

barrels, carboys, and sacks are concerned? If returned filled with foreign products, it must be as coverings suitable for such products. It would seem, therefore, this exemption from duty was unnecessary, as this was already done by section 19 of the administrative law; that is, a law of which free coverings on free goods is but a part, and that the only substantial part of paragraph 493 is the proviso which not only limits the exemption, but prohibits importation, except upon payment of duties equal to the drawback which had been allowed. This is not necessarily repugnant to the purposes of the act; but, if it is, it was competent for congress to make an arbitrary exception, and, if it intended to do so, it is not clear how language more apt to accomplish it could have been employed. The proviso contains another example of the same kind. It exempts from privilege of return or reimportation without duty articles manufactured in bonded warehouses, and exported under any provision of the law. The exception is more complete than in the case of sacks. On the latter the duty is fixed at the amount of drawback allowed. No duty, therefore, is put on the value given by American labor. On the former—that is, on articles manufactured in bonded warehouses—the duty shall be the same rate as if originally imported. Section 22. A duty, therefore, is put on the value given by American labor. This is a more repugnant exception to the general policy of the act than that of which appellant complains. The usual purpose of a proviso is to limit that which precedes it, but it may do more, and, however the intention of the lawmaker is expressed, it must prevail. If the proviso to paragraph 493 stopped by exempting from it articles upon which an allowance of drawback had been made, there would have been some reason for claiming it a limitation merely; but it goes further, and says “the reimportation of which is hereby prohibited, except upon payment of duties equal to the drawbacks allowed.” Language could not well be clearer or more positive. It forms a class of articles of those upon which drawbacks had been allowed. Thus construed, the paragraph and proviso have an intelligent purpose.

Appellant, in support of his claim, makes a distinction between the word “returned,” in the body of the paragraph, and the word “reimportation,” in the proviso. It is manifest, however, to accomplish the purpose of the paragraph, that they must be construed as having the same meaning. It follows from these views that the decision of the board of appraisers must be, and it is, affirmed.

In re GARDNER et al.

(Circuit Court, N. D. California. December 16, 1895.)

CUSTOMS DUTIES—CLASSIFICATION—BONES.

Bones which have been crushed and screened must be regarded as “otherwise manufactured,” within the meaning of paragraph 511 of the act of 1890 (26 Stat. 604), and therefore are not admissible free of duty under that paragraph, but are subject to duty as “manufactures of bone,” under paragraph 460 (26 Stat. 602).

This was an appeal by Gardner & Thornley from a decision of the board of general appraisers affirming the action of the collector of the port of San Francisco in respect to the classification for duty of certain imported bones.

J. F. Evans and Charles A. Garter, for importers.
Samuel Knight, for the United States.

McKENNA, Circuit Judge (orally). This case comes on appeal from the decision of the board of appraisers affirming the action of the collector of the port of San Francisco, assessing duty against certain bones imported by Gardner & Thornley. The case involves the construction of paragraph 460 of the tariff act of 1890 (26 Stat. 602),—"McKinley Bill," so called,—and paragraph 511 of the same act, as to whether the bones imported are of the character claimed under paragraph 460 or of the character claimed under paragraph 511. Paragraph 460 is as follows:

"Manufacturers of bone, chip, grass, horn, India rubber, palm-leaf, straw, weeds, or whalebone, or of which these substances or either of them is the component material of chief value, not specially provided for in this act, 30 per cent. ad valorem."

Paragraph 511 is:

"Bones, crude, or not burned, calcined, ground, steamed, or otherwise manufactured, and bone-dust, or animal carbon, and bone ash, fit only for fertilizing purposes, are admitted free."

Gardner & Thornley claim that the bones are of the character described in paragraph 511, and not of the character described in 460. The collector of the port assessed duty against them under paragraph 460, to which the importers protested, and took an appeal.

