

fact that cheese is subject to a specific duty of so much a pound, the amount of which is determined by the weight made by the weigher, and not by the papers connected with the entry. If this were otherwise, I am not prepared to say that the crime created by the statute in question could not be committed by making a false entry of imported merchandise, subject to a specific duty charged according to its weight as ascertained by the government weigher, by means of an invoice in which the weight of the merchandise is falsely stated. It is not impossible that a loss of duty might accrue to the United States under some circumstances by means of such a false invoice. An invoice is important for the purpose, among other things, of enabling the correctness of the weigher's return of the weight to be tested. In this case,—of which I can speak, because the weigher who weighed this cheese was tried before me for making a false return,—if the invoice in question had stated the correct weight of the cheese, it may well be presumed that the falsity of the weigher's return would have been at once discovered, and the lawful duties accruing upon the merchandise collected, instead of the lesser sum that was paid. A correspondence between a false invoice and a false weigher's return doubtless facilitates the entry of the goods upon payment of less than the legal amount of duties, and so may be a means whereby the United States shall be deprived of the lawful duty on the merchandise. However, as the statute reads, in my opinion the crime provided for in section 9 can be committed by an entry of imported merchandise by means of a false invoice, notwithstanding that the merchandise is subject to a specific duty of so much a pound, as ascertained by weighing it at its landing.

The next question presented is whether the indictment is double because it charges in a single count a false and fraudulent entry by means of a false and fraudulent affidavit, a false and fraudulent paper, and a false and fraudulent written statement. In my opinion, the point is not well taken. "When a statute makes two or more distinct acts connected with the same transaction indictable, each one of which may be considered as representing a stage in the same offense, those which are actually done in the course and progress of its commission may be coupled in one count." *Heard, Cr. Pl. p. 128.* In this instance the making of the affidavit, the invoice, and the statement, were all acts connected with the same transaction, and represent a stage in the same transaction, viz. the entry of the cheese described. In my opinion, the indictment is not double. There must be judgment for the United States upon the demurrer, with liberty to the defendant to plead.

FOSTER, Secretary of the Treasury, v. VOCKE et al.

(Circuit Court, D. Maryland. March 20, 1894.)

CUSTOMS DUTIES—APPEAL FROM BOARD OF APPRAISERS—WHEN LIES.

An appeal from a decision of the board of general appraisers sustaining the claim of the importer of burlaps for a deduction of the excess weight

caused by the goods being wet, is not an appeal from a decision "respecting the classification of such merchandise, and the rate of duty imposed thereon under such classification," within Act June 10, 1890, giving jurisdiction to the circuit court.

At Law. Appeal by Charles Foster, secretary of the treasury, from the decision of the United States board of general appraisers in favor of Claas Vocke & Co., importers.

John T. Ensoe, U. S. Dist. Atty., for appellant.
Brown & Brune, for appellees.

MORRIS, District Judge. Claas Vocke & Co. imported into the port of Baltimore 13 bales of burlaps per steamship Schiedam, which arrived and were entered November 10, 1891, and on November 14th the importers withdrew the entire importation for consumption. The merchandise, being burlaps, was dutiable at 1½ cents per pound. The appraiser, in his report on the invoice, dated November 13, 1891, stated: "Upon examination of the goods as above, we find they were damaged by water during the voyage, and would recommend that the invoice weight be accepted." On November 24th, the official return of the weights having been filed with the liquidating officer on the day before (November 23, 1891), the entry was liquidated, and the importers were notified of the excess of weight over the invoice weight, and the consequent increase of duty. On November 30th the importers paid the whole duty exacted, and on the same day filed their written protest, claiming that, as the bales were soaked with water, the weight was greatly increased. They claimed that the goods were not damaged, as the water would soon dry out, and then the goods would be merchantable as sound goods; but protested against paying duty on the weight of the water, which they showed was in some bales as much as 134 pounds per bale in excess of the ordinary dry weight. The collector, while conceding that the facts were as claimed by the importers, and that, if they had pursued their proper remedy, relief should have been and would have been granted, refused to allow any abatement, because by article 602 of the customs regulations of 1884, prescribed by the secretary of the treasury, it was provided that no abatement of duties on merchandise on account of increased weight, caused by accidental and unusual leakage or shipment of water on the voyage of importation, would be allowed unless due application in writing for such allowance, with oath of applicant, should be lodged in the customhouse within 10 working days after the landing of the goods. Upon appeal by the importers to the board of general appraisers, it was decided by them that it was sufficient that the importers had complied with the provisions of section 14 of the customs administrative act of June 10, 1890, and that they were not barred from relief by article 602 of the regulations of 1884; and they sustained the claim of the importers that the duty should be computed upon the actual weight as stated in the invoice. This appeal is from that decision of the board of general appraisers.

It is very obvious that by the act of June 10, 1890, congress did not intend to give to the circuit courts jurisdiction to re-examine and decide all the questions which might be appealed from the decision of the collector to the board of general appraisers. An appeal may be taken from the collector to the board of appraisers "as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character." An appeal from the board of appraisers to the circuit courts may be taken "as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification." The circuit court is given jurisdiction "to hear and determine the questions of law and fact involved in such decision respecting the classification of such merchandise and the rate of duty imposed thereon under such classification." It is obvious that the present appeal is not from any decision respecting the classification of the goods as burlaps, or the rate of duty imposed thereon under the classification. It is conceded that the goods are properly classified as burlaps, and that the rate of duty is properly $1\frac{1}{2}$ cents per pound. The only question is as to the actual weight of the goods on which the duty is to be computed. This is not a question of law or of fact respecting the classification. It is a question of ascertaining the actual weight of the goods imported. *Passavant v. U. S.*, 148 U. S. 214-219, 13 Sup. Ct. 572; *In re Klingenberg*, 57 Fed. 195. In my judgment, this is not a question which the circuit court is given jurisdiction to hear and determine, and the appeal must be dismissed.

HUTTON v. STAR SLIDE SEAT CO. OF SPRINGFIELD.

(Circuit Court, S. D. Ohio, W. D. March 28, 1894.)

No. 4,619.

PATENTS—INFRINGEMENT SUITS—PLEADING.

Failure to aver that the invention of the patent has not been previously patented or described in any printed publication is a defect which may be taken advantage of by special demurrer.

Suit in equity by George B. Hutton against the Star Slide Seat Company of Springfield for infringement of a patent. Heard on special demurrer to the bill.

Price & Stewart, for complainant.
Paul A. Staley, for defendant.

SAGE, District Judge (orally). The defendant demurs specially to the bill that it does not set forth that the invention described in the patent sued upon has not been previously patented or described in any printed publication. The bill states that the invention was not known or used by others before complainant's invention or discovery thereof, and was not in use or on sale in this country for more than two years before his application for letters patent therefor. That this averment is good against a general demurrer was held in