

ways; as from the parties receiving the letters or packages, or from agents depositing them in the post office, or others cognizant of the facts."

Demurrer overruled.

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UNITED STATES v. ALLEN.

(Circuit Court of Appeals, Ninth Circuit. November 14, 1893.)

No. 101.

CUSTOMS DUTIES—DRAWBACKS—COAL USED BY AMERICAN VESSELS.

The provision of Schedule N of the tariff act of 1883, allowing, as amended by the act of June 19, 1886, (24 Stat. 81,) a drawback of 75 cents per ton on imported coal afterwards used by steam vessels of the United States engaged in foreign commerce or the coasting trade, was not repealed by the provision in Schedule N of the act of October 1, 1890, which merely imposes a duty of 75 cents per ton on imported coal; but the drawback, less 1 per cent. thereof, is continued in force by the proviso to section 25 of said act, relating to drawbacks "allowable under existing law." 52 Fed. 575, affirmed.

In Error to the District Court of the United States for the Northern District of California.

At Law. Action by Charles R. Allen against the United States to recover a drawback on imported coal. Judgment for plaintiff. Defendant brings error. 52 Fed. 575. Affirmed.

Charles A. Shurtleff, Asst. U. S. Atty., (Charles A. Garter, U. S. Atty., on the brief,) for the United States.

Charles Page, (Page & Eells, on the brief,) for defendant in error.

Before McKENNA and GILBERT, Circuit Judges, and HAWLEY, District Judge.

HAWLEY, District Judge. On the 6th of April, 1891, Charles R. Allen, appellee herein, brought this action to recover from the United States, appellant herein, the sum of \$93.94 alleged to be due him as drawback under the provisions of the act of congress of March 3, 1883, (22 Stat. 511,) as amended by the act of June 19, 1886, (24 Stat. 81,) on certain bituminous coal by him imported into the United States, and subsequently consumed as fuel on the Humboldt, a steam vessel of the United States engaged in the coasting trade of this country.

There is no controversy as to the facts. The merits of the case are to be disposed of by determining the legal question whether or not the right of drawback given by the statutes above mentioned is repealed by the act of congress of October 1, 1890, (26 Stat. 600,) commonly known as the "McKinley Bill." To intelligently present this question, it will be proper to refer to certain portions of the statutes which are necessary to be considered in order to arrive at a correct construction of the act.

We quote (1) that portion of Schedule N of the act of March 3, 1883, which reads as follows:

"Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel. A drawback of seventy-five cents per

ton shall be allowed on all bituminous coal imported into the United States which is afterwards used for fuel on board of vessels propelled by steam which are engaged in the coasting trade of the United States, or in the trade with foreign countries, to be allowed and paid under such regulations as the secretary of the treasury shall prescribe."

(2) Section 10 of the act of June 19, 1886, declares—

"That the provisions of Schedule N of 'An act to reduce internal revenue taxation, and for other purposes,' approved March 3, 1883, allowing a drawback on imported bituminous coal, used for fuel on vessels propelled by steam, shall be construed to apply only to vessels of the United States."

(3) That portion of Schedule N of the act of October 1, 1890, which reads as follows:

"Coal, bituminous and shale seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel; coal, slack or culm, such as will pass through a half-inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel."

(4) Section 25 of the act of October 1, 1890, which declares—

"That where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: provided that when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained. And provided further, that the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of custom duties when exported, shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter or agent, shall in writing order such drawback paid under such regulations as the secretary of the treasury shall prescribe."

The act of October 1, 1890, was evidently intended to be a complete revision of the tariff laws. As was said in *Re Straus*, "it manifests a plain intention to substitute that tariff act in the place and stead of all prior tariff legislation, so far, at least, as such legislation lays a duty upon imported articles of any kind." 46 Fed. 522; Letter of attorney general, 19 Op. Attys. Gen. 687. It will be observed, however, that the act does not, in direct terms, repeal the drawback on coal. The question is whether the prior acts allowing this drawback are repealed by the clause in section 55, "that all laws and parts of laws inconsistent with this act are hereby repealed."

