

UNITED STATES v. WELLS et al.

(Circuit Court of Appeals, Second Circuit. December 8, 1896.)

CUSTOMS DUTIES—CLASSIFICATION—GREASE AND OIL.

Grease and oils, commonly used in soap making, wire drawing, or for stuffing or dressing leather, and which are fit only for such uses, were entitled to free entry under paragraph 599 of the act of October 1, 1890, though they might be scientifically classed under some of the duty schedules. Accordingly, *held*, that "Japanese fish oil," fit only for such uses, was duty free under this paragraph, and not classifiable, under paragraph 46, as "whale and other fish oil." *Magone v. Heller*, 14 Sup. Ct. 18, 150 U. S. 70, applied.

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

This is an appeal from a decision of the circuit court for the Southern district of New York, filed January 9, 1896, reversing a decision of the board of United States general appraisers, which had affirmed the decision of the collector of customs at the port of New York. The importation was of certain fish oil, known in the trade as "Japanese fish oil."

Max J. Koehler, for the United States.

Edward Hartley, for appellee.

Before LACOMBE and SHIPMAN, Circuit Judges.

PER CURIAM. The collector exacted duty under the provisions of paragraph 46 of the act of October 1, 1890, which reads as follows:

"46. Seal, herring, whale and other fish oil, not specially provided for in this act, eight cents per gallon."

The importers protested, claiming that the merchandise was free of duty, under paragraph 599 of the same act, which provides as follows:

"599. Grease, and oils, such as are commonly used in soap-making or in wire-drawing, or for stuffing or dressing leather and which are fit only for such uses, not specially provided for in this act."

The decision of the supreme court in *Magone v. Heller*, 150 U. S. 70, 14 Sup. Ct. 18, is controlling in this case. It is entirely plain that it was the intention of congress that any oil which was commonly used in the arts for the purposes designated in paragraph 599, and was fit only for such uses, should come into this country free of duty, although it might be scientifically classed as one kind of an article, the name of which appears in some of the duty schedules, or is spoken of in commerce by that name. The manufacturing use must prevail over the scientific or commercial nomenclature. The evidence abundantly proves that Japanese fish oil, such as was imported in this case, was commonly used for the purposes named in paragraph 599, and is fit only for such uses. The board of general appraisers, it is true, find that such oil is used "possibly for other purposes"; but, as there is no evidence found in the record to sustain this finding, it must be assumed that it is a mere guess of the board, as the language used in the finding sufficiently indi-

cates. The witnesses who dealt in the article, and were familiar with its uses, all testified that they knew of no other purpose that it has ever been used for.

The decision of the circuit court is affirmed.

EASTMAN CO. v. GETZ et al.

(Circuit Court, N. D. New York. November 26, 1896.)

No. 5,954.

1. PATENTS—INVENTION—MACHINES FOR COATING PHOTOGRAPHIC PAPER.

In a machine for making sensitive photographic films by coating the paper with an emulsion, merely increasing the distance between the coating roll and the driven, smooth rolls, to give further time for drying and setting, does not involve invention.

2. SAME—ANALOGOUS USE—MECHANICAL SKILL.

The transfer and adaptation of a machine for coating glass and emery paper to the art of coating paper with gelatine emulsion for photographic purposes is merely an analogous use, and does not involve invention, where the changes required are merely such as would occur to a skilled mechanic when confronted with the problem of applying an emulsion of a different consistency from that formerly employed.

3. SAME—INVENTION.

The Eastman and Walker patent No. 358,848, for a machine for making sensitive photographic films, *held* invalid for want of patentable invention, in respect to claim 3, which comprises a roll of suitable paper arranged to pass through guide rolls, and around a coating roll partially submerged in a trough of gelatine emulsion, and thence over driven, smooth rolls to a hang-up of looping slats, at such distance from the coating roll as to allow the coating to set before reaching the hang-up.

4. SAME—NOVELTY—INFRINGEMENT.

The Eastman and Walker patents Nos. 370,110 and 370,111, both for processes for coating photographic paper, considered, and the former *held* not infringed as to claims 1, 2, 3, and 4, and the latter *held* void for want of patentable novelty as to claim 3.

Philipp, Munson & Phelps, for complainant.

William A. Jenner and George B. Selden, for defendants.

TOWNSEND, District Judge. The bill in equity herein alleges infringement of the third claim of patent No. 358,848, dated March 8, 1887, for a machine for making sensitive photographic films; and of the second, third, and fourth claims of patent No. 370,110, and of the third claim of patent No. 370,111, both dated September 20, 1887, for processes of coating photographic paper; all three of these patents having been granted to George Eastman and William H. Walker, and duly assigned to this complainant. These patents will be considered in their chronological order.

The machine of patent No. 358,848, so far as its construction is material in the consideration of the claim in suit, comprises a roll of uncoated paper suitable for photographic films, arranged to revolve in bearings, passing through guide rolls, and around a coating roll partially submerged in a coating trough of gelatine emulsion, and thence over driven, smooth-faced rolls, to a hang-up of looping slats arranged at such a distance from the coating roll as