes, having iron or steel shanks from 1½ to 6 inches in length, with more or less ornamental glass heads, some polished and some of a dull black, the articles being commercially known as "lace pins," "hat pins," and "bonnet pins," the glass heads of some of the bonnet pins being in the form of sprays or sprigs, are dutiable as manufactures of glass at 60 per cent. ad valorem, under paragraph 108 of the tariff act of October 1, 1890, and not as "pins, metallic," under paragraph 206 of the same act.

At Law.

This was an appeal by the importer pursuant to the provisions of the so-called "Administrative Act" of June 10, 1890, from the decision of the collector of customs at the port of New York in relation to the classification for duty of certain merchandise imported into said port in August, 1891, and which was assessed for duty by the collector as manufactures of glass at 60 per cent. ad valorem under Schedule B, par. 108, of the tariff act of October 1, 1890, which is as follows:

"108. Thin-blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

The importer protested that the merchandise was "pins," and was dutiable only at 30 per cent. ad valorem, under Schedule C, par. 206, of said tariff act, which is as follows:

"206. Pins, metallic, solid-head, or other, including hairpins, safety pins, and hat, bonnet, shawl, and belt pins, thirty per centum ad valorem."

The case coming before the board of United States general appraisers, pursuant to the statute, evidence was taken in behalf of the importer, from which it appeared that the articles were pins of various sizes having iron or steel shanks, varying in length from 1½ to 6 inches, and all having more or less ornamental heads made of glass, some polished and some of a dull black, and that all of the articles were commercially known as "pins." The board of

appraisers overruled the importer's protest, and affirmed the collector's assessment of duty. The importer appealed to the circuit court under the provisions of the above-mentioned administrative act, and procured from the court an order to take further testimony before one of the general appraisers as referee. Upon such reference a number of trade witnesses were produced in behalf of the importer, and from their evidence it appeared that the merchandise was commercially known in trade and commerce as "lace pins," "hat pins," or "bonnet pins," and that some of the bonnet pins—those with elaborate and ornamental glass heads in the form of sprays or sprigs—were sometimes used for hat ornaments as well as for fastening the hat upon the head, but that they were always included in the trade among the class or group known as "pins." This trade testimony was not contradicted by any evidence produced on the part of the collector or the government; and after the return of the testimony to the circuit court the case came on for hearing upon the return of the board of United States general appraisers, and the further evidence taken as above. The United States attorney relied solely upon the point of law that in the tariff act of March 3, 1883, Schedule C, (Tariff Ind., New, par. 209,) the provision for pins was in the following terms: "Pins, solid-head or other, thirty per centum ad valorem;" whereas in the tariff act of October 1, 1890, (Schedule C, par. 206,) the provision is for "pins, metallic, solid-head, or other," etc.; and contended that the important word "metallic," introduced after the noun "pins" in paragraph 206 of the latter tariff act, must be given the significance which it naturally conveyed as limiting the pins covered by the provision to pins entirely of metal.

After argument, the circuit court delivered the following decision.

Comstock & Brown, for importer.

Edward Mitchell, U. S. Atty, and James T. Van Rensselaer, Asst. U. S. Atty, for collector and the government.

LACOMBE, Circuit Judge. In the tariff act of March 3, 1883, Schedule C, (Tariff Ind. par. 209,) the provision as to pins is as follows: "Pins, solid-head or other, thirty per centum ad valorem." In the tariff of October 1, 1890, in Schedule C, "Metals and Manufactures of," (Tariff Ind. par. 206,) it is found amplified so as to read: "Pins, metallic, solid-head, or other, including hairpins, safety pins, and hat, bonnet, shawl, and belt pins, thirty per centum ad valorem." The United States attorney contends on behalf of the collector and the government that the word "metallic," inserted by congress into the present tariff provision, must be given some significance, and that it should be held to qualify the noun "pins" so as to cover only pins consisting entirely of metal, whereas the imported articles in this case are, according to uncontradicted testimony, pins having more or less ornamental glass heads. Upon that one point I am inclined to sustain the view of the board. The word "metallic" is certainly put there for some purpose, and I cannot see any other meaning to give it here than the one it would naturally have.

The decision of the board of general appraisers is affirmed.

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In re KRAFT.

(Circuit Court, S. D. New York. January 23, 1893.)

CUSTOMS DUTIES — DYED MOSS — ACT OF OCTOBER 1, 1890 — CONSTRUCTION OF PARAGRAPH 24.

Dyed moss, used by florists, held to be dutiable at 10 per cent. ad valorem, under paragraph 24 of the act of October 1, 1890, as "Mosses

\* \* \* not edible, but which have been advanced in value or condition by refining or grinding, or by other process of manufacture," and not at 20 per cent. ad valorem, under section 4 of said act, as a nonenumerated manufactured article.

At Law. Appeal from decision of United States general appraisers. Reversed.

