

as it saw proper. Provision for the indemnification of the company in such an emergency was made by a clause in the act of 1864 providing that wherever, prior to the date of definite location, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the secretary of the interior."

Again, the court, in considering the construction of section 6 of the said act of July 2, 1864, said:

"The only ground upon which a contrary view can be rested is the provision in the sixth section of the act of 1864, that the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption, before or after they are surveyed, except to said company as provided by this act. It must be taken in connection with section 3, which manifestly contemplated that rights of pre-emption or other claims and rights might accrue or become attached to the lands granted after the general route of the road was fixed, and before the line of definite location was established."

These views in the main affirm the position taken by this court in the case of *Railroad Co. v. Sanders*, 46 Fed. 239, and *Id.*, 47 Fed. 604, and maintain the position that the fixing of the general route of plaintiff's railroad did not withdraw any land from disposal under the laws of congress. When the definite route of said road was fixed, then for the first time it was determined what lands were granted to plaintiff, and up to that date a pre-emption claim or other claim or right could be initiated to any lands within the limit of the grant. Before the definite line of plaintiff's road was fixed, defendant had initiated a homestead right upon the land in dispute. As to whether he complied with the law as to settlement and improvements, and took the necessary steps to entitle him to a patent for the same, was a matter for adjudication in the land department of the government. It appears that plaintiff contested defendant's right to a patent before the government's land officers, and the said officers found in favor of defendant. This determination binds this court. *Railway Co. v. Dunmeyer*, 113 U. S. 629, 5 Sup. Ct. 566. This determination of the officers of the land department included the adjudication of the intention of defendant when he settled upon this land. The patent relates back to the date of settlement. It appears, then, that defendant had title to said land when the route of plaintiff's road was fixed, and hence it was excluded from plaintiff's grant, although a part of an odd section within the limits of the same. I therefore find that plaintiff is not entitled to the possession of the land described in its complaint. It is therefore ordered that defendant have judgment against plaintiff for his costs.

BLOOMINGDALE et al. v. UNITED STATES.

(Circuit Court, S. D. New York. December 9, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—MANUFACTURERS OF METAL.

Cords, fringes, tassels, and braids, composed in chief value of metal, and not known commercially as metal threads, nor as bullion, were dutiable under paragraph 215 of the act of October 1, 1890, as manufactures composed wholly or in part of metal, and not under paragraph 103, as a manufacture of glass.

This was an application to review a decision of the board of general appraisers affirming a decision of the collector of the port of New York in regard to the classification for duties under the act of October 1, 1890, of certain merchandise.

Robert Weil, for plaintiffs.

Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. As to this importation, the board of general appraisers reports:

"We find that the goods in question consist of cords, fringes, tassels, braids, etc., composed in chief value of metal thread, or bullions; that said goods are articles composed in chief value of metal; and that the same are not known commercially as metal threads, nor as bullions."

Nevertheless the goods were assessed as manufactures of glass, or of which glass was the component material of chief value, under paragraph 108 of the tariff act of 1890, against a protest that they should be assessed as manufactures composed wholly or in part of metal, under paragraph 215. This finding is said to be a reason only, and that the classification was in fact right. But it is more than a reason. The board is authorized to find facts, and this must be treated as a finding of fact; and, according to this finding, the protest should have been sustained. Decision reversed.

HENNESSY et al. v. BRAUNSCHWEIGER & CO.

(Circuit Court, N. D. California. October 10, 1898.)

No. 12,641.

1. TRADE-MARKS—SUIT FOR INFRINGEMENT—JURISDICTION OF FEDERAL COURTS.

Rights and remedies pertaining to trade-marks generally exist independently of the federal statute, and, where a federal court is given jurisdiction of a suit in equity for the protection of a trade-mark by reason of diverse citizenship of the parties, it is not necessary that the bill should allege that the parties, or either of them, are engaged in foreign commerce, or commerce with Indian tribes, as is required by the act of March 3, 1881, to give jurisdiction where the parties are citizens of the same state.

2. SAME—EFFECT OF REGISTRATION AS EVIDENCE.

Under the trade-mark act of 1881 the registration of a trade-mark is only prima facie evidence of ownership.

On Demurrer to Bill.

This is a suit for the infringement of a trade-mark. The bill of complaint alleges: That complainants are citizens of the republic of France. That the respondent is a California corporation, having its principal place of business in the city and county of San Francisco. That complainants are co-partners under the firm name of James Hennessy & Co., and have been, and now are, exporters, bottlers, and vendors of a cordial or liquor known as "Hennessy Brandy," which, for upward of 30 years, they have produced, bottled, and sold. "That said brandy, when bottled by these complainants, is put up in peculiar, tall, dark-colored bottles, to wit, twelve inches in height, bearing (a) a rectangular label bearing the inscription 'Jas. Hennessy & Co. Cognac' in gold letters on a white ground, encircled by a wreath of vine leaves and grapes, in gold, said wreath being surmount-