

make the banners correspond with the architecture of the church. It took about one year to make them, after which they were shipped to the church at Reading. This is one of them. Q. How are those made, do you know? A. That I could not answer. I do not know by what process it is made. Q. You testified they were made from designs? A. Yes, sir; designs drawn specially by the artist for those. Q. Did you state the name of the artist who designed that? A. My recollection of the name is Dr. Beck,—Beck, at least. I do not know what kind of a doctor, whether an artistic doctor or not, but he is an artist in that line. Q. Was he a professional artist? A. A professional artist residing in Nuremburg. Q. What use is made of these banners in the church? A. They are exhibited during the hours of public worship. Q. How exhibited? A. This one you have there is put in front of the altar. There is another one corresponding to it, a smaller design, that is suspended from the pulpit, and there is a third one—there are three of each set—that is suspended at the lecturn or reading desk. Q. Have they any use as an ordinary covering? A. No, sir; they are taken away after the service, and put away, and they have regular coverings to put over these pulpits, etc. These are not coverings. They are exhibited for worship. They are designs. Q. To the church, did these derive their value from their artistic appearance, or from the fact that they are embroidered? A. Their artistic appearance. Anybody could make embroidery, but not anybody can make that kind of work. Q. Their value to the church was entirely from their artistic appearance? A. Certainly.”

It seems to the court that the contention of the district attorney that, considering these articles as “works of art,” they are nevertheless subject to the well-settled rule that general legislation must give way to special legislation on the same subject, and that general provisions of such a statute must be interpreted so as to embrace only provisions to which the special provisions are not applicable, cannot be sustained. It is the general legislation which lays a duty upon all embroideries. It is the special legislation that exempts from duty, not all works of art, but works of art imported “expressly for presentation to an incorporated religious society”; and a work of art imported for such a purpose, whether it be silk embroidery or dressed stone, is taken out of the purview of the general legislation imposing duties by the particular description of the section granting the exemption. The testimony of the Rev. Mr. Fry, not contradicted by that of any witness produced by the government, is taken by the court as decisive of the question that these importations were works of art within the meaning of the statute, and, as it is not contended that they were not imported for presentation to an incorporated religious society, the question before the court must be determined in favor of the importers, and the decision of the board of appraisers in the premises reversed.

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UNITED STATES v. DE LUZE et al.

(Circuit Court of Appeals, Second Circuit. November 15, 1898.)

No. 18.

CUSTOMS DUTIES—CLASSIFICATION—GLASS BOTTLES.

Bottles coming within the provisions of paragraph 88 of the tariff act of 1894 are subject to separate duty thereunder, though imported filled with champagne, dutiable at a fixed rate per dozen, under paragraph 243.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause comes here upon an appeal from a decision of the circuit court, Southern district of New York (84 Fed. 156), reversing a decision of the board of general appraisers, which affirmed a ruling of the collector of the port of New York touching the rate of duty upon certain bottles containing champagne, imported in March, 1895.

James T. Van Rensselaer, for the United States.

W. Wickham Smith, for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

**PER CURIAM.** The tariff act of 1894 contained the following provision as to duty on glass bottles:

"Par. 88. Green and colored, molded or pressed and flint or lime glass bottles, holding more than one pint, and demijohns and carboys, covered or uncovered, whether filled or unfilled, and whether their contents be dutiable or free, and other molded or pressed, green and colored and flint or lime bottle glassware not specially provided for in this act, three-fourths of one cent per pound," etc.

Counsel for the importers concedes that the bottles in controversy, which came here filled with dutiable champagne, are within the provisions of this paragraph, and liable to pay a duty of three-fourths of one cent per pound, unless they are specially provided for elsewhere in the tariff act of 1894. It is further contended that such special provision is to be found in paragraph 243, which reads:

"243. Champagne, and all other sparkling wines in bottles, containing each not more than one quart, and more than one pint, eight dollars per dozen," etc.

Conceding that the last-quoted paragraph is not entirely free from ambiguity, and that when congress therein provided for a duty of "eight dollars per dozen on champagne in bottles," the phrase might, without violence to its language, be interpreted either as including or as excluding the bottles, any such ambiguity seems entirely relieved by the language of the next succeeding paragraph, 244, in the same act. Congress therein imposes a duty upon "still wines \* \* \* in bottles, \* \* \* per case of one dozen bottles, \* \* \* containing each not more than one quart," and adds the proviso, "but no separate or additional duty shall be assessed on the bottles." Undoubtedly, therefore, congress assumed that, unless it thus expressly exempted the bottles, its imposition of a duty on wines in bottles per case of one dozen bottles would leave the bottles subject to the provision for duty on filled bottles contained in paragraph 88 of the same act. When, therefore, in the preceding section, congress in substantially similar language lays a duty of eight dollars per dozen on champagne and other sparkling wines in bottles, without exempting the bottles, it is a fair conclusion that it had no intention to exempt them from the operation of paragraph 88.

## IN re MASSACHUSETTS GENERAL HOSPITAL.

(Circuit Court, D. Massachusetts. July 7, 1899.)

No. 668.

## CUSTOMS DUTIES—CLASSIFICATION—SCIENTIFIC INSTRUMENTS.

Surgical instruments, specially designed and adapted for use in surgery, are "scientific instruments," and as such, when specially imported in good faith by a general hospital, established, among others, for educational purposes, for use in its clinics and training school for nurses, are entitled to free entry, under paragraph 585 of the tariff act of 1894 (28 Stat. 543).

Gaston & Snow, for petitioner.

Boyd B. Jones, U. S. Atty.

COLT, Circuit Judge. This is an application by the Massachusetts General Hospital for a review of the decision of the board of general appraisers, affirming the action of the collector of the port of Boston in the assessment of duties on a case of surgical instruments entered October 28, 1895. The duties were assessed under paragraph 177 of the tariff act of August 27, 1894 (28 Stat. 520):

"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, thirty-five per centum ad valorem."

The petitioner, in its protest, claimed that the articles should have been admitted free of duty under paragraph 585 of the free list (28 Stat. 543), which reads as follows:

"Philosophical and scientific apparatus, utensils, instruments and preparations, including bottles and boxes containing the same; statuary, casts of marble, bronze, alabaster, or plaster of Paris; paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale."

The evidence shows that the surgical instruments in question were imported in good faith for the use of the Massachusetts General Hospital in its clinics and training school for nurses; that they were specially designed and adapted for use in surgery, and were such instruments as were ordinarily used by surgeons in the practice of their profession. The experts testified that they were scientific instruments, for the reason that surgery is a science, and the instruments were specially designed for use in surgical operations. There was no evidence that the instruments were used for any other purpose. The question presented is whether ordinary surgical instruments are "scientific instruments," within the meaning of the statute.

The answer to this question is not free from difficulty. By one rule of interpretation, an instrument may be classified as scientific, by reason of its use in a particular science, for which it was primarily designed and is principally employed. By another rule of interpretation, an instrument may be classified as scientific, according to the intrinsic character of the instrument itself, and without regard to its use. Further, an instrument which at one time may have been properly classified as scientific may, by reason of its common use in