THE INTERNATIONAL.

(Circuit Court of Appeals, Third Circuit. September 20, 1898.)

No. 5.

CUSTOMS DUTIES—DREDGES AND SCOWS.

A steam dredge and scows used in connection therewith are "vessels," within the meaning of Rev. St. § 3, and neither is dutiable under Act 1894, par. 177, as "manufactured articles," not specially provided for, and composed wholly or in part of metal.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

This was a libel in admiralty by N. K. and M. Connolly against John R. Read, collector of customs for the district of Philadelphia, to recover possession of the steam dredge International and two scows used in connection therewith. There was a decree for libelants (83 Fed. 840), and the collector appeals. Affirmed.

Francis Fisher Kane and James M. Beck, for appellant.

Frank P. Prichard, for appellees.

Before ACHESON and DALLAS, Circuit Judges, and BRADFORD, District Judge.

BRADFORD, District Judge. The libel was filed in this case by Nicholas K. Connolly and Michael Connolly, trading as N. K. and M. Connolly, to recover possession of the steam dredge "International," and two scows used in connection therewith, known as "No. 1," and "No. 2," of which the libelants were owners, and which were alleged to be illegally detained by John R. Read, then collector of customs for the district of Philadelphia. The dredge and scows were built in Canada and were towed from Halifax to Philadelphia; the dredge arriving at the latter port October 2, 1896, and the scows November 27, 1896, respectively. The dredge and scows were seized by the collector of customs at the port of Philadelphia, and were held by him to enforce the payment of certain duties claimed to be due thereon under the tariff act of August 27, 1894 (28 Stat. 509). The court below sustained the libel, decreeing that possession of the dredge and scows be restored by the collector to the libelants. This is an appeal from that decree. It is contended by the appellant that the dredge and scows were dutiable as "an article" or "articles" enumerated in that act, and were embraced in paragraph 177, imposing a duty of 35 per centum ad valorem upon "manufactured articles or wares, not specially provided for in this act, composed wholly or in part of any metal, and whether partly or wholly manufactured." We are unable to adopt this view. The dredge, as well as each of the scows, must, in our judgment, be regarded, for the purposes of this case, as a "vessel" within the meaning of section 3 of the Revised Statutes of the United States, and, as such, not subject to duty under the tariff act of 1894. That section provides that "the word 'vessel' includes every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

The terms of this provision are broad and unqualified. The word "transportation" is not expressly or impliedly limited to the carriage of passengers or merchandise for hire. A pleasure yacht or an ice boat is a vessel within the meaning of the section, equally with a merchantman or an ocean liner; although the ice boat be designed solely to keep navigation open, and the pleasure yacht may carry neither passenger nor merchandise for hire. While the dredge was not intended or adapted for the carriage of merchandise or passengers, and did not possess the power of self-propulsion except to an inadequate extent through the use of its steam shovel or dipper as a paddle, it was nevertheless a water craft "used, or capable of being used, as a means of transportation on water." Its permanent home was on navigable water, and it was intended and adapted for navigation and transportation by water of its crew, supplies and machinery, from point to point, in carrying on the work of deepening and removing obstructions from channels and harbors in aid of navigation and commerce. Admiralty jurisdiction attaches to such dredges. Within the sphere of their activities they are subject to the maritime law of contracts and of torts and to the laws of navigation. The scows also were water craft "used, or capable of being used, as a means of transportation on water." It is immaterial that they were to be laden with mud from the shovel or scoop of the dredge instead of ordinary merchandise. They were designed to receive and transport mud by water in the course of rendering valuable maritime service. Equally with the dredge they were vessels within the meaning of the statute. In the case of The Conqueror, 166 U. S. 110, 17 Sup. Ct. 510, the court, recognizing that "vessels should be treated as a class by themselves, and not within the general scope of the tariff acts," used language, much of which may well be applied to the case in hand, as follows:

