

soever my said attorney, or any substitute appointed by him, may do in the premises by virtue hereof. In witness whereof, I have hereunto set my hand and seal this 22d day of April, A. D. 1873.

"James McDonald. [Seal.]

"Signed, sealed, and delivered in presence of

"Archy McDonald.

"Dana White."

"State of Minnesota, county of Ramsey—ss.: On this 22d day of April, A. D. one thousand eight hundred and seventy-three, before me personally appeared James McDonald, personally known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned. In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

Dana White,

[Notarial Seal.]

"Notary Public, Ramsey Co., Minn."

Subsequently, Chowen, as attorney in fact for said patentee, executed certain warranty deeds to one Rufus J. Baldwin, and the latter on December 1, A. D. 1875, duly executed a mortgage on the property to Henry A. Stinson. All of the instruments above mentioned were duly recorded. The mortgage to Stinson was duly foreclosed under a power of sale in said mortgage, and after legal notice, as required by the statutes of Minnesota, and the property therein described was sold by the proper sheriff on July 18, 1881, to the defendant, John De Laittre, and a certificate of sale duly executed by the sheriff, and recorded. On July 17, 1882, George W. Chowen made a quitclaim deed to George Douglas, the plaintiff. No redemption was ever made from the foreclosure sale.

It is claimed that the instruments executed by the patentees to George W. Chowen conveyed the fee in the land to him, and that the deed to Baldwin, executed by George W. Chowen as attorney in fact, through which the defendant claims title, is a nullity, and void. These instruments executed and delivered to Chowen are destitute of any greater legal effect than the creation of an irrevocable power of attorney, the fee of the land remaining in the patentees. Chowen, executing the deeds to Baldwin as attorney in fact for the patentees, conveyed the fee in the land therein described; and the defendant, claiming through Baldwin, has the title, and is entitled to a judgment. Let judgment be entered accordingly.

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In re GRIBBON.

(Circuit Court of Appeals, Second Circuit. May 23, 1893.)

CUSTOMS DUTIES—CLASSIFICATION—HANDKERCHIEFS.

Under the tariff act of October 1, 1890, par. 373, imposing a duty of 60 per cent. ad valorem upon the goods therein enumerated, the provision for "embroidered and hemstitched handkerchiefs" covers only handkerchiefs which are both embroidered and hemstitched, and these words cannot be taken distributively, so as to include handkerchiefs which are embroidered only, or hemstitched only. 53 Fed. Rep. 78, affirmed.

Appeal from the Circuit Court of the United States for the Southern Division of New York.

This was an application by William Gribbon to review a decision of the board of general appraisers affirming the action of the collector of the port of New York in the classification for duty of certain imported handkerchiefs. The court below reversed the decision of the board, (53 Fed. Rep. 78,) and the collector appeals. Affirmed.

The goods in question consisted—First, of handkerchiefs with a hemstitched border; second, of handkerchiefs embroidered or scalloped on the edge, and not hemstitched; and, third, of handkerchiefs with a hemstitched border, and embroidered, either with initial letters, or with figures worked by hand or machinery. The collector assessed them all at 60 per cent. ad valorem, under paragraph 373 of the tariff act of October 1, 1890. This paragraph reads as follows:

“373. Laces, edgings, embroideries, insertings, neck ruffings, ruchings, trimmings, tuckings, lace window curtains, and other similar tamboured articles, and articles embroidered by hand or machinery, embroidered and hemstitched handkerchiefs, and articles made wholly or in part of lace, ruffings, tuckings, or ruchings, all of the above-named articles composed of flax, jute, cotton, or other vegetable fiber, or of which these substances, or either of them, is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem: provided, that articles of wearing apparel and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.”