It will be conceded, as claimed by appellant, that the omission from that portion of Schedule N of the act of October 1, 1890, imposing a duty of 75 cents a ton on bituminous coal, of the drawback clause in relation to such coal contained in the act of March 3, 1883, as amended by the act of June 19, 1886, of itself, indicates the intention of congress to abolish such drawback, and, if there were no

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other provisions in relation to this matter, would be conclusive upon the subject. But it is apparent that the question is not solved by a reference only to that portion of Schedule N. The true meaning and intent of the act cannot be ascertained without a careful consideration of the provisions of section 25. What does this section mean? What was the intention of congress in inserting the second proviso, "that the drawback on any article allowed under existing law shall be continued at the rate herein provided?" Does this section, in its entirety, deal exclusively with drawbacks upon exports? Is the word "article," as used in the second proviso, to be construed as applying only to an exported article?

In answer to these questions, we adopt the views expressed by Judge Ross in overruling the demurrer interposed by the United States, as follows:

"It is urged on the part of the government that section 25 deals exclusively with drawbacks upon exports, and that the word 'article,' in the second proviso, means and refers to an exported article, and to no other. An analysis of the section does not sustain the contention. The section provides in distinct terms for a drawback—First, on all articles wholly manufactured from imported materials, and thereafter exported; second, for a drawback on all articles made partly from imported materials, and thereafter exported. This language, as said by plaintiff's counsel, covers every possible manufacture made in this country, whether wholly, or partially only, of foreign materials, and thereafter exported. These provisions are followed by the proviso that the drawback allowed 'under existing law on any article shall be continued at the rate herein provided;' that is to say, the amount returned shall be that of the duty paid, less one per centum. There could be no clearer recognition than is here expressed of the fact that there were at the time of the passage of the act of October 1, 1890, existing laws providing for drawbacks. Among them, as has been seen, was the act of March 3, 1883, as amended by that of June 19, 1886, giving a drawback on bituminous coal imported into this country, and used on steam vessels of the United States. This drawback was therefore, by the express language of the second proviso of section 25 of the act of October 1, 1890, continued, but at the rate provided in that section, to wit, the amount of duty paid, less one per centum. This, it seems to me, is the natural and ordinary meaning of plain language. There is not only no authority in the court to interject by construction the word 'exported,' as the attorney for the government contends should be done, before the word 'article,' in the proviso in question; but it would, in effect, be so to construe that proviso as to make it apply to drawbacks on exported articles specifically provided for in the preceding clauses of the section,—that is to say, to drawbacks on articles manufactured in this country, wholly or partially of foreign materials, and thereafter exported. The court is not at liberty to say that congress meant by the words embodied in the proviso in question to provide for the same drawbacks it had immediately before made specific provision for, nor is it at liberty to hold that the legislature, in declaring 'that the drawback on any article allowed under existing law shall be continued at the rate' specified in the section, did not mean what its language naturally and plainly imports. It is true that ordinarily the office of a proviso is to restrain or qualify some preceding matter, and will be so restricted, in the absence of anything in its terms, or in the subject it deals with, indicating an intention to give it other and broader effect; but where, as in the present case, to restrict it to the matter preceding it would, as has been shown, make it mean precisely the same thing as the clause to which it is appended, the language employed should be given the natural and ordinary meaning it conveys as an independent clause. 'Like everything else, interpretation has its limits, beyond which it cannot legitimately go. Where the legislative meaning is plain, there is not only no occasion for rules to aid the interpretation, but it is contrary

to the rules to employ them. The judges have simply to enforce the statute according to its obvious terms.' Bish. Writ. Law, § 72; *Thornley v. U. S.*, 113 U. S. 313, 5 Sup. Ct. 491.

"The laws existing at the time of the passage of the act of October 1, 1890, allowing drawbacks, were not uniform. In some cases, a drawback was fixed at the amount of duties paid less ten per cent.; in others, the deduction was one per cent.; and by the act of March 3, 1883, the full amount of duty paid on bituminous coal was allowed as a drawback. Rev. St. §§ 3017, 3026; 18 Stat. 340; 23 Stat. 57. By the second proviso of section 25 of the act of October 1, 1890, the amount of drawback allowed is placed on all articles at a uniform rate, with certain exceptions specially provided for elsewhere in the act, as, for example, in paragraph 322, (26 Stat. 588,) in relation to salt. The provision of the act of March 3, 1883, in regard to that article, was as follows: 'Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds; in bulk, eight cents per one hundred pounds. Provided, that exporters of meats, whether packed or smoked, which have been cured in the United States with imported salt, shall, upon satisfactory proof, under such regulations as the secretary of the treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the treasury the duties paid on the salt so used in curing such exported meats in amounts not less than one hundred dollars. And provided, further, that imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries and in curing fish on the shores of the navigable waters of the United States, under such regulations as the secretary of the treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso the duties on the same shall be remitted.' 22 Stat. 514. By the act of October 1, 1890, the order of the enactment is somewhat changed, but it is in substance the same, and is as follows: 'Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds; in bulk, eight cents per hundred pounds. Provided, that imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries and in curing fish on the shores of the navigable waters of the United States, under such regulations as the secretary of the treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso the duties on the same shall be remitted. Provided further, that exporters of meats, whether packed or smoked, which have been cured in the United States, with imported salt, shall, upon satisfactory proof, under such regulations as the secretary of the treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars.' 26 Stat. 588.

