

on the floor, and is swept up, and is used for the same purposes as original leaf tobacco. It is used as filler tobacco, and is known as "scrap filler." It is unnecessary to consider all the questions presented by the elaborate briefs and arguments of counsel. Upon the argument of this case, I was inclined to affirm the decision of the board of general appraisers in conformity with the opinion of the court of appeals in *Sheldon v. U. S.*, 5 C. C. A. 282, 55 Fed. 818. But I have been unable to distinguish the material issues herein from those involved in *Seeberger v. Castro*, 153 U. S. 32, 14 Sup. Ct. 766, where the supreme court of the United States decided that tobacco sweepings such as those in question herein were "waste." I think that opinion is controlling upon the issues herein, and for that reason the decision of the board of general appraisers is reversed.

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EIMER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. March 3, 1898.)

CUSTOMS DUTIES—FREE ENTRY OF SCIENTIFIC INSTRUMENTS—COMPLIANCE WITH REGULATIONS.

To entitle an importer to the benefit of paragraph 585 of the tariff act of 1894, authorizing the free entry of "philosophical and scientific instruments imported for the use of a society incorporated for scientific purposes," the affidavit required by the regulations prescribed by the secretary of the treasury in such cases must be filed before the arrival of the articles, showing that they were imported by order of such institution, and not for sale or distribution; otherwise, the collector is justified in requiring payment of the prescribed duty.

This was an appeal by Eimer & Amend, importers, from the decision of the board of general appraisers sustaining the action of the collector of New York in assessing duty upon certain instruments imported.

H. T. Walden, for importers.

H. I. Sedgwick, for the United States.

TOWNSEND, District Judge. The goods in question were assessed as optical instruments at 40 per cent. ad valorem, under the provisions of paragraph 98 of the act of 1894, and are claimed as free under paragraph 585 of said act, as "philosophical and scientific instruments imported for the use of a society incorporated for scientific purposes." The apparatus was imported for the use of the state board of health of Minnesota. It is doubtful whether this board of health is an institution established for scientific purposes, within the benefit of the act. *Robertson v. Oelschlaeger*, 137 U. S. 436, 11 Sup. Ct. 148. But, without determining this question, I think the decision of the board sustaining the action of the collector should be affirmed, upon the admitted fact that the custom-house regulations were not complied with. Under the authority of Rev. St. § 251, giving the secretary of the treasury power to make regulations, he made a regulation not inconsistent with law providing that, for the free entry of such merchandise, an affidavit must be made within seven days before their arrival that such

articles were imported by the order of such institution, and not for sale or distribution. This regulation seems to be a reasonable one. It does not appear that its reasonableness has ever been called in question. The decision of the board of general appraisers is affirmed.

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FISH BROS. WAGON CO. v. FISH BROS. MFG. CO.

(Circuit Court, N. D. Iowa. April 20, 1898.)

1. **USE OF TRADE-MARK AND TRADE-NAME BY TWO—ASSIGNABILITY OF RIGHT.**  
In a suit between the originator of a manufacturing business and the purchaser thereof, it was decided that the right to the trade-mark and trade-name used in connection therewith was not exclusive in either party, but that each had a right to the limited use thereof. *Held*, that such right was assignable.
2. **SAME—CLAIMS OF GENUINENESS—RIGHTS FIXED BY COURT.**  
Where the court has decided that each of the parties to a suit is entitled to manufacture an article, and use the same name and trade-mark to designate it, it is not open to either to give out or claim that he manufactures the only genuine article of that name; but neither can be restrained from using the trade-mark or trade-name, at the suit of the other.

This was a suit in equity brought by the Fish Bros. Wagon Company, of Racine, Wis., against the Fish Bros. Manufacturing Company, of Clinton, Iowa, to restrain defendant from the use of the trade-mark and trade-name claimed by complainant.

Quarles, Spence & Quarles and Preston & Moffitt, for complainant.  
W. J. Turner and Chase & Seaman, for defendant.

**SHIRAS**, District Judge. From the evidence submitted in this case, it appears that in 1863 Fish & Bull began the manufacture of wagons at Racine, Wis.; and about a year later Bull retired from the firm, and Abner C. Fish became interested in the business with his brother Titus G., the firm name being changed to Fish Bros. In 1868 John C. Huggins and E. B. Fish were admitted as partners, and the firm name was changed to Fish Bros. & Co. Shortly after this time the firm became embarrassed financially, and an arrangement was made with Jerome I. Case, under which the latter advanced a large amount of money in aid of the business, and received as security a transfer of the assets of the firm; the business being conducted in the name of Fish Bros. & Co., Agents. In 1880 Jerome I. Case brought a suit against the firm to settle the respective rights of the parties under the agreement above named. During the pendency of this suit, and in the year 1882, Abner C. Fish ceased to be a member of the firm, and D. J. Morey and S. S. Lyon were admitted thereto, without change in the firm name. On the 2d day of October, 1882, a declaration for a trade-mark was duly registered in the United States patent office in the name of Fish Bros. & Co.; it being stated that the firm was composed of T. G. Fish, E. B. Fish, D. J. Morey, and S. S. Lyon, and that the trade-mark had been used by the Fish Bros. since 1873 in connection with the manufacture of wagons. On October 16, 1883, J. I. Case was appointed receiver, in the suit