The board of general appraisers held that the provision for “embroidered and hemstitched handkerchiefs” should be understood distributively, the copulative “and” being read “or,” so that the clause should apply to handkerchiefs which were hemstitched only, and those which were embroidered only, as well as to those which were both hemstitched and embroidered. The circuit court, however, held that this clause could not be so read, and that the expression “embroidered and hemstitched handkerchiefs” could include only handkerchiefs which were both embroidered and hemstitched. The court further held that those handkerchiefs which were embroidered, only, should be classified under the further provision of paragraph 373 for “textile fabrics” which have been embroidered by hand or machinery, and must therefore pay the same rate of duty that is paid by embroideries of the material of which they are composed; and, as these handkerchiefs were of cotton, they should, under this provision, pay the same duty, viz. 60 per cent. ad valorem. As to handkerchiefs which were hemstitched, and not embroidered, the circuit court held that they were dutiable at 50 per cent. ad valorem, under paragraph 349, simply as “handkerchiefs.”

Jas. I. Van Rennsalaer, Asst. U. S. Atty., for appellant.  
W. Wickham Smith, for appellee.

Before WALLACE and SHIPMAN, Circuit Judges.

PER CURIAM. We agree with the circuit court whose judgment is now under review, and with the circuit court of appeals for the eighth circuit, that only those handkerchiefs which are both embroidered and hemstitched are subject to the duty of 60 per centum ad valorem imposed by paragraph 373 of Schedule J of the act of October 1, 1890.

In affirming the judgment it is not to be taken that we concur in the opinion of the circuit court that the embroidered handkerchiefs which are not hemstitched are, by the proviso of paragraph

373; dutiable as embroidered "textile fabrics." It would seem that they are manufactured articles advanced beyond and outside of the category of textile fabrics, and, like hemstitched handkerchiefs, are dutiable under paragraph 349, as handkerchiefs. We do not decide this proposition definitely, however, because the case is here upon an appeal by the collector only. The importer, not having appealed, can only be heard in support of the decision below. *Chittenden v. Brewster*, 2 Wall. 191; *Alviso v. U. S.*, 8 Wall. 337; *The Stephen Morgan*, 94 U. S. 599; *Louden v. District*, 104 U. S. 771. And, if an error has been committed by the court below, it was to the advantage of the collector, and furnishes him no ground of complaint. *Campbell's Ex'rs v. Pratt*, 2 Pet. 354; *Tilden v. Blair*, 21 Wall. 241; *Bethell v. Mathews*, 13 Wall. 1. The judgment is affirmed.

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ADEE v. J. L. MOTT IRON WORKS.

(Circuit Court of Appeals, Second Circuit. May 23, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—OVERFLOWS FOR BATHS.

Reissued patent No. 6,739, granted November 16, 1875, to James Foley, for an improvement in wash valves and overflows for basins and baths, which consists in bringing up the standpipe, or outer pipe of the overflow, through the casing or slab contiguous to the basin or bathtub, and securely attaching it to a removable cap resting upon the outside of the casing or slab, is not infringed by the device made under letters patent No. 170,709, to William S. Carr, in which the standpipe is secured by a screw flange resting on the top of the slab, but has no cap covering its upper end, as has the prior patent. 46 Fed. Rep. 77, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

In Equity. Bill by Fred Adee against the J. L. Mott Iron Works for infringement of a patent. The bill was dismissed, (46 Fed. Rep. 77,) and complainant appeals. Affirmed.

A. v. Briesen, for appellant.

Francis Forbes, for appellee.

Before LACOMBE, Circuit Judge, and WHEELER, District Judge.

PER CURIAM. This suit was brought in the circuit court of the southern district of New York for infringement of reissued patent No. 6,739, dated November 16, 1875, and granted to James Foley, upon surrender of original patent No. 153,250, dated July 21, 1874, for an improvement in waste valves and overflows. The alleged infringement consists in the making of the device patented to William S. Carr in No. 170,709, dated December 7, 1875, for an improvement in waste valves and overflows for baths and basins, and in which the device patented to Foley was required by the patent office to be, and was, disclaimed. The bill was dismissed for want of infringement. 46 Fed. Rep. 77. This patent was be-