"This is cited on the part of the government as illustrative of the method adopted and pursued by congress in the act of October 1, 1890, when providing for the retention of existing drawback rights in respect to imported articles passing into home consumption, and not thereafter exported. The answer to this is that in the case of the use of imported salt from the bonded warehouse in curing fish not exported, as permitted by the first provision of the above-cited paragraph of the act of 1890, there is a remission of duties, not the allowance of a drawback, which latter necessarily implies the former payment of duty; and, in the case of the drawback permitted by the second provision of the paragraph on imported salt used in curing meats afterwards exported, the provision is that there shall be refunded from the treasury the duties paid on the salt so used in curing such exported meats, in amount not less than one hundred dollars. It is manifest that these provisions could not be brought within the general language employed in the second proviso of section 25 of the act declaring that drawbacks allowed 'under existing law on any article shall be continued at the rate herein provided;' that is to say, the amount returned shall be that of the duty paid, less one per centum, and therefore a special provision in relation to salt became a necessity."

The judgment of the district court is affirmed.

## HEULINGS et al. v. REID.

(Circuit Court, E. D. Pennsylvania. November 14, 1893.)

## No. 51.

## 1. PATENTS—INVENTION—ANTICIPATION—MILK COOLERS.

The Evans & Heulings patent, No. 471,974, for a milk cooler, consisting of a combination of corrugated cooling plates and an intermediate filling of metal, limited to the space between and uniting the plates, is void, as to the sixth and seventh claims, for anticipation and want of invention.

## 2. SAME—JOINT PATENTS—VALIDITY.

A joint patent is invalid as to a feature previously invented by one of the patentees, and which is not a necessary part of the device jointly invented.

In Equity. Suit by Samuel M. Heulings and Elwood Evans against Alban H. Reid for infringement of a patent. Bill dismissed.

Strawbridge & Taylor, for complainants.

Philip T. Dodge, for defendant.

BUTLER, District Judge. The suit is on patent No. 471,974, issued to Evans & Heulings, dated March 26, 1892, for improvements in milk coolers. The sixth and seventh claims only are involved. They are as follows:

"(6) A cooling apparatus, comprising plates corrugated transversely and supported in operative position by means located between the plates, whereby the ends of the corrugations on their outer surfaces are left free and unobstructed for cleaning purposes, substantially as specified. (7) The combination of corrugated cooling plates and an intermediate filling of metal, limited to the space between and simultaneously uniting the plates, substantially as specified."

These claims cover the same matter. The plaintiffs' expert says so, and their counsel admit it.

In view of the former state of the art, we think they embrace nothing new in a patentable sense. The plaintiffs' description of coolers in common use previously may be adopted with slight alteration. Those of the general type of that disclosed in the patent consisted of two vertically erected plates of sheet metal correspondingly corrugated transversely to their height, and so connected at their top, bottom, and sides as to constitute a closed receptacle for a liquid refrigerant, with a milk distributing trough above the plates, and a collecting trough below them. In operation, liquid inlet and outlet pipes being in communication with the space between the plates, iced water or other cold liquid is caused to circulate through the said space so as to chill the plates, and the milk to be treated is delivered to the distributing trough, from which it escapes in small streams or drops, and descends upon and trickles in a thin film down and over the outside faces of the water-cooled corrugated plates into the collecting trough below, from which it is subsequently removed for use. Generally in milk coolers of the foregoing type as constructed prior to the invention of the patentees the means employed to support the corrugated plates in position, to secure them in proper relationship to each other, and to her-

