

United States v. An Antique Platter of Gold, [184 F.3d 131 \(2d Cir. 1999\)](#), *aff'g* [991 F. Supp. 222 \(S.D.N.Y. 1997\)](#).

Location: Item exported from Italy into New York state

Applicable Laws: [National Stolen Property Act](#) (NSPA) ([18 U.S.C. §§ 2314 et seq.](#))

Where Laws Apply: *National Stolen Property Act*: Applies to “goods, wares, merchandise, securities, or money” valued at \$5,000 or more, which have been “stolen, converted or taken by fraud” then ***transported, transmitted, or transferred in interstate or foreign commerce.*** (*Emphasis added*) (jurisdiction is over the trafficking in the United States – property may be stolen in the United States or abroad).

Holding: False, material statements made on customs forms violate 18 U.S.C. § 545, which prohibits the importation of merchandise into the United States “contrary to law.” A false statement is material if it has the potential significantly to affect the integrity of the importation process as a whole.

Overview:

The case centered around a “Phiale,” an antique gold platter originating in Sicily around the 4th Century B.C. The Phiale’s history was largely unknown until about 1980 when it began a series of ownership changes. In 1991, a U.S. art dealer, Haber, purchased the Phiale for his client, Michael H. Steinhardt, from a Swiss art dealership. In procuring the Phiale for the client, Haber flew to Switzerland, proceeded to a town near the border with Italy and took possession of the Phiale. An invoice was prepared by the Swiss art dealership. Haber had his customs broker in New York prepare an Entry/Immediate Delivery Form (Customs Form 3461) for the Phiale. The form listed the country of origin as “CH”, the code for Switzerland. In addition, the value on the custom forms and the invoice of sale was listed as only \$250,000 although the price paid for the Phiale was nearly \$1.2 million dollars.

After several years of being displayed in Steinhardt’s New York home, the Italian government requested that the U.S. government confiscate the Phiale and return it to Italy. Under Article 44 of Italy’s law of June 1, 1939, (Italy’s patrimony law) an archaeological item is presumed to belong to the state unless its possessor can show private ownership prior to 1902. The U.S. government seized the item and brought this present *in rem* civil forfeiture action.

The government claimed that the forfeiture was proper because of the false statement on the customs forms and because the Phiale was stolen property under the NSPA as a result of violating Italy’s patrimony laws. The Court of Appeals agreed that importation of the Phiale violated 18 U.S.C. §545 because of the false statements made on the customs forms.

Section 545 of the NSPA prohibits importation “contrary to law” of merchandise into the United States and states that material imported in such a manner shall be forfeited. Importation of the Phiale was contrary to law because it violated Section 542, which prohibits making false

statements in the course of importing merchandise into the United States. The Court had previously concluded that Section 542 includes a materiality requirement and Steinhardt argued that the country of origin mistake is not material and thus did not violate Section 542.

The Court examined different tests for determining materiality and adopted the “natural tendency” test. The Court held that under the natural tendency test a false statement is material if it has the potential to significantly affect the integrity of the importation process as a whole, and that neither actual causation nor harm to the government need be demonstrated. In practice, the court found that the test is whether a reasonable customs official would consider the statements to be significant to the exercise of his or her official duties.

Here, the false statements were material. Customs Directive No. 5230-15 advised customs officials to determine whether property was subject to a claim of foreign ownership and, if so, to seize that property. Under *United States v. McClain*, [545 F.2d 988 \(5th Cir. 1977\)](#), violations of a nation’s patrimony laws are covered by the NSPA. Because the false statement of the country of origin did affect the custom officials’ exercise of duty as they would have confiscated the item otherwise, the court found that the false statement was material and thus subject to forfeiture. In addition, the court held that Section 545 does not contain any explicit innocent owner defense and therefore none existed in this case.