The imported merchandise in this case consisted of moss, cleaned, dyed, sorted, and boxed, chiefly used by florists, and not used as a drug, nor for chemical purposes. The collector of customs at New York assessed duty thereon at the rate of 20 per cent. ad valorem, as a nonenumerated manufactured article, under section 4 of the tariff act of October 1, 1890.

The importer duly protested, claiming the same to be dutiable at 10 per cent. ad valorem, under language of the following paragraph of said act: Paragraph 24: "Drugs, such as barks, beans, berries, balsams, buds, bulbs, and bulbous roots, and excrescences, such as nutgalls, fruits, flowers, dried fibers, grains, gums, and gum resins, herbs, leaves, lichens, mosses, nuts, roots, and stems, spices, vegetables, seeds, (aromatic, not garden seeds,) and seeds of morbid growth, weeds, woods used expressly for dyeing, and dried insects, any of the foregoing which are not edible, but which have been advanced in value or condition by refining or grinding, or by other process of manufacture, and not specially provided for in this act, ten per centum ad valorem." The United States general appraisers decided against the importer, affirmed the decision of the collector, and held that paragraph 24 did not cover the merchandise, because it was not a drug, nor used as a drug. The importer appealed to the United States circuit court, under the provisions of the act of June 10, 1890.

It was contended on behalf of the collector that the first three words of paragraph 24, to wit, "Drugs, such as," qualified, restricted, and covered all of the articles mentioned therein, and that the act of October 1, 1890, had altered the language of the corresponding paragraph of the previous tariff act of March 3, 1883, (paragraph 94 of the act of 1883,) by the insertion of the above three words; that there had also been a similar alteration of paragraph 636 of the act of 1883, in paragraph 560 of the act of 1890, thus denoting an intention of congress to include in said paragraphs 24 and 560 of the later act only such articles therein named as were drugs, or used as drugs. On behalf of the importer it was argued that the words, "Drugs, such as," in paragraph 24, only covered and qualified the succeeding words, "barks, beans, berries, balsams, buds, bulbs, and bulbous roots," and did not cover the other articles named therein, such as "mosses," etc.

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

Stephen G. Clarke, for importer.

LACOMBE, Circuit Judge. The alleged intention of congress to include in paragraph 24 only such articles as are drugs is not shown by the language of that paragraph. As "mosses \* \* \* advanced in value or condition by any process of manufacture" are therein specifically designated, the decision of the board is reversed, and it is directed that the articles be classified under paragraph 24.

## HOTCHKISS v. SAMUEL CUPPLES WOODEN-WARE CO.

(District Court, E. D. Missouri, E. D. November 28, 1891.)

No. 3,465.

## 1. PATENTS FOR INVENTIONS—OFFENSES AGAINST PATENT LAWS—MARKING UNPATENTED ARTICLES.

In an action under Rev. St. § 4901, to recover penalties for marking unpatented articles as "patented," the jury can only consider cases in which the marking was done within five years before the commencement of the suit, and within the judicial district in which it is brought.

## 2. SAME—INTENT—EVIDENCE.

To render defendant liable for the penalty, the marking must have been done for the purpose of deceiving the public, and in determining the existence of such purpose the jury may consider that, although the articles were in fact unpatented, they were claimed to have been manufactured under a certain patent, and that the question whether they were covered by such patent was one upon which persons skilled in the patent law might reasonably entertain different opinions. The fact that defendant may have become convinced, some time after the marking was done, that the articles were not covered by the patent, would not render it liable.

## 3. SAME—LIABILITY OF CORPORATIONS—INTENT OF OFFICERS.

A corporation may be held liable under this section when the wrongful acts are proven to have been committed by some officer or agent thereof acting within the scope of his authority, knowing that the articles were unpatented, and with intent to deceive the public.

## 4. SAME—SINGLE OFFENSE.

The marking of a number of separate articles with intent to deceive the public does not constitute separate offenses when it is all done on the same day and at the same time, so that the marking is practically a continuous act, and in such case but one offense is committed, and one penalty is recoverable.

At Law. Action by Charles A. Hotchkiss, for himself and to the use of the United States, against the Samuel Cupples Wooden-Ware Company to recover penalties under Rev. St. § 4901, for marking certain unpatented articles with the word "Patented," for the purpose of deceiving the public.

Wm. Eccles, for plaintiff.

Geo. A. Madill, for defendant.

THAYER, District Judge. As you are aware, this is a suit brought by the plaintiff in his own behalf and in behalf of the United States, to recover penalties imposed by the laws of the United States for marking an unpatented article with the word "Patented," and doing so with intent to deceive the public. The motive that inspired congress to enact such a law was fairly stated to you by Mr. Eccles, in opening the case, and nothing further need be said by me upon that subject. The complaint in this case charges that defendant marked the words "Patented, September 28, 1880," on 1,420 rope reels manufactured between July 1, 1885, and April 5, 1890. But as the case stands at the conclusion of the trial, the evidence will not warrant you in finding that more than 400 rope reels were so marked in this district between the dates