metically close the space between the side edges or margins of the plates so as to prevent the lateral escape of the cooling fluid, consisted of straight-sided vertical end standards or plates, of width in excess of the breadth of the two corrugated plates from crest to crest, and butted against the ends of the plates. In this arrangement the closing up of the ends of the grooves of the corrugated plates by said standards occasioned the formation at the juncture of the standards and plates of angular recesses designated pockets; and in the use of such coolers it was found impossible, in cleaning the structure with ordinary appliances, to gain such access to the corners of the pockets as would enable the user to thoroughly cleanse them, with the result that such milk as in the cleaning of the device escaped removal remained to deteriorate and taint the milk subsequently subjected to the action of the cooler. To remove the difficulty of cleansing the grooves at the standards the plaintiffs severed the connection between the plates and standards, leaving a space between, and closed the ends of the plates by other means. They accomplished this by simply moving the standards back, and closing the openings thus left by solder or similar material, as described. In this we are unable to see any evidence of invention. Its accomplishment required nothing more than a slight mechanical change in the structure, such as any skilled workman in the art would have understood how to make. The same result would have been attained by simply cutting the standards down at the edges, so as to make them correspond with the corrugations of the plates, and leave the ends of the grooves open. The difference between this and placing the standards thus reduced *between* the ends of the plates would be immaterial. But the plaintiffs have not even the merit of being first to do what they did. The cooler described was the one in general use, but the art had advanced beyond it before the plaintiffs' alleged invention. In August, 1890, the defendant moved the standards back, and closed the ends of the plates; and coolers so made were sold and used. It is unimportant that he closed the space thus left open between the plates by folding their ends over, and sealing them. There is no substantial difference between this and closing the space with solder, as the plaintiffs describe. If folding the ends and sealing them down did not produce sufficient rigidity, as the plaintiffs urge, no invention would be required to increase it by the insertion of metal between the plates, or by other means. It further appears, however, that Heulings, one of the plaintiffs, did the same thing in 1890, by precisely the same means which the plaintiffs employ. Mr. Heulings himself testifies to this, and he is uncontradicted. The fact that his name is included in the patent is unimportant. Evans can derive no benefit from his invention, and a joint patent for it cannot be sustained. As he testifies, Evans had no connection with it. It was his own work exclusively. It is not a necessary part of the cooler which they jointly invented, but is as applicable to any other cooler as to this. If patentable, he alone was entitled to the patent. It was an independent invention, standing by itself, and could be applied to any

other description of cooler. The law respecting joint inventions and patents need not be discussed. Some pretty nice distinctions have been drawn by the courts in this regard, and a little confusion and uncertainty created. The facts involved here, however, seem to remove all doubt.

The Lawrence patent of 1876, and the Chambers patent of 1874, also, we think, suggest quite plainly all the plaintiffs have done.

The bill must be dismissed.

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RODWELL MANUF'G CO. v. HOUSMAN.

(Circuit Court, E. D. New York. November 21, 1893.)

PATENTS—SUIT FOR INFRINGEMENT—DEMURRER.

A demurrer to a bill for infringement must be overruled unless the patent is so void on its face as to require no defense.

In Equity. Suit by the Rodwell Manufacturing Company against Moses Housman for infringement of a patent. Heard on demurrer to the bill. Overruled.

C. H. Duell, for plaintiff.

H. A. West, for defendant.

WHEELER, District Judge. This suit, brought upon letters patent No. 477,429, dated June 21, 1892, and granted to Arthur Martyn, for a method of making advertising signs by molding or stamping the letters or symbols in plastic or ductile material, and placing them under glass, the field of which is covered, leaving a similar pattern, has been heard on demurrer to the bill. Unless the patent is so void on its face as to require no defense to a suit upon it, the demurrer must be overruled, and the defendant left to make his defense according to the provisions of the statute governing such defenses and the principles of procedure. Rev. St. U. S. § 4920; New York, etc., Co. v. New Jersey, etc., Co., 137 U. S. 445, 11 Sup. Ct. 193; Blessing v. Copper Works, 34 Fed. 753; Indurated, etc., Co. v. Grace, 52 Fed. 124; Goebel v. Supply Co., 55 Fed. 825. The specification contains a disclaimer of similar signs, but not of this method of making them, which, as an art, is patentable separately from the signs themselves, if sufficiently new and useful. The several steps of the method are said to be and are old, but the combination of them producing this result is not known to be, nor even said to be. The disclaimer of signs made by carving is said to be a disclaimer of every obvious method of making similar signs, but the court cannot say that the method of this patent was so obvious before Martyn made it so.

Demurrer overruled; bill to be answered by December rule day.