

issuing the bonds to ascertain, determine, and certify the existence of the facts upon which their power, by the terms of the law, was made to depend; not including, of course, that class of cases in which the controversy related, not to conditions precedent, on which the right to act at all depended, but upon conditions affecting only the mode of exercising a power admitted to have come into being. In the present case there was no power at all conferred to issue bonds in excess of an amount equal to ten per cent. upon the assessed valuation of the taxable property in the county."

That is the principle upon which *Lake Co. v. Graham* was decided. This decision is cited in that opinion. The principle is that, when power is not given to the county to issue the bonds, no recital whatever binds the county. There must be power to act in the first place; when the power exists, recitals that it is exercised in conformity to the law are conclusive. In this instance, as said in *Lake Co. v. Graham*, there was no power. The power not existing, of course the bonds issued are void. The judgment will be for defendant. As counsel for the plaintiff in this suit resides abroad, 90 days will be allowed him to file a bill of exceptions, and bond on writ of error will be in the sum of \$500.

In re PERRY et al.

(Circuit Court, S. D. New York. April 27, 1891.)

1. CUSTOMS DUTIES.

Act October 1, 1890. Construction of paragraphs 122 and 677.

2. SAME.

Painted glass windows, specially imported in good faith for the use of a society or institution incorporated or established for religious purposes, and not intended for sale, are free of duty, under paragraph 677.

3. SAME.

Painted glass windows held to be "paintings," within the definition of that term in paragraph 677 of the free list; and the particular use of the importation, as therein described, constitutes a more specific designation thereof than the language used in paragraph 122.

At Law. Appeal from decision of board of United States general appraisers.

Perry & Ryer imported into the port of New York, per Rugia, November 24, 1890, certain stained or painted glass windows or paintings on glass which were specially imported in good faith for the use of the Convent of the Sacred Heart at Philadelphia, and not intended for sale. They were invoiced as "three cases paintings," and were returned by the appraiser as attaining to the rank of works of art. The collector of customs at the port of New York assessed duty thereon at 45 per centum *ad valorem* under the provisions of paragraph 122 of Schedule B of the tariff act of October 1, 1890, providing for that rate of duty upon "all stained or painted window-glass and stained or painted glass windows." The importers duly protested, claiming that the said paintings were entitled to exemption from duty under the provision in the free list of said

act, paragraph 677, for "paintings * * * specially imported in good faith for the use of any society or institution incorporated or established for religious * * * purposes, and not intended for sale." The importers duly appealed from the decision of the collector to the board of United States general appraisers, under the act of June 10, 1890, entitled "An act to simplify the laws in relation to the collection of the revenues." The board of United States general appraisers on March 6, 1891, affirmed the decision of the collector. S. S. 10,902 G. A. 397. The importers thereupon made application under section 15 of the act of June 10, 1890, for a review by the United States circuit court of the questions of law and fact involved in such decision. The appeal was heard upon the return of the board of United States general appraisers, filed in the United States circuit court on March 28, 1891, and upon additional evidence taken before Hon. George H. Sharpe, one of said general appraisers, as provided by law.

W. Wickham Smith, for importers.

Edward Mitchell, U. S. Atty., and *Henry C. Platt*, Asst. U. S. Atty., for collector.

LACOMBE, Circuit Judge, (*orally*.) The board of appraisers in their decision state that the word "paintings" is no doubt sufficiently comprehensive to embrace paintings on glass as well as on other substances, and add that the practice of the treasury department for a long series of years has been to classify paintings on glass of the kind under consideration as "paintings" within the meaning of the former tariff acts, at least when they attained to the dignity of works of art. That finding of the board seems entirely borne out by the decisions of the treasury department which have been read here, and commends itself to the good sense of every one. It seems also to have been the meaning which congress attached to the word "paintings," because, in paragraph 757, where it made provision with regard to pictorial paintings on glass, it expressly excepted from that classification "stained or painted window-glass or stained or painted glass windows." Evidently congress understood that, unless it thus excepted "painted window-glass or painted glass windows," the particular article referred to would fall within the general phraseology, "pictorial paintings on glass." Therefore, when we find the word "paintings" in section 677, it is manifestly the generic word "paintings." There is nothing to limit or qualify, so far as I can see, its broad meaning. That being so, we have, then—*First*, the broad and generic term "paintings," and, *secondly*, as a class or group included under that generic term, the particular variety of painting which is known as "painted window-glass or painted glass windows." Of course, if it were only a question as to "paintings" on the one side, and the particular kind of painting which is known as "painted glass windows" on the other, there could be no doubt that the latter should be held the more specific designation of the two. We have, however, in paragraph 677 a provision, not for paintings in general, but for "paintings imported in good faith for the use of any religious society, and not intended for sale." I am

at a loss to conceive of any more specific designation than that which is limited by the particular use of the individual article which is the subject of importation. Under these circumstances, it seems to me that the articles here,—there being no dispute as to the purpose for which they were imported, or as to the fact that they were brought here in good faith, and are not intended for sale,—there can be no doubt, it seems to me, that they fall within paragraph 677, and are therefore free. For that reason I shall reverse the decision of the board of appraisers, and direct the assessment of duty in accordance with the terms of this decision.

UNITED STATES *v.* EGAN *et al.*

(District Court, D. Minnesota, Third Division. July 9, 1891.)

INTERSTATE COMMERCE—LIMITED TICKETS.

Where a railroad company has advertised one rate for unlimited first-class tickets between certain points and a less rate for limited first-class tickets between such points, it may sell at the latter rate tickets which, though not limited as to time of use, do not entitle the holder to the right to stop over at intermediate stations, as is allowed under the unlimited tickets, since the requirement that the ticket shall be used only for a continuous passage renders it a "limited ticket."

At Law.

This is an indictment for an alleged violation of certain provisions of the interstate commerce act, in selling tickets at less than the rates scheduled, published, and posted in the proper places, and filed with the interstate commerce commission. The indictment consists of four counts, the second and fourth of which are merely formal. The first count, omitting the preliminary averments, is as follows:

"That on the said 12th day of March, A. D. 1890, John M. Egan was general manager of said railway company and Charles H. Holdridge was general agent of the passenger department of said railway company. That on said day said Chicago, Saint Paul, and Kansas City Railway Company had established a certain rate, fare, and charge for the first-class unlimited transportation of passengers from the said cities of Minneapolis and Saint Paul to said city of Chicago, which said rate, fare, and charge had been duly published and was in force on said day, and has been ever since. A copy of the schedule showing said rate, fare, and charge established as aforesaid had been duly filed by said common carrier and railway company with the interstate commerce commission, created by the act of congress as aforesaid. That said rate, fare, and charge for said transportation of passengers from said cities of Minneapolis and Saint Paul to said city of Chicago as aforesaid, as established by said railway company as aforesaid, and duly published, and a copy of said schedule filed with said interstate commission was eleven dollars and fifty cents (\$11.50) for each passenger for first-class unlimited transportation from each of said cities of Minneapolis and Saint Paul to said city of Chicago as aforesaid. That said rate, fare, and charge of eleven dollars and fifty cents (\$11.50) for each passenger was the legal rate, fare, and charge which said common carrier and railway company as aforesaid, or any director, officer, of agent thereof, or any person acting for or employed by said common carrier and railway company, could legally charge, demand, collect, and receive from