

him in custody; that said Karlin was examined before United States Commissioner Edward N. Deady, on the 9th day of March, 1898, as to the identity of said Karlin and the person charged, and held by said commissioner to await the action of this court. Wherefore the attorney for the United States petitions that an order be issued directing the marshal for this district to deliver said Karlin to the United States marshal for the district of Washington, at Spokane. This proceeding is brought under section 1014 of the Revised Statutes of the United States, which section provides, among other things, that where any offender or witness is committed in any district other than that where the offense is to be tried it shall be the duty of the judge of the district, where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had. In *Re Bailey*, Woolw. 422, Fed. Cas. No. 730, the question of procedure under this statute is considered in a correspondence between Mr. District Judge Love and the late Mr. Justice Miller, and the conclusion reached that, in cases arising under this statute, there must be an examination of the person sought to be removed, where no indictment has been found, at least before the commissioner for the district where the party is found, or before the commissioner of the district where the crime is alleged to have been committed. In short, there can be no removal of the defendant upon a mere affidavit charging him with the commission of a crime, as the basis of a proceeding or prosecution against him. It is said in this case that the examination which has taken place before Commissioner Deady involved an inquiry as to the fact of the crime, but my action must be based upon the petition of the attorney for the United States. I am concluded by the facts appearing in that petition. How far it is open to the prosecution to issue another warrant for the arrest of Karlin, and to hold him for an examination before the commissioner here for the crime charged, is not decided. Upon the petition of the district attorney, because of its insufficiency, there will be an order directing the discharge of the defendant.

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**MORRIS EUROPEAN & AMERICAN EXP. CO. v. UNITED STATES.**

(Circuit Court, S. D. New York. March 8, 1898.)

**CUSTOMS DUTIES—WORKS OF ART FOR PRESENTATION TO RELIGIOUS SOCIETY.**

Plaintiff imported a church altar and reredos for presentation to a church in New York. It was originally designed by a leading American artist in this style of church architecture. A French artist of reputation made original designs for the angels, and impressed his personality upon the work. *Held*, that it is a "work of art," within the meaning of Act Aug. 27, 1894, par. 686, and entitled to admission free of duty.

This was an appeal by the Morris European & American Express Company from a decision of the board of general appraisers affirming the action of the collector of the port of New York in respect to the classification for duty of an imported church altar.

Howard T. Walden, for the importer.  
Henry C. Platt, for the United States.

TOWNSEND, District Judge. In 1896 the plaintiff imported into the port of New York a church altar, including a tomb and reredos, for presentation to the Trinity Episcopal Church at Binghamton, N. Y. The collector classified it for duty at 30 per cent. ad valorem, as "dressed stone, not specifically provided for," under paragraph 106 of the act of August 27, 1894. The importer protested, claiming the altar as free, either as a "work of art, imported expressly for presentation to an incorporated religious society," under paragraph 686 of said act, or as "statuary specially imported in good faith for the use of a society established for religious purposes," under paragraphs 585 and 603 of said act, or dutiable at 20 per cent., as a nonenumerated article, under section 3 of said act. The board of general appraisers sustained the classification of the collector, and the importer appeals.

The parties are at issue chiefly upon the question as to whether this altar and reredos is a work of art. The attorney for the United States relies upon the testimony of certain distinguished sculptors. Thus Mr. St. Gaudens says:

"My reply is that it is not a work of art, but I think this reply needs qualification. It is difficult to define a work of art, or say just where a work of art begins or where it ends. In a large sense, everything from the commonest design on a cheap cast-iron stove to the frieze of the Parthenon can be included in the expression 'works of art.' There is no established line. Every man draws his own line. The nearest I can get to it is that what is generally understood by artists as a work of art purely is only such as is produced by a professional artist in his own studio, either wholly by himself or with such assistance as he needs, under his own immediate direction and supervision. According to my understanding, this is distinctly and only what was meant by the words 'works of art' in the phraseology of the law, and was the intention of the framers of the law."

