

of the free list, which is not applicable to this controversy. The court is not called upon to define the word "paintings" further than is necessary for the purposes of the present controversy. If these importations are paintings it disposes of the issue. In ordinary parlance it is, perhaps, true that a painting is understood to mean a picture in oil or water colors, painted on canvas or paper, inclosed in a suitable frame and intended to be hung on the walls of a public or private building. But such a definition is manifestly too narrow. Many of the works of the old masters are frescoes painted on stone. Some of the gems of more modern art are painted on wood, ivory, porcelain, china, silk, cotton and other textile fabrics. It is also true that paintings are not always used as mural decorations. They may be placed on fire screens, lamp shades, plaques, and, indeed, on almost any article which is to be ornamented. Nor is size a controlling factor. Some of the masterpieces of Meissonier and Meyer von Bremen are hardly larger than the subjects of this controversy. So too a painting may be of almost any conceivable shape. I presume we can all recall instances where the artist has painted his picture upon a fan-shaped background. Obviously, then, it is not size or shape or material or use which is to determine, arbitrarily, the character of these importations. There is no dispute that these productions are the works of artists of recognized ability and standing in their profession, and that at least two-thirds of the value is imparted to the fans by the skill, genius and reputation of the artist. The silk would be comparatively of no value but for the work of the artist. It is the painting, not the silk, which makes the fan valuable. Take for instance the picture by Houghton, which might properly be called "The Chess Players." No one who has the slightest knowledge of art can fail to see that in drawing, coloring, grouping and in attention to minute detail it is a painting of great beauty and merit. To call such a work of art "a manufacture of silk" seems almost as irrational as to call the Venus of Milo "a manufacture of marble." It is doubtless true that such a painting should be preserved under glass, but it does not cease to be a painting because it is placed upon a fan. These views lead me to reverse the decision of the board of general appraisers.

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 TIFFANY v. UNITED STATES.

(Circuit Court, S. D. New York. February 6, 1895.)

No. 1,122.

1. CUSTOMS DUTIES—TRAVELING CLOCKS.

Traveling clocks *held* dutiable as manufactures of metal, under Act Oct. 1, 1890, par. 215.

2. SAME—BRONZE STATUES.

Bronze statues *held* dutiable as manufactures of metal, under Act Oct. 1, 1890, par. 215, and not as "statuary" under paragraph 465, not being "wrought by hand" from metal

This was an application by Tiffany, the importer of certain French traveling clocks and bronze statues, for a review of the decision of the board of general appraisers sustaining the decision of the collector of the port of New York as to the rate of duty on such merchandise.

William B. Coughtry, for importer.

Wallace Macfarlane, U. S. Atty., and Henry C. Platt, Asst. U. S. Atty.

COXE, District Judge (orally). There are two branches to this controversy. The first relates to certain importations known as traveling clocks; the second relates to two bronze statues known as "Manon P'Escaut" and "Christopher Columbus." The collector assessed the traveling clocks under paragraph 215 of the act of 1890 as "manufactures of metal." The importer protested, insisting that they should have been classified either directly, or by reference to the similitude clause, under paragraph 211 of the same act, which provides for "watches, parts of watches, watch cases, watch movements," etc. There is no dispute that the articles in question are traveling clocks. They usually consist of a case of brass and plate glass, which contains the watch or clock movement, the whole being surrounded by an outer case of leather. They are intended to be carried by travelers, and when in use are placed upon the table, mantel, etc. They are never carried upon the person and are not suitable for such use. It cannot be said therefore in any view that they are watches or parts of watches, nor can it be said that the similitude clause operates, for the reason that, being specifically covered by paragraph 215 as manufactured articles, they are not nonenumerated.

As to the second branch of this controversy, relating to the two bronze statues, the collector assessed duty upon them under the same paragraph as "manufactures of metal." They are claimed by the importer to be dutiable at 15 per cent. under paragraph 465 as "statuary," wrought by hand from metal, by a professional sculptor. There is no question upon this proof that both of these statues are the works of a sculptor of recognized ability. They came here accompanied by the sculptor's certificate. The evidence is undisputed that they are original productions, and also that they were fashioned and finished after coming from the mold by the hand of the sculptor himself. They were not made by skilled workmen or mechanics. *Merritt v. Tiffany*, 132 U. S. 167, 171, 10 Sup. Ct. 52. It is strongly my impression that the proof brings these importations within paragraph 465. But it is stated that they are not within that paragraph, because it does not cover a bronze statue which is molded, but refers only to such statues as are wrought by the hand of the sculptor himself. It seems to me that such a construction practically excludes all bronze statues, and a large number of marble statues as well, for the proof shows, and it is well known to all familiar with the matter, that the sculptor himself very frequently does not touch the marble. The more eminent the sculptor, the less likely

is he to do the work of the skilled workman. While this is my impression from the testimony presented, it seems that the question has been passed upon by this court in a case which, I understand, related to importations precisely similar and was presented upon identical testimony. If this be true, it is clearly an authority which is controlling. There is nothing to distinguish the present issue from the issue that was there tried. Therefore the decision of the board of appraisers upon both branches of the controversy must be affirmed.

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GODWIN et al. v. UNITED STATES (two cases).

(Circuit Court, S. D. New York. February 5, 1895.)

Nos. 1,487 and 1,685.

CUSTOMS DUTIES—ANTIQUITIES—SALE AFTER IMPORTATION.

A collection of antiquities produced prior to the year 1700 is entitled to free entry under Act Oct. 1, 1890, par. 524, irrespective of the intention of the importer to sell the collection, or parts thereof, after its importation.

These were two applications by Godwin & Sons, importers of certain antiquities, for a review of the decision of the board of general appraisers sustaining the decision of the collector of the port of New York as to the rate of duty on such importations

Stephen G. Clarke, for importers.

Jason Hinman, Asst. U. S. Atty., for collector.

COXE, District Judge (orally). The sole question in these causes is whether or not the importations should be admitted free under paragraph 524 of the free list of the tariff act of October 1, 1890, as collections of antiquities. They all stand on the same footing. I will consider the one composed of 10 articles. The evidence establishes the undisputed fact that each member of this collection was produced prior to the year 1700, and that they were assembled as a collection in Europe and imported here in 1891 under one invoice. Three of the 10 members of the collection were admitted without duty by the collector as antiquities. The contention is made that the remainder of the collection should not be admitted free for the reason that it appears from the evidence that it was the intention of the importer to sell the collection or parts thereof after its importation. A reading of the section in question convinces the court that there is nothing in the language employed to warrant the court in taking into consideration the intent or motive of the importer. Where it is established beyond dispute that he has imported a collection of antiquities produced prior to the year 1700, the collection is entitled to free entry under paragraph 524. The collector has nothing to do with the intent of the importer. The decision of the board of general appraisers in each case is reversed.