

Max J. Kohler, Asst. U. S. Atty.
W. Wickham Smith, for defendants.

COXE, District Judge (orally). The question in this cause arises upon the sufficiency of the protest. It is conceded upon the part of the importers that the protest is insufficient, under section 14 of the customs administrative act of June 10, 1890. They contend, however, that the collector is estopped from raising this question, for the reason that in making his return to the board he stated that the requirements of the law had been complied with by the importers. If any proposition of tariff law is clearly established, it is that a valid and timely protest is a condition precedent to a recovery of duties by the importer. I am inclined to think that this is a condition which neither the collector nor any other officer of the United States has power to waive. The protest here is unquestionably insufficient under the section referred to; and although it may, I think, be conceded that the course of the collector was misleading and perhaps unfair to the board of general appraisers, still, when the question is presented to the court, it must be determined upon the well-known rules of law applicable thereto. The contention of the importers if sustained would lead to the proposition that duties can be recovered without any protest at all, provided the collector makes a misleading return to the board by stating that the requirements of the law have in this regard been complied with. If such doctrine is accepted he will have the power to waive protest when he sees fit. I do not so understand the law. A protest is a statutory necessity. As no protest distinctly and specifically setting forth the objections of the importers was served, I fail to see how recovery can be had. The decision of the board of general appraisers is reversed solely upon the ground that no valid protest was served upon the collector.

ABEGG et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 6, 1896.)

No. 1,942.

CUSTOMS DUTIES—PROTEST BY AGENT.

A protest filed by apparent strangers to the goods, without any intimation that the act was done for the person who swore in the invoice that he was the owner, is ineffectual; nor will the fact that the owner is connected with one of the departments of the establishment of the persons making the protest authorize the inference that they were agents of the goods, within the meaning of the fourteenth section of the customs administrative act.

Appeal by the importers from a decision of the board of general appraisers which sustained the action of the collector in assessing duty upon the importations in question.

D. I. Mackie, for plaintiffs.
J. T. Van Rensselaer, Asst. U. S. Atty.

COXE, District Judge (orally). The merchandise in controversy was imported by one William Robertson, who swore in the invoice

that he was the owner of the goods. The protest was filed by Abegg & Rusch, without any intimation upon the protest that they acted for Robertson in any capacity whatever. The board of general appraisers refused to entertain jurisdiction, for the reason that no proper protest had been filed. It is now for the first time suggested that the protest is valid for the reason that Abegg & Rusch acted as the agent for the merchandise in question. The burden of proof is upon the importer to satisfy the court that such agency existed. It will be observed that section 14 of the customs administrative act permits a protest to be made by the importer, consignee, or agent of the merchandise; not agent of the importer or consignee, but of the merchandise itself. It seems to me that there is a failure to establish that Abegg & Rusch were the agents of the merchandise in question. Robertson was the owner. Robertson has not been produced as a witness, nor is he a party in any way to this litigation. The mere fact that he was connected with one of the departments of Abegg & Rusch comes very far short, in my judgment, of establishing the fact that they were the agents of Robertson's goods. If Robertson had been produced as a witness and had testified that he gave these men the authority to make this protest, or if there were a written authorization filed in the custom house to that effect, it would be a very different matter; but Robertson is an entire stranger to this controversy, and it seems to me that the evidence fails to establish such agency as is contemplated by section 14. The decision of the board of appraisers is affirmed.

DAVIS v. PARKMAN.

PARKMAN v. DAVIS.

(Circuit Court of Appeals, First Circuit. October 25. 1895.)

Nos. 119 and 120.

1. PATENTS—INTERPRETATION.

A description in a specification of an increased curvature in the holding pin of a rowlock involves nothing of which the law can take notice, where no degree of curvature is specified.

2. SAME.

The rule applied that claims must be construed closely, where they cover mere details of construction.

3. SAME—ROWLOCKS.

The Davis patent, No. 209,960, for an improvement in rowlocks, construed, and held not infringed, as to the first claim, and invalid as to the second, third, and fourth claims. 45 Fed. 693, affirmed.

4. SAME—FOOTBOARD FOR ROWBOAT.

Giving to the footboard of a rowboat an upward curvature of about 45 degrees in the part where the toes rest, though in itself apparently involving no invention, held to be patentable, upon evidence that it was at once widely adopted, taken in connection with the presumptions arising from the patent and the decision in its favor in the court below. *Watson v. Stevens*, 2 C. C. A. 500, 51 Fed. 757, applied.

5. APPEAL—APPORTIONMENT OF COSTS.

Where the parties, for economical reasons, consolidate the records in two cases so as to render it impracticable for the appellate court to apportion between the two suits the expense of taking the proofs, it will