"Was the Conqueror dutiable under the tariff act of October 1, 1890 (26 Stat. 567)? This act requires duties to be levied upon all 'articles' imported from foreign countries and mentioned in schedules therein contained, none of which schedules mention ships or vessels eo nomine. An abstract furnished us of the corresponding clauses in all the principal tariff acts from 1789 to the present date shows that duties are laid either upon 'articles,' as in the present act, or upon 'goods, wares and merchandise,'—words which have a similar meaning. Indeed, the words 'articles' and 'goods, wares and merchandise' seem to be used indiscriminately, and without any apparent purpose of distinguishing between them. While a vessel is an article of personal property, and may be termed 'goods, wares and merchandise' as distinguished from real estate, it is not within either class, as the words are ordinarily used. * * * Not only is there no mention of vessels, eo nomine, in the tariff acts, but there is no general description under which they could be included except as manufactures of iron or wood. * * * Considering the hundreds of foreign vessels which enter the ports of the United States every day, it is incredible that, if congress had intended to include them in the tariff acts, it would not have made mention of them in terms more definite than that of 'manufactures.'"

The fact that dredges and scows are not subject to all the regulations and provisions of law applicable to vessels carrying passengers or merchandise for hire and engaged in foreign or domestic commerce, cannot affect their legal status as vessels or render them dutiable. The decree of the district court is affirmed.

SMITH & DAVIS MFG. CO. v. SMITH.

(Circuit Court, N. D. Illinois. March 31, 1898.)

TRADE-MARK—INFRINGEMENT.

Where the number 27, originally used by a manufacturer of mattresses to designate a particular kind, as distinguished from other patterns or kinds made by him, has come to designate in the trade any mattress of like kind or quality, other manufacturers who have the right to make such mattresses may designate them by that number without infringement.

This is a suit in equity to enjoin the use by defendant of an alleged trade-mark.

Peirce & Fisher and Paul Bakewell, for complainant.
Offield, Towle & Linthicum and H. L. Fowler, for defendant.

SHOWALTER, Circuit Judge. This is a bill to stop the use by defendant of what is alleged to be complainant's trade-mark. The parties are citizens of different states. It developed in the evidence that complainant has registered the mark in question at Washington, but this bill is not grounded on the federal statute. I see no reason why the numerals 2 and 7, even in their ordinary conjunction as 27, may not, under possible circumstances, be a trade-mark. In the present case the fact is not clearly made out that the defendant uses these figures as a sign for the purpose of misrepresenting the origin of goods made by himself, or for the purpose of representing himself as the manufacturer of goods really made by complainant. The fact seems to be that the mark 27 is a mark of grade or quality. It signifies a steel-wire mattress made according to the specification of a patent issued in 1882 to this defendant, who was at that time engaged in business as a manufacturer of mattresses, and to whose business this complainant afterwards succeeded. The defendant had graded his goods by numerals. When he introduced the kind of mattress made according to his patent, he marked that grade as No. 27, having already 26 grades of goods indicated by numerals from 1 to 26. The defendant and his successor, the complainant, apparently enjoyed a monopoly of the patented mattress for a time; but one Mellon, a rival manufacturer in St. Louis, at length put upon the market the same style of mattress, and used the figures "27" as indicating the grade of it, or as distinguishing it from other grades of his own manufacture. A litigation ensued over the patent, and the courts held it void. Afterwards Mellon changed the grade number from 27 to 28, specifying in his catalogue as his reason for so doing that other manufacturers had depreciated the quality of the article by poor workmanship and bad material, so that he preferred to indicate that grade of goods as manufactured by himself as 28, instead of 27. Whether Mellon made this change for the reason stated in his catalogue, or for fear of a trade-mark suit with this complainant, seems to me immaterial.

After separating himself from any connection with the complainant in the case, this defendant established himself in the same business in Chicago. The grade of mattresses made by him on the lines of his