TALMAGE et al. v. UNITED STATES.

(Circuit Court, S. D. New York. December 8, 1896.)

No. 2,354.

CUSTOMS DUTIES—CLASSIFICATION—RICE.

The specific descriptions in paragraph 193 of the tariff act of 1894 are intended to define all kinds of imported rice, and accordingly rice from which not only the outer hull, but also the inner cuticle, has been removed, though commercially known, prior to the act, as "uncleaned rice," is not entitled to be classified as such, but is dutiable as cleaned rice.

This was an appeal by Dan Talmage's Sons from a decision of the board of general appraisers sustaining the classification by the collector of the port of New York of certain rice imported by the appellants. The rice was described in the invoice as "Patna rice (not cleaned)," but was classified by the collector as cleaned rice, and duty was assessed thereon at 1½ cents per pound, under paragraph 193 of the tariff act of 1894, pursuant to the report of the assistant appraiser that the merchandise in question was rice with the outer and inner cuticle removed, and contained particles of rice flour or meal. The importers' protest claimed that the rice was dutiable only at $^{8}/_{10}$ of 1 cent per pound under paragraph 193, or at the same rate under section 4 of the same act, or at no more than 20 per cent. ad valorem, as a nonenumerated partly manufactured article, under section 3 of the act. It appeared by evidence taken before the board of general appraisers that the rice in question was known commercially, prior to August 28, 1894, as uncleaned rice, but also that the inner or yellow cuticle had been removed from it.

W. Wickham Smith, for plaintiffs.
Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. The act of 1894, by paragraph 193, divides rice into three classes for duty, viz.:

"Rice cleaned, one and one-half cents per pound; uncleaned rice, or rice free of the outer hull, and still having the inner cuticle on, eight-tenths of one cent per pound; * * * paddy, or rice having the outer hull on, three-fourths of one cent per pound."

These specific descriptions are new; and, in view of prior legislation and litigation, seem intended to extend to and define all kinds of imported rice. Under them what is not paddy is uncleaned rice, and what is not uncleaned rice is cleaned rice. This importation is of Bengal rice, and is not only free of the outer hull, but has not still the inner cuticle on. It is not paddy, nor uncleaned rice, according to these statutory descriptions, but has become cleaned rice. Decisions and trade distinctions upon former statutes are themselves controlled by this new statutory division, and cannot be controlling over this subject with their former force. Decision of general appraisers affirmed.

GOODENOUGH et al. v. CARY et al.

(Circuit Court, S. D. New York. January 6, 1897.)

PATENTS—INVENTION—LACING STUDS.

The Mathison patent, No. 525,152, for an improvement in lacing studs, whereby nonmetallic, plastic materials, such as hard rubber or celluloid, may be fastened to the heads thereof by attachment to a crimped or corrugated flange, is void for want of invention, in view of the prior art.

This was a suit in equity by Maremus J. Goodenough and others against Benjamin H. Cary and others for alleged infringement of a patent for an improvement in lacing studs.

Arthur v. Briesen, for complainants.

Edward S. Beach and Henry A. Prince, for defendants.

COXE, District Judge. This is an equity action for infringement of letters patent, No. 525,152, granted to Arthur Mathison, August 28, 1894, for an improvement in lacing studs. The object of the invention is to attach firmly to the heads of lacing studs or eyelets nonmetallic plastic material such as hard rubber or celluloid. The specification states that before the alleged invention there had been "numerous constructions, means and methods of affixing to lacing studs, buttons and eyelets, a layer or body of plastic material resembling rubber or celluloid to constitute the wearing face." The claim is as follows:

"The eyelet or stud having a metallic head with elevations and depressions extending outward from near the post to the periphery of said metallic head, and a plastic cover extending over said metallic head and outside the periphery thereof, and filling the recesses under the elevated portions of the metal, the depressions in the metal being exposed, substantially as described."

The defenses are prior invention, lack of novelty and patentability, and noninfringement.

All that the patentee did, taking the most liberal view of his achievement, was to provide a new way of anchoring the plastic material to the head of the stud. The prior art demonstrates and the patent concedes that everything else was old. Other persons, notably Smidt, Joyce, Pupke and Van Norman, had fastened plastic material to the head of an eyelet or stud and some of them by means so nearly identical that it is not easy to express the difference in words. It can be discovered by a microscope but language is hardly adequate. No new article was produced by Mathison and no new result in an old article. It is said that no one before had made an eyelet with a crimped or corrugated flange. This is undoubtedly true if the corrugations are confined to the identical form illustrated by the patent, but the inventive faculties were not called into action to make this slight departure. With the common knowledge that plastic material will not adhere perfectly to a smooth surface, a number of persons had sought to overcome the difficulty by making the headpiece or flange uneven by means of burrs, perforations, lugs, lips, teeth, ledges, holes and flanges. With the information given by Thierry, Smidt, Pupke, Joyce and Van Norman (1891 device) and with the