

painting buildings, utensils, etc., is manufactured by grinding in an ordinary paint-mill, and then mixing with oil, without a careful elimination of the grosser materials and impurities, and the complete comminution of the pigment, such as is intended to be accomplished by the mulling stones; and the only question in this case is whether clause 89, which admits ochre and ochre earths, and umber and umber earths, at a duty of one and a half cents per pound when ground in oil, includes these elaborately prepared pigments.

It does not seem to me that congress intended to make any distinction as to the care with which the paints in question are prepared for the purpose of fixing the duty thereon. The ochre and umber contained in these tubes is still ochre and umber, notwithstanding the careful preparation which it has undergone to adapt it to the finer classes of painting; and I can only reconcile clause 87 with clause 89 by reading the former in this way, "colors and paints, except ochre and umber," etc.; otherwise the ochre and umber of clause 89 would depend, for the amount of the tariff imposed upon them, upon the care used in their preparation, while it seems to me the clear purpose of clause 89 is to admit ochres and umbers, when ground in oil, at a specific duty of one and a half cents per pound, without regard to the manner in which they are prepared for use. The issue is therefore found for the plaintiff.

BONTE v. SEEBERGER, Collector.

(Circuit Court, N. D. Illinois. August 1, 1887.)

CUSTOMS DUTIES—ASSESSMENT OF DUTY—"PHOTOGRAPHIC MOUNTS."

Enamelled cards called "photographic mounts," which have passed through a printing-press, and have printed thereon the name and address of the photographer for whom they are intended, are subject to a duty of 25 per centum *ad valorem*, as "printed matter not specially enumerated or provided for," under clause 384 of the new tariff index.

Jesse A. Baldwin, for plaintiff.

Graham H. Harris, Asst. U. S. Dist. Atty., for the collector.

BLODGETT, J. The plaintiffs imported an invoice of photographic cards, or what are called "photographic mounts," upon which a duty of 25 per centum *ad valorem* was assessed, under clause 384 of the new tariff index, as "printed matter not specially enumerated or provided for." Plaintiff claimed that the goods were dutiable as a manufacture of paper, or of which paper is the component material, not specially enumerated or provided for, at the rate of 15 per centum *ad valorem*, under clause 388 of the new tariff index. The duties imposed were paid under protest; an appeal taken to the secretary of the treasury, by whom the action of the collector was affirmed; and this suit brought, in apt time, to recover the excess of duties paid.

The goods in question are finely enameled cards, made, as the proof shows, by laying together from four to seven sheets of paper, which are properly gummed, and then pressed together so as to make a firm, hard surface, and cut of the proper size for mounting photographs thereon. Upon one side of these cards, as a rule, there is an engraved or lithographed border, and a finely-printed design, showing the name and location of the photographer who is to use the same, and upon the opposite side there is, in many instances, the name of the photographer, and an ornamental or gilt border, to surround the picture. In some samples of the goods, only one side has any printed or lithographed impression, but in most of them there is an impression from engraved or lithographic plates upon both sides of the card. The only question in the case is whether this is "printed matter," within the meaning of clause 384 of the new tariff.

There can be no doubt, from the proof as to the manner in which these cards are made, that they have passed through a printing-press, and received thereby the impressions of letters and figures now appearing thereon; and I think all the questions in this case are clearly settled by the supreme court of the United States in *Arthur v. Moller*, 97 U. S. 365. In that case the question was whether certain articles imported, known as "decalcomanie pictures," were subject to duty as printed matter, and the court there held that they were so dutiable. The court says: "The pictures in question were printed from lithographic stones in successive impressions, each impression giving a different portion of the view, and of a different color, like other pictures which are made and used for the purpose of ornament. Equally with engravings, copper-plates, and lithographs, they are printed, and properly fall within the statutory designation of printed matter." If a picture produced by a series of impressions from lithographic stones is to be held as printed matter, I cannot see why these cards, which are more or less ornamented by engraved designs, with fancy lettering showing the name and residence of the photographer for whom they were specially ordered, do not come within the same definition.

The issue is found for the defendant.

UNITED STATES *v.* DENVER & R. G. RY. CO.SAME *v.* DENVER & R. G. R. Co. and others.

(District Court, D. Colorado. August 27, 1887.)

1. PUBLIC LANDS—GRANT OF MATERIALS TO RAILROAD COMPANIES.

Defendant, a railroad company, was empowered by special act of congress to take timber from the public lands adjacent to its right of way, for the repair and construction of its road, with the proviso that the road should be built to a certain point within a certain time. Defendant, having forfeited its rights under the special act, continued to take timber; and, upon being sued by the government for the value of the timber taken after such forfeiture, justified its action under the provision of a subsequent general act of congress giving railroad companies generally a right of way over public lands, and the privilege of taking material therefrom for the construction of their roads. *Held*, that the two acts were not inconsistent, and that the defendant, having enjoyed the bounty of the special act, was not thereby disqualified from claiming the privileges granted by the general law.

2. SAME—ADJACENT PUBLIC LANDS.

Under the provisions of the special act of congress of June 8, 1872, (17 St. 339,) and of the general act March 3, 1875, the defendant railroad company was authorized to take from the public lands "adjacent" to the line of its road the timber and other material necessary for the construction and repair of its railway. *Held*, that the language used was intended to indicate such timber and other materials as could be conveniently reached by ordinary transportation by wagons, and that the privilege granted did not include the right to take timber from public lands, and transport it by rail to distant parts of the road, for use in construction and repairs.

3. SAME—ACTION OF TRESPASS—BURDEN OF PROOF.

In an action of trespass by the government against a railroad company, for cutting timber upon public lands, the burden is upon the government to show that the timber was taken from public lands. That it was taken from public lands "adjacent" to defendant's road, and used at a point authorized by the statute granting the privilege of taking it, is a matter of defense peculiarly within the knowledge of defendant, and, in the absence of evidence to that effect, plaintiff is entitled to judgment.

H. W. Hobson, for plaintiff.

Edward O. Walcott, for defendant.

HALLETT, J. In these actions the government sues for the value of timber taken from public lands, and defendants justify the taking under certain acts of congress. The facts as to the alleged trespasses are not in dispute; the matter for consideration is the proper construction of the acts of congress. In the year 1870, defendant in the first suit, the Denver & Rio Grande Railway Company, was incorporated under a general law of the territory of Colorado relating to corporations, and afterwards built the road and operated it until some time in the year 1886, when the property was sold under foreclosure proceedings to a new company, defendant in the second suit, and the present owner. In this discussion the old company will be called the *railway* company, and the new company the *railroad* company, as their names differ only in these words.

June 8, 1872, congress granted to the railway company "the right of