

## STERN et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 11, 1896.)

No. 1,861.

## CUSTOMS DUTIES—CLASSIFICATION—NAIL CLEANERS.

Silver-handle nail cleaners were dutiable as "manufactures of metal," under paragraph 215 of the act of 1890, and not as "files," under paragraph 168, though they may have had a file attached to them.

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

D. L. Mackie, for appellants.

Henry C. Platt, Asst. U. S. Atty.

COXE, District Judge (orally). The articles imported are known as files or nail cleaners. The collector assessed them for duty under paragraph 215 of the act of 1890 as "manufactures of metal." The importers insist that they should have been assessed under paragraph 168 of the same act, which provides for files. The general appraiser found that they were silver-handle nail cleaners, and were not files either in fact or commercially. No evidence was taken before the board of general appraisers and none has been taken in this court. In fact, the court is without the sample which was before the board and has nothing of which to predicate a finding that the decision of the board is incorrect. It is said that the burden is upon the importer to satisfy the court that the findings of the board are unsupported by evidence; but irrespective of that question it would seem, from the description given by the general appraiser and by the board, there is very great doubt whether these articles can be regarded as files. There is perhaps a file upon them, but they are more correctly designated in the terms of the appraiser as "silver-handle nail cleaners." I think the record is insufficient to justify the court in interfering with the decision of the board of general appraisers, and it is, therefore, affirmed.

## HENSEL et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 11, 1896.)

No. 1,903.

## 1. CUSTOMS DUTIES—REIMPORTATION OF AMERICAN GOODS—CERTIFICATE.

Upon the reimportation of exported American manufactures, the mere failure to state, in the certificate presented on the entry, that the goods had not been advanced in value or improved in condition since they left this country, as required by the former treasury regulations, did not justify the collector in requiring payment of duties, if the fact that they had not been advanced in value or improved in condition otherwise appeared. The regulation requiring the statement in the certificate was unreasonable, as appears from the fact that it was omitted from the amended regulations, on the ground that it was impossible for foreign customs officials to state such facts from their own knowledge.

**2. SAME—TIME OF FILING CERTIFICATE.**

Failure to file the certificate required on the reimportation of exported American machines, immediately upon the entry of the goods, does not deprive the importer of the right to re-enter them free, if such certificate is filed in a short time.

Appeal by Hensel, Bruckman & Lorbächer, importers, from a decision of the board of general appraisers which sustained the action of the collector in assessing duty upon the merchandise in question.

W. Wickham Smith, for importers.

Henry D. Sedgwick, Jr., Asst. U. S. Atty.

COXE, District Judge (orally). The imported articles are machines made in this country, taken to Germany, not accepted there by the consignees, and reimported on August 15, 1893. The collector assessed duty upon them under paragraph 215 of the act of 1890, concededly the correct paragraph if the articles were subject to duty. The importers insist, however, that they were entitled to free entry under paragraph 493 of the same act, and I understand it to be admitted upon the part of the collector that that paragraph correctly describes the importations, that is, there is no dispute that these machines were manufactured in the United States and that they have not been advanced in value or improved in condition since they were exported.

This is another of those cases where the facts are of such character that the court naturally inclines to aid the importers, if possible to do so, because it must be conceded that, upon the merits, there is but one side to the controversy. Beyond question the collector has taken duty from the importers upon articles which were entitled to free entry, and the only excuse of the collector is that he was justified in this course because the importers failed to comply with all the technical requirements of the law. In other words, the collector's contention is based upon the strictest construction of the statute and of the treasury regulations made in pursuance thereof. The certificate presented upon the entry of the goods complied with the requirements of the law, except that it failed to state that the machines in question had not been advanced in value or improved in condition since they left this country. I suppose it will be admitted that if this provision of the treasury department were an unreasonable or an impossible one, that the insistence upon it by the collector was beyond his power. That it was an unreasonable regulation is sufficiently established by the action of the treasury department itself. When its attention was called to the matter the regulation was amended by leaving out this provision, upon the ground that it was an impossibility for the foreign customs official, in a majority of cases, to be able to state of his own knowledge that the imported article had not been improved in value.

But even if the importers are wrong in this contention, it still remains to be considered whether or not the fact that they have supplied the certificate in the precise language of the amended regula-

tion, is not, in the circumstances, a sufficient compliance. I do not understand that any fault is found with the certificate as it now appears, except that it was not filed in time. The regulation, unless very strictly construed, provides no particular time within which the certificate must be furnished. The evident intention of the law is that the collector shall at some time, some reasonable time of course, have evidence that the goods are entitled to free entry. Although there is language in the regulation which might imply that this must be done at the time of entry, still it does not seem to me that it can be said that the importer must lose the benefit of paragraph 493 if he delays furnishing the certificate for a short period of time. The spirit of the law is otherwise. Upon the merits there is no dispute. Even if the above constructions were doubtful, the doubt should be resolved in favor of the importers.

The decision of the board of general appraisers is reversed.

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PIERCE & BUSHNELL MANUF'G CO. v. WERCKMEISTER.

(Circuit Court of Appeals, First Circuit. January 24, 1893.)

No. 118.

1. COPYRIGHT—PAINTING—COPIES—REV. ST. § 4962.

The word "copies," in Rev. St. § 4962, requiring a notice of copyright to be inserted in the several copies of the edition of a copyrighted book, or, if the copyrighted article be a map, painting, etc., to be inscribed upon some visible portion thereof, refers not to reproductions of an original, but to the individual copyrighted things, whether one or many. Accordingly, *held* that, in order to maintain an action for the infringement of a copyright of a painting, a notice of copyright must have been inscribed upon some visible portion thereof, when it was published. Colt, Circuit Judge, and Nelson, District Judge, concurring, and Webb, District Judge, dissenting. 63 Fed. 445, reversed.

2. SAME—PUBLICATION.

A painting which is publicly exhibited is "published," within the meaning of the copyright laws. Colt, Circuit Judge, and Nelson, District Judge, concurring, and Webb, District Judge, dissenting.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a suit in equity for infringement of a copyright in a painting entitled "Die Heilige Cäcilie." The artist was Gustav Naujok, a citizen and resident of Germany. The painting was completed in 1891. From January, 1892, to March, 1892, the picture was publicly exhibited by the artist at Berlin, Germany; and at Munich, in the summer of 1892. Upon the 5th day of March, 1892, Naujok made the following assignment:

"I transfer hereby to the Photographische Gesellschaft in Berlin for my work 'Die Heilige Cäcilie' the right of publication,—by which I wish to have understood the exclusive right of reproduction,—against a payment of 500 marks, and nine gratuitous copies thereof.

"Königsberg, in Prussia, March 5, 1892.

Gustav Naujok."

On May 16, 1892, the plaintiff, a citizen of Germany, under the business name of the Photographische Gesellschaft, deposited in the office of the librarian of congress the title of the painting, with the photograph and description thereof, claiming a copyright therein as proprietor, as appears by the following certificate: