

WOTTON et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 9, 1898.)

CUSTOMS DUTIES—CLASSIFICATION—HAT TRIMMINGS—GALOONS.

Cotton hat trimmings, of the variety called "galoons," were dutiable as galoons, under paragraph 263 of the act of 1894, and not as "trimmings of which cotton is the component material of chief value, not specifically provided for," under paragraph 276.

This was an appeal by Wotton & Rumler from a decision of the board of general appraisers as to the classification of certain merchandise imported by them.

Comstock & Brown, for appellants.

James T. Van Rensselaer, for the United States.

TOWNSEND, District Judge (orally). The articles in question are cotton hat trimmings, as found by the board of general appraisers. But they are also a specific variety of hat trimmings, namely, galoons, and therefore dutiable as such, under the provisions of paragraph 263 of the act of 1894, and not under the provisions of paragraph 276, as "trimmings of which cotton is the component material of chief value, not specifically provided for," as found by the board of general appraisers. The decision of said board is therefore reversed.

KOECHL et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 9, 1898.)

CUSTOMS DUTIES—CLASSIFICATION—MEDICINAL PREPARATIONS—LORETIN.

Loretin, a medicinal preparation, the medicinal action of which as an antiseptic and otherwise is chiefly due to its acid properties, was free, under paragraph 363 of the act of August, 1894, as an "acid used for medicinal purposes," and not dutiable, under paragraph 59, as a medicinal preparation.

This was an appeal by Victor Koechl & Co. from a decision of the board of general appraisers as to the classification for duty of certain merchandise imported by them.

Hartley & Coleman, for appellants.

James T. Van Rensselaer, for the United States.

TOWNSEND, District Judge (orally). The merchandise in question herein, loretin, is a medicinal preparation, as claimed by the United States and found by the board of general appraisers. But it is also an acid, used for medicinal purposes, and its medicinal action as an antiseptic and otherwise is chiefly, if not entirely, due to its acid properties. In accordance with the rule laid down by the court of appeals in *Matheson & Co. v. U. S.*, 18 C. C. A. 143, 71 Fed. 394, it should have been classified as an "acid used for medicinal purposes," and free, under paragraph 363 of the act of August, 1894. The decision of the

board of general appraisers sustaining an assessment of 25 per cent., under the provision for medicinal preparations not specifically provided for in paragraph 59 of said act, is reversed.

CENTAUR CO. v. HEINSFURTER et al.

(Circuit Court of Appeals, Eighth Circuit. January 10, 1898.)

No. 899.

TRADE-MARKS—PATENTED ARTICLES—EXPIRATION OF PATENT.

When a patented article becomes known by a particular name, though an arbitrary one invented by the patentee, such as "Castoria," such name becomes public property on the expiration of the patent; and no trade-mark right exists therein, or can be acquired by subsequent use. *Singer Mfg. Co. v. June Mfg. Co.*, 16 Sup. Ct. 1002, 163 U. S. 189, followed.

Appeal from the Circuit Court of the United States for the District of North Dakota.

This is a suit brought by plaintiff in the circuit court of the United States for the district of North Dakota to restrain the defendants from the use of the word "Castoria," claimed by it as a trade-mark. The bill, filed on June 10, 1896, alleges that plaintiff is a corporation engaged in the business of manufacturing and selling, in bottles, with labels thereon, a certain vegetable preparation for assimilating the food, and regulating the stomachs and bowels, of infants, designated and known by the trade-mark or name of "Castoria"; that one Dr. Samuel Pitcher first used said name as a trade-mark; that he used the same prior to May 12, 1868, at which time letters patent of the United States, numbered 77,758, were granted to him for a composition to be employed as a cathartic, or substitute for castor oil; that the word "Castoria" nowhere occurs in the specifications, or appears upon or in connection with said letters patent, but was adopted and used as a trade-mark; that it is not a general designation for the preparation, is not descriptive of the same, or of the ingredients of which it is composed, but has been used purely and arbitrarily to point out the origin and ownership thereof by plaintiff and its predecessors, as manufacturers of the same. The bill sets forth in detail the various transfers by which all the rights of Samuel Pitcher passed to plaintiff, and avers that it had expended large sums of money in advertising and placing said preparation before the public under the name of "Castoria" or "Pitcher's Castoria," and that the preparation had acquired a recognized and standard reputation throughout the land. The bill further charges that defendants are commencing the business of manufacturing and selling a medicinal preparation under the designation of "Castoria"; that they have issued circulars describing themselves as the manufacturers and sellers of Castoria, in which circulars they claim and represent that the medicine which they are making and selling is the only one on the market which is prepared according to the recipe originally prescribed by said Dr. Pitcher, and for which the patent was issued, and that under the name of "Castoria" an article had for years been imposed upon the public, the ingredients of which were different from those used by Dr. Pitcher,—thus, as is claimed, representing that plaintiff's manufacture is a spurious article. The prayer is that defendants be enjoined from "directly or indirectly manufacturing and putting up, selling, advertising, offering, or exposing for sale any preparation for assimilating the food, and regulating the stomachs and bowels, of infants and children, or as a remedy for the troubles of infants and children caused by indigestion, and other irregularities of the stomachs and bowels, under said name, 'Castoria,' or under any word or combination of words liable to create confusion in the mind of the public with that used by your orator as a trade-mark as aforesaid, and which will in any manner simulate said trade-mark, so as to be calculated to deceive or mislead purchasers of the same, either in large or in small quantities, at wholesale