

1878, \$72,175.97; for 1879, \$47,220; for 1880, \$44,571; for 1881, \$44,033; for 1882, \$49,170; for 1883, \$71,824."

The constitution of Iowa (article 11, § 3) ordains as follows:

"No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation—to be ascertained by the last state and county tax lists, previous to the incurring of such indebtedness."

A statute of the state provides:

"Section 1. Any independent school district or district township now or hereafter having a bonded indebtedness outstanding is hereby authorized to issue negotiable bonds at any rate of interest not exceeding seven per cent. per annum, payable semiannually, for the purpose of funding said indebtedness, said bonds to be issued upon a resolution of the board of directors of said district: Provided, that said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

"Sec. 2. The treasurer of such district is hereby authorized to sell the bonds provided for in this act at not less than their par value, and apply the proceeds thereof to the payment of the outstanding bonded indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par, but the bonds hereby authorized shall be issued for no other purpose than the funding of outstanding bonded indebtedness." Laws 18th Gen. Assem. Iowa, 127.

Upon the foregoing finding of facts the court rendered judgment in favor of the defendant, and the plaintiff sued out this writ of error.

C. H. Gatch (William Connor and J. B. Weaver, Jr., on the brief), for plaintiff in error.

S. M. Marsh (O. J. Taylor, on the brief), for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

PER CURIAM. This case, upon the facts found, cannot be distinguished from *Doon Tp. v. Cummins*, 142 U. S. 366, 12 Sup. Ct. 220, and is affirmed on the authority of that case. Affirmed.

UNITED STATES v. KLINGENBERG.

(Circuit Court, S. D. New York. May 22, 1896.)

No. 1,169.

CUSTOMS DUTIES—VALUES OF ENTRIES—FOREIGN CURRENCIES.

An invoice of goods purchased in Austria stated the value in both florins and marks, florins being the legal currency of the country. The collector, on reducing both expressions of value, found that the florins gave \$207, and the marks \$240, and assessed the duty on the latter valuation. *Held*, that this was erroneous; that the value must be taken in the legal currency of the country where the purchase was made; and that this was not a mere question of appraised value, which could not be raised by protest. In re McCarty, 46 Fed. 360, followed.

This was an application by an importer of certain goods for a review of the decision of the board of general appraisers in respect to the amount of duties payable thereon.

The question involved arose under the customs administrative act of June 10, 1890. The importer entered certain china ware upon a pro forma invoice, made at Dux, Bohemia. The invoice stated the value of the merchandise both in florins and marks. The appraiser made his return by simply indorsing the invoice as correct. The importer, in making his entry, stated the value in florins. On reducing the value in both marks and florins to United States money, the collector found that the invoice value in marks gave \$240 and the invoice value in florins gave \$207.

He thereupon assessed the duties upon the value in marks, namely, \$240. The board of general appraisers reversed this decision upon the ground that florins, not marks, were the legal currency of the Austrian empire, and the value in florins must be taken. At the trial before the circuit court it was contended in behalf of the government that this was purely a question upon the appraised value; that the importer could not raise it under a protest, and the decision of the collector was final; that the collector was bound to assess the duties upon the highest value stated in the invoice; also that the goods must be taken as actually purchased in marks, and it was therefore proper for the appraiser to make his return of valuation in marks, and for the collector to assess duty accordingly.

Henry D. Sedgwick, Jr., Asst. U. S. Atty.
W. Wickham Smith, for the importer.

TOWNSEND, District Judge. The questions presented in this case are so strikingly similar to those presented in *Re McCarty*, 46 Fed. 360, that that decision would seem to be controlling herein. The circumstances stated by counsel for the United States do not seem to so distinguish the respective provisions or so differentiate the facts as to call for the application of a different rule. After the conclusion of the argument, counsel for the United States filed a memorandum claiming that the questions herein are determined by the case of *U. S. v. Klingenberg*, 153 U. S. 93, 14 Sup. Ct. 790. In the absence of any opportunity to discuss this question upon the argument, I am not sufficiently familiar with the practice to pass upon the question therein involved. The decision of the general appraisers assessing the merchandise according to the valuation of the country of purchase and from whence imported is affirmed.

MATHESON v. CAMPBELL.

(Circuit Court, S. D. New York. May 18, 1896.)

1. **PROCESS AND PRODUCT PATENTS—ANTICIPATION—CHEMICAL IDENTITY.**

The fact that a coal-tar dye, similar to a dye covered by a process and product patent, and answering to the chemical tests of the patent, was on sale in this country prior to the application, is not sufficient to show anticipation, where it appears that such prior patent was not identical therewith, as shown by the fact that it was made from a different starting material, was much inferior in quality, and was sold at a much higher price. 69 Fed. 597, affirmed, on rehearing.

2. **SAME—VALIDITY OF PRODUCT PATENT.**

Where a patent first describes a new and patentable process, producing an article chemically or technically identical with an article formerly known, but superior thereto, and the invention is a meritorious one, a valid claim may be made for the product, as well as for the process. 69 Fed. 597, affirmed, on rehearing.

3. **SAME—INFRINGEMENT—BURDEN OF PROOF.**

In a suit for infringement of a process and product patent covering a composition or chemical product, the complainant has sustained the burden of proof, resting on him, as to infringement, when he shows that defendant's product corresponds to the tests of identity; and the burden is then upon defendant to show that it was not made by the patented process.

4. **SAME—COLOR COMPOUNDS—COAL-TAR PRODUCTS.**

The Hoffman and Weinberg process and product patent, No. 345,901, for a naphthol-black color compound, made from coal-tar products, held valid and infringed. 69 Fed. 597, affirmed, on rehearing.