Other distinguished sculptors, among them Messrs. J. Q. A. Ward, Hartley, and Donaldson, testifying on behalf of the United States, admitted that, if it was not a work of art in sculpture, it was a work of art in architecture, or in the broad sense. It would be presumptuous to question the correctness of the views of such eminent artists as to what constitutes a work of art in the strict and technical understanding of sculptors, who exclude architectural works from their definition. But when they undertook to determine "what was meant by the words 'works of art' in the phraseology of the law, and was the intention of the framers of the law," they manifestly overlooked the well-settled rule in the interpretation of the tariff acts that words used therein are to be understood in the sense which they bear in the common speech of the people of this country. In that sense the altar and reredos was a work of art. Several of the eminent sculptors already referred to say, in effect, that it was a work of art in the commonly accepted meaning of the phrase. As Mr. Ruckstuhl, another sculptor, says: "From my point of view, any human work made with the specific purpose of stirring human emotions is a work of art, and I consider that work comes under that head." Mr. Ward says: "Art is the work of a human being, in plastic material or color, or something to render a sentiment, to imitate a form, or something of that kind, which does not grow on trees, which is not in nature."

If the proportions are sufficiently symmetrical, and the lines so far

free from faults as to stir the emotions of people, the work is to them a work of art. Whether it is good or bad art is a mere question of quality. This work was originally designed by one of the leading American artists in this style of church architecture. An artist of reputation in France made original designs for the angels, and imposed his personality upon the work. The specifications and detail drawings show this fact beyond question. Whether the design and construction show such originality of conception and perfection of execution as to mark it as the work of a genius is not the question herein. The work as an entirety confessedly falls within the accepted definition of a work of art. It represents the handiwork of an artist; it embodies something more than the mere labor of an artisan; it is "a skillful production of the beautiful in visible form." It is unnecessary to consider the contention that architectural works are not works of art, for writers such as Mr. Ruskin, and all the witnesses herein, refuse to impose a limitation which would exclude the famous churches, triumphal gates, and graceful towers of Europe. The further contention that it cannot be a work of art if adapted to a useful purpose would exclude the Ghiberti doors of Florence, or the fountains of Paris and Versailles. These conclusions render it unnecessary to consider the further claims of the importer that the altar, at least, is statuary, and that neither altar nor reredos is dressed stone. The decision of the board of general appraisers is reversed.

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VON MUMM et al. v. WITTEMANN et al.

(Circuit Court, S. D. New York. March 17, 1898.)

1. TRADE-MARKS AND TRADE-NAMES—LABELS ON WINE BOTTLES—INFRINGEMENT. Where complainants have long used characteristic labels to distinguish a particular brand of champagne in bottles, and which has been long and favorably known, defendants will be restrained from using labels of the same size and color, sufficiently corresponding in general appearance to deceive the ordinary customer, and manifestly designed to enable unscrupulous persons to palm off a spurious article on the public.
2. SAME—COLORED CAPSULES ON WINE BOTTLES—TERMS DENOTING QUALITY. Every possible color for capsules having been appropriated by proprietors of the various brands of champagne, and the term "Extra Dry" having been so long and generally used to denote character and quality, the use by defendants of a capsule of the same color as that used by complainants, with the words "Extra Dry" thereon, as used by complainants, though used with fraudulent intent, cannot be enjoined.

This was a suit in equity by Peter Hermann Von Mumm and others against Rudolph A. Wittemann and others for infringement of a trademark and unfair competition in trade.

Rowland Cox, for complainants.

Straley, Hasbrouck & Schloeder, for defendants.

TOWNSEND, District Judge. A study of defendants' "Illustrated Catalogue and Price List of Supplies and Outfits for the Wholesale Bottling Trade" shows the character of one branch of their business. The green and red ginger ale diamond label, with its "Original Supe-