

action feature. The proof is clear that this feature is useful and that it produces results never produced before. I am convinced that the statement of the specification above quoted, that La Dow was the first to use rotary spring-teeth, whether concave or not, in gangs angled relatively to the draft-line, is substantiated by the proof.

The remaining question relates to infringement. The only controversy here is whether or not the defendant's teeth have the spring action of the patent? That they are dissimilar in shape and in the manner of attachment, and that the blades are shorter and somewhat wider than the blades shown in the La Dow patent, is unquestionably true, but that they have a spring action is also true. The defendant, himself, swears that he applied the identical test to the two structures and with a 30-pound strain his blade showed a yield of one-fourth of an inch and the complainant's three-eighths of an inch. The difference is one of degree only. The defendant cannot escape infringement by showing simply that his teeth have less spring action than those of the complainant. The undisputed fact that he uses teeth having spring action is sufficient to establish infringement. The complainant is not limited to the exact yield of the teeth described. If he were, any one who used a fraction more or less could escape. The complainant is entitled to the usual decree.

GARDINER et al. v. WISE, Collector of Customs.

(Circuit Court of Appeals, Ninth Circuit. January 3, 1898.)

No. 299.

CUSTOMS DUTIES—CLASSIFICATION—GROUND BONE.

Bones which have been submitted to a process of crushing or grinding, producing an article known commercially as crushed or ground bone, which is fit for other than fertilizing purposes, was dutiable as "manufactures of bone," under paragraph 460 of the act of 1890, and was not free as "bones crude, or not burned, calcined, ground, steamed, or otherwise manufactured, * * * fit only for fertilizing purposes."

Appeal from the Circuit Court of the United States for the Northern District of California.

This was an appeal by James H. Gardiner and William H. Thornley from a decision of the board of general appraisers affirming the action of the collector of customs at San Francisco as to the classification for duty of certain imported merchandise. The circuit court affirmed the decision of the board, and the importers have appealed.

Thos. D. Riordan, for appellants.

Samuel Knight, for appellee.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

GILBERT, Circuit Judge. This appeal is taken from the decision of the circuit court of the United States for the Northern district of California, affirming the ruling of the collector of customs for the port

of San Francisco and the board of general appraisers sitting at New York, holding dutiable, at the rate of 30 per cent. ad valorem, 4,480 bags of imported bone meal, under the provisions of paragraph 460 of the tariff act of congress approved October 1, 1890, which reads as follows:

"Manufactures 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, thirty per cent. ad valorem."

It is the contention of the appellants that the merchandise so imported is not included among the articles made dutiable in paragraph 460, but that it was free, under paragraph 511 of the said tariff act, which provides:

"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."

The findings of the lower court are that the merchandise is not "bones crude, not burned or otherwise manufactured," and is not bone dust, but is commercially known as crushed or ground bone, produced by submitting crude bones to a process of crushing or grinding, and that the merchandise in question is fit for other than fertilizing purposes. On the hearing before the board of appraisers and before the circuit court, there was conflict in the testimony concerning the extent to which the bones were crushed and broken, and the purpose to be served by the process to which they had been submitted. In such a case, we cannot disturb the findings of the court below. They must be taken as conclusive. *White v. U. S.*, 18 C. C. A. 541, 72 Fed. 251.

There is presented for our consideration, therefore, only the question of the construction to be given to the paragraphs of the tariff act which have been quoted above. On behalf of the appellants it is urged that bone meal, or ground bone, is not a manufacture of bone, as the term is used in section 460; that to crush crude bone is not to manufacture it; and that, after being so crushed, the material remains, notwithstanding its change of form, substantially as it was before, and is in fact, as well as under commercial usage, crude bone. Paragraphs 460 and 511 must be construed together, and in order to determine whether the merchandise in question is crude bone, notwithstanding the fact that it has been crushed or ground, it is only necessary to note the plain language of the latter paragraph. In specifying, as free, crude bones, not burned, calcined, ground, steamed, "or otherwise manufactured," it is clear that burning, calcining, grinding, and steaming are regarded as methods of manufacture, and that bones in their natural condition, not subjected to any such process, are what is meant by crude bones. Any other construction renders senseless and nugatory the words "or otherwise manufactured." That this is the true meaning is further made evident by the remainder of the paragraph, "and bone dust, or animal carbon, and bone ash, fit only for fertilizing purposes." Here exception is made in behalf of manufactured bone which is in the form

of bone dust, or bone ash, or animal carbon, and is fit only for fertilizing purposes. The product in question in this case does not come within this last clause of the paragraph, for the finding of the court below is that it is fit for other than fertilizing purposes. It does not come under the first clause, as we have seen, because it is not "crude bones, not burned, calcined, ground, steamed, or otherwise manufactured."

It is urged that, in case of doubt, the doubt should be resolved in favor of the importer, and that duties are never imposed upon doubtful interpretation. But this is not a case of doubt. The statute is clear, and its meaning is not uncertain or ambiguous. It is so plain that to read it is to construe it. The judgment of the circuit court will be affirmed.

PILLSBURY-WASHBURN FLOUR-MILLS CO., Limited, et al., v. AMERICAN WIRED-HOOP CO.

(Circuit Court, D. Minnesota. November 30, 1897.)

1. PATENTS—INVENTION—MACHINE FOR PRINTING BARREL HEADS.

The Hooper patent, No. 557,582, for a printing press designed especially for printing on barrel heads, is void for want of invention, in view of the prior state of the art.

2. SAME—MACHINE FOR PRINTING ON BOARDS.

The Hooper & Hollingsworth patent, No. 359,972, for a machine for printing on boards, and which is especially designed for printing in two colors at one operation, by a combination of two type cylinders, and elastic-face feed rollers between them, construed, and held infringed as to the first, second, and third claims, and not infringed as to the sixth claim.

This was a suit in equity by the Pillsbury-Washburn Flour-Mills Company, Limited, and Francis X. Hooper, against the American Wired-Hoop Company, for alleged infringement of letters patent No. 359,972, issued March 22, 1887, to F. X. Hooper and W. Hollingsworth, for a machine for printing on boards, and also No. 557,582, issued April 7, 1896, for a printing press designed especially for printing barrel heads. The patent of 1887 is adapted for printing upon boards with two colors in one continuous operation. In the specifications the patentees say:

"One description of boards which are to be printed by this machine are used for the ends of boxes; such boxes as are employed for packing goods of various kinds,—notably, canned goods, such as oysters, fruits, etc. Instead of stenciling upon the end of the ready-made box, to denote its contents, the board designed for the box end is printed previous to being made up into the box. Where boxes are made up in large numbers for packing special articles, this plan is found more economical, besides producing neater and better work. Another kind of boards which may be printed to advantage are those used for advertising signs."

Fig. 1 is a vertical, longitudinal section of this machine. In his description the patentee says:

"Referring to Fig. 1, 1 is the frame of the machine. 2 is the bed. 3 is a feed chain. 4 and 5 are sprocket wheels mounted in a frame, by which the feed chain is driven. 7 and 8 are two printing rollers suitably geared with the driving mechanism, so as to turn in the proper order in relation to the