

"That the true construction of said paper of April 19th is that it is to be treated as an amendment of the contract declared upon of April 5th-9th, and operates as if it had been added to or incorporated into that contract, so that the words, 'this contract is further subject to the proper execution by the Pearson Cordage Company of their general contract with The National Cordage Company' were not a condition precedent to the taking effect of said paper of April 19th, but became by the acceptance and adoption of that paper by the Pearson Cordage Company a condition of the performance of the whole contract; so that, unless such general contract were executed by the Pearson Cordage Company, neither could that company maintain an action against The National Cordage Company for nondelivery of hemp, nor could The National Cordage Company maintain an action against the Pearson Cordage Company for refusing to accept hemp. In other words, that the execution by the petitioner of said paper of April 19th, and its acceptance and adoption by the Pearson Cordage Company, incorporated it into the contract of sale, so that the contract between the parties then stood in brief as follows: (1) A sale by the petitioner to the Pearson Cordage Company of eight thousand bales of hemp. (2) A provision for the delivery of contracts for hemp instead of hemp. (3) An agreement that changes of duty either way were for the Pearson Cordage Company, and that delivery of contracts instead of hemp should not change terms of sale or price. (4) That, the Pearson Cordage Company having bought three thousand two hundred and four bales between April 9th and 19th, the amount to be sold and delivered is correspondingly reduced, and the whole contract of sale is subject to the proper execution by the Pearson Cordage Company of their general contract with The National Cordage Company."

The petition for rehearing was denied, April 13, 1893. No opinion was filed.

SHELDON et al. v. UNITED STATES. CASTRO v. SAME. SHELDON et al. v. SAME.

(Circuit Court of Appeals, Seventh Circuit. February 11, 1893.)

CUSTOMS DUTIES—TOBACCO SCRAPS.

Leaf tobacco scraps, which are the remnants of tobacco, left after making cigars, and are used in the manufacture of snuff, cigarettes, and cheap cigars, are dutiable at 40 cents per pound, under paragraph 244 of the tariff act of 1890, as "tobacco, manufactured, not especially enumerated or provided for," and not as "waste," under paragraph 472, nor as "unenumerated, unmanufactured goods," under section 4.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Proceeding to appraise imports. The circuit court affirmed the decision of the board of general appraisers. The importers appeal. Affirmed.

P. L. Shuman, for appellants.

T. E. Milchrist, for the United States.

Before GRESHAM and WOODS, Circuit Judges, and BUNN, District Judge.

GRESHAM, Circuit Judge. These cases involved the question whether leaf tobacco scraps are dutiable at 40 cents per pound, under paragraph 244 of the tariff act of 1890, or at the rate of 10

per cent. ad valorem, under paragraph 472 of the same act, as "waste," or at the same rate of per cent., under section 4 of the act, as "unenumerated, unmanufactured" goods. The duty was assessed in each case under paragraph 244. The assessments were paid under protest. The board of general appraisers affirmed the collector's rulings. The importers appealed. The circuit court affirmed the decisions of the board, and the importers prosecuted these appeals. The board of general appraisers found that the merchandise was "leaf tobacco scrap," "tobacco cuttings," and "scraps and cuttings from Havana tobacco." In the manufacture of cigars, scraps are cut or broken from the wrappers and fillings, which are put aside, not as waste, but to be used in the manufacture of snuff, cigarettes, and cheaper cigars. This was the character of the merchandise in question. Paragraph 242 of the tobacco schedule provides that leaf tobacco suitable for cigar wrappers, if not stemmed, shall be subject to a duty of \$2 per pound, and, if stemmed, \$2.75 per pound; and paragraph 243 provides that all other tobacco in leaf, unmanufactured, and not stemmed, shall be subject to a duty of 35 cents per pound, and, if stemmed, 50 cents per pound. It will be observed that those two paragraphs embrace all leaf tobacco, both stemmed and unstemmed. Section 244 reads: "Tobacco, manufactured, of all descriptions, not specially enumerated or provided for in this act, forty cents per pound." Snuff, cigars, cigarettes, and cheroots are covered by other paragraphs. It appears to have been the intention of congress to cover by the tobacco schedule all kinds of tobacco,—manufactured and unmanufactured. The scrap tobacco in question is saved as valuable merchandise. It is a known article of commerce. Paragraph 244 was doubtless intended to embrace tobacco of all descriptions, not especially enumerated in the act. Scrap tobacco is tobacco which has been partially manufactured, and manufactured tobacco, of all descriptions, not elsewhere specially enumerated in the act, is covered by paragraph 244. The judgment of the circuit court is affirmed.

EMPIRE STATE NAIL CO. v. FAULKNER et al.

(Circuit Court, S. D. New York. May 13, 1893.)

1. PATENTS FOR INVENTIONS—ASSIGNMENT—EVIDENCE—AGENCY.

In a suit for the infringement of a patent the defense was that the alleged infringer, the A. Company, was the equitable owner of the patent in suit. In support of this it showed an agreement between it and the son of the patentee, who claimed to be the patentee's agent, that he should disclose and transfer to the A. Company all the secrets and patent or other rights relating to the manufacture in question which were owned or controlled by him. There was nothing but the son's own declarations to show that he was such agent, and he was shown to be utterly untrustworthy; and the agreement made no express reference to either the patent in suit or the patentee. *Held*, that the A. Company acquired no title to the patent by virtue of this transaction.

2. SAME—BONA FIDE PURCHASERS—ESTOPPEL.

After this agreement, the son, by assignment, became owner of a half interest in the patent, and the A. Company claimed that under and by