The testimony is quite long, and of course it is impossible to review it. It is somewhat conflicting, at least as to whether the bones are, in the first place, crude bones. But, passing that, and assuming them to be crude bones, do they fulfill the other conditions? Are they bones not burned, not calcined, not steamed, not ground, and not otherwise manufactured? The testimony is again conflicting as to whether they are "ground." The importers claim that "ground" means pulverized. I hardly think that is true. One of the definitions of grind is to crush into small fragments. But, passing this also, are not the bones otherwise manufactured, in the sense of paragraph 511? The word "manufactured" seems to be given a definition by the paragraph different from the definition in *Hartranft v. Wiegmann*, 121 U. S. 609, 7 Sup. Ct. 1240. It appears to regard bones which are burned, calcined, or ground as manufactured. If so, the words "otherwise manufactured" would include those crushed and screened, and it is conceded that the bones in controversy are crushed and screened. Hence I am in the same situation that the board of appraisers were,—I am constrained, by the words of the statute, to concur with the collector.

There is one other proposition: Assuming the bones to be bone dust or animal carbon, the statute requires that they, in such con-

dition to be exempt from duty, must be fit only for fertilizing purposes. The best that may be said in favor of the claim that they are only so fit is that the evidence is conflicting. The claim is therefore not proved. But it is a fair inference from the evidence that they are fit for other purpose. The decision of the board of appraisers is therefore affirmed.

JONATHAN MILLS MANUF'G CO. v. WHITEHURST et al.¹

(Circuit Court of Appeals, Sixth Circuit. February 4, 1896.)

No. 331.

1. ASSIGNMENT OF PATENTS—BONA FIDE PURCHASERS—NOTICE.

Where an assignment of a patent contains recitals indicating a possible outstanding interest in another party, the assignee is chargeable with notice of every fact in reference to such interest which diligent and honest inquiry would have developed. A defect of title being brought to his knowledge, no inconvenience will excuse him from the utmost scrutiny.

2. SAME—ASSIGNOR HOLDING AS TRUSTEE.

A purchaser, who has reason to believe that the party offering a patent for sale holds it either as trustee or agent for a third person, cannot become a bona fide purchaser for value by relying on the statements of the suspected trustee or agent either as to his authority or as to his beneficial ownership. Inquiry must be made of some other person, who will have a motive to tell the truth in the interest of the cestui que trust or principal.

3. RES JUDICATA—DECREE FOR ASSIGNMENT OF PATENT.

A bill was brought to compel one S., an inventor of flour-milling apparatus, and others, to perform a contract requiring him to convey to complainant all the patents for flour milling which he should thereafter "obtain" or "procure," and also to annul certain alleged fraudulent assignments, made by him, of various patents, designated by name and number, and "all other letters patent relating to the manufacture" of certain described kinds of milling machinery which the complainant "then owned or controlled, or in which it then had any joint or other interest." The bill prayed a discovery by defendants of all patents or patent interests controlled or owned by the complainant, which, they claimed, passed by said fraudulent assignments, and a conveyance thereof to complainant. *Held*, that the decree properly included a patent, not specifically designated in the bill, which the said S. had obtained by assignment from another, and which was of the description of inventions in which the contract gave complainant a right, and that, consequently, the decree with reference to that patent was responsive to the issues made by the bill, and was conclusive against one who purchased from the defendant pending the suit. 65 Fed. 996, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

The action in the court below was in equity to enjoin the infringement of a United States patent, No. 267,098, issued to Jonathan Mills, November 7, 1882, upon an application filed June 30, 1882, for an improvement in a device for bolting in flour mills, known as the "centrifugal bolt or reel." The bill averred that the complainant, by direct and mesne assignments, in writing, had become the sole and exclusive owner of the letters patent sued on. The bill was filed against M. C. Whitehurst, C. D. Whitehurst, and G. A. Whitehurst, and prayed an injunction, an accounting of profits, and damages. In the original answer, the defendants did not deny the sufficiency or validity

¹ Rehearing denied April 14, 1896.