

fore held that they should be classified as integral articles according to their components of chief value. I am of opinion that this view of the matter is correct; that an article which is invoiced and intended to be sold as a single thing is not resolvable into its constituents for the purpose of ascertaining its liability to duty. The decision as to these articles will stand.

5. The board of appraisers found that certain imported merchandise consisted of "articles known as papier mache," and therefore held that it was dutiable as papier mache. This finding of fact is unquestionably correct, and the conclusion stated was also right. Articles invoiced, known, and (in this instance) sold as papier mache, cannot be relieved from payment of duty as such, upon the ground, here set up, that every constituent of true papier mache was not present in the composition of which they were made. The decision as to these articles will stand.

Let judgment be entered in accordance with this opinion.

ZIMMERN et al. v. UNITED STATES.

(Circuit Court, S. D. New York. May 9, 1895.)

CUSTOMS DUTIES—CLASSIFICATION—SILK VEST CHAINS.

Silk vest chains, in which silk is the component of chief value, were dutiable at 50 per cent. ad valorem, under paragraph 383 of the act of March 3, 1883, and not at 25 per cent., as "jewelry," under Tariff Ind. 459.

This was an application by Henry Zimmern & Co. for a review of the decision of the board of United States general appraisers affirming the decision of the collector for the port of New York in respect to the classification for duty of certain merchandise imported by them.

The merchandise in question consisted of vest chains, which are silk guards or chains used for watches and eyeglasses. Silk is the component of chief value, and the collector imposed a duty of 50 per cent. ad valorem, under paragraph 383 of the act of March 3, 1883. The importers protested on the ground that the goods were dutiable at 25 per cent., as "jewelry," under Tariff Ind. 459. The board of appraisers affirmed the collector's decision, saying that the goods were not commercially or popularly known as "jewelry."

Albert Comstock (of Comstock & Brown), for importers.
Jason Hinman, Asst. U. S. Atty., for the United States.

TOWNSEND, District Judge (orally). It does not appear that there is any commercial designation for jewelry which includes these silk vest chains. The article is not jewelry in the ordinary sense of the word, nor is it considered jewelry by the trade. The decision of the board of general appraisers is affirmed.

DAVOCK v. CHICAGO & N. W. R. CO.

(Circuit Court, N. D. Illinois, N. D. July 27, 1895.)

PATENTS FOR INVENTIONS—NOVELTY—ANGLE SPLICE FOR RAILWAY JOINT.

Letters patent No. 228,347, issued June 1, 1880, to James Hawks, for "angle splice for railway joint," consisting of "a splice made angular in cross section, and having its base flange constructed with a bend whereby the base flange of the splice is adapted to fit upon the bases of two abutting rails of unequal height," are not void on their face, for want of patentable invention and novelty, although they inferentially admit that angle splices are not new for that purpose, and only claim them when bent as described, and although they state that "these joints have usually been formed by fish plates, the ends of which were arranged at different heights, corresponding with the position of the rails."

In Equity. On demurrer to bill.

Suit by Harlow P. Davock against the Chicago & Northwestern Railroad Company to restrain the infringement of a patent.

Charles Loughridge, for plaintiff.

George Payson, for defendant.

SEAMAN, District Judge. The defendant demurs to a bill of complaint alleging infringement of letters patent No. 228,347, issued to James Hawks, June 1, 1880, for "angle splice for railway joint," and assigned to the complainant. The first claim of the patent is this:

"A splice made angular in cross section, and having its base flange, *l*, constructed with a bend, *k*, whereby the base flange of the splice is adapted to fit upon the bases of two abutting rails of unequal height, and having its vertical web, *L*, fitted under the heads of the abutting rails, substantially as set forth."

And the second claim is for a combination, with rails of unequal height, of two of the angle splices of the first claim, bolted to the rails.

The sole ground asserted for the demurrer is that the patent "is wholly invalid on its face, for want of patentable novelty and invention." It is unquestionable that this objection may be taken by demurrer, and it is equally clear that the demurrer should be overruled, and the complainant put to answer, if the question of invention or novelty is fairly open to doubt. Oftentimes a showing of the prior state of the art will demonstrate that to be true invention which does not seem to possess this merit on first impression, and when read in the simple terms of the patent, and all light in that direction is shut out if the demurrer is sustained. The argument that the court can take judicial notice of certain facts which are of common understanding does not apply, as it would require, for the purposes of this case, an assumption of knowledge, not only of the methods which had been employed for joining the rails, but of the practical difficulties, under various conditions, which were met, and the measure in which the means theretofore employed had failed, and the alleged invention had succeeded, in overcoming them. It would be an innovation for the