

ance in respect to such damage, it could not be supposed that damages to importations of glass were to be exempted out of that general system simply because importations of broken glass had been put on the free list, and held that there was nothing indicating an intention by congress to take the one article of glass out of the general system. The general system provides that, if the damage amounts to 10 per cent. of the total invoice, the importer may abandon any portion of the invoice and be relieved from the duties on the portion so abandoned.

I think it is clear that the board of general appraisers was right in holding, in deciding the present case, that this section contemplated a case where there remains something to be abandoned, in the sense of being impaired in value, but that it is not applicable to a case where specific items of the invoice have been so entirely destroyed as that, in reckoning up to the items of the invoice, they cannot be counted, and where the destroyed items are valueless, and there remains nothing which can be the subject of abandonment. Section 23 of the act of 1890 is not inconsistent with the general provisions of section 2921 of the Revised Statutes, nor with sections 906 and 922 of the General Regulations, providing that, if the quantity which arrives is less than the invoice, there may be an allowance for the deficiency. In the present case it was not possible for the appraisers to say what number of cocoanuts was contained in the mass of debris remaining after the discharge of the cargo. It was estimated that this mass contained the difference between the number discharged and the number stated in the invoice. But the number specified in the invoice is not the result of an accurate count, the nuts being often brought on board in small boats through the surf, so that it is not possible to say with any accuracy what number the mass of debris did represent. It is quite manifest that there is no ground for the contention that section 23 is applicable to this case. The decision of the board of general appraisers is sustained.

---

J. L. MOTT IRON WORKS v. CLOW et al.

(Circuit Court, N. D. Illinois. February 18, 1896.)

COPYRIGHT—ILLUSTRATIONS IN TRADE CATALOGUE.

Under Act Cong. 1874, limiting the right of copyright to such cuts and prints as are connected with the fine arts, there can be no copyright on cuts contained in a trade catalogue, and not offered for copyright or to the public as works of fine art.

In Equity. On demurrer to bill.

Suit for injunction by the J. L. Mott Iron Works against J. B. Clow & Son.

Hamline, Scott & Lord, for complainants.

Newman, Northrup & Levison, for defendants.

GROSSCUP, District Judge. The bill is to enjoin infringement by defendants of complainants' copyright. The complainants, who

are manufacturers of bath tubs, have issued, from time to time, advertising sheets containing a description of their porcelain baths, the dimensions and prices of the same, and such other information as people in that trade are interested in. The sheets also contain cuts or prints of such baths as are offered to the trade. The defendants, engaged, among other things, in a like business, have also, from time to time, issued advertising sheets or books containing like information, and, in some cases, closely copying the prints or cuts of baths contained in complainants' sheets. A comparison of the exhibits makes it pretty manifest that some of these cuts or prints of the defendants have been copied by photographic processes, or otherwise, from the complainants' cuts or prints; and it is so averred in the bill. The defendants demur to the bill, for the reason that the matter therein set forth is not, in law, a proper subject-matter of copyright.

The cuts or prints shown in complainants' sheets, in connection with their ornamental settings, may have such artistic merit as would support a copyright if offered as a work of fine art. The statutes, as amended by the act of 1874, limit the right of copyright to such cuts and prints as are connected with the fine arts. But the bill does not show that the author or designer intended or contemplated these cuts and prints as works of fine art. No copyright was asked upon them separately from the advertising sheet of which they are a part. They are not offered to the public as illustrations or works connected with the fine arts, but are adjuncts simply to a publication connected with a useful art. The court will not supply an intention that the author or designer has not avowed, or give to the cuts or prints a character and purpose different from what their surroundings indicate.

The demurrer will therefore be sustained.

---

INTERNATIONAL TOOTH-CROWN CO. v. BENNETT.

(Circuit Court, E. D. New York. February 14, 1896.)

1. ASSIGNMENTS OF PATENTS—ADMISSIBILITY OF COPY OF PATENT-OFFICE RECORD.

A certified copy of the patent-office record of an assignment taken on notice, but in the absence of defendant's counsel, will not be excluded on final hearing, where no objection was made to its admissibility when offered, and no motion was afterwards made to suppress it.

2. VALIDITY OF PATENTS—PRIOR USE—ARTIFICIAL TEETH.

The Low patent, No. 238,940 for a method of permanently fixing artificial teeth to the mouth, by bands around the natural teeth, held invalid on proof of prior knowledge and use.

This was a bill in equity by the International Tooth-Crown Company against Allen G. Bennett for alleged infringement of a patent relating to artificial teeth.

James C. Chapin and Edwin H. Brown, for plaintiff.

Charles K. Ofield, for defendant.

WHEELER, District Judge. The bill alleges ownership by the plaintiff and infringement by the defendant of patent No. 238,940,