

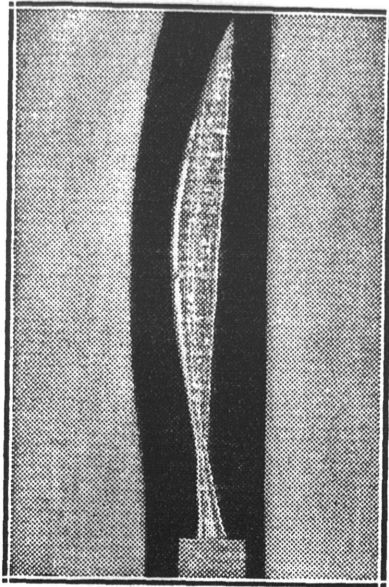
THE MUSEUM OF MODERN ART
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PROOF OF ENCLOSED MATRIX

"Bird in Space"
Sculpture in polished bronze
by Constantin Brancusi, a re-
cent anonymous gift to The
Museum of Modern Art, New York

The Museum of Modern Art, 11 West 53 Street, announces the acquisition of a sculpture in polished bronze, "Bird in Space," by Constantin Brancusi, which will be placed on view at the Museum, Monday, August 13. The piece is an anonymous gift and is a duplicate of the bronze "Bird" that caused such excitement in artistic circles when it was denied duty-free admission to this country in 1926. At that time the customs inspector decided it was not a work of art and therefore was taxable as a piece of bronze under the clause in the tariff of 1922, which placed a 40% duty on "articles and wares not especially provided for.....and composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum or other metal."

The "Bird" was one of several pieces of Brancusi sculpture brought into the country at the same time and the tax was imposed on all. The declared valuation of all the pieces was \$10,000 on which the tax levied was \$4,000. If admitted to this country as works of art, no import tax could have been imposed. If admitted merely as articles of metal and marble, their valuation could have been no more than the few hundred dollars which was the actual value of the materials, and the tax would have been correspondingly low. It did not seem illogical to the customs inspector, however, to accept the

\$10,000 art appraisal of the pieces--the high valuation due solely to the creative genius that had gone into their making --and yet to declare them subject to tax as commercial "wares."

Considering the tax unjust, several leaders in the art world of New York decided to contest it, making a test case of the "Bird." Mrs. Harry Payne Whitney retained an attorney for the sculptor. When the case "Brancusi vs. the United States" came up in the United States Customs Court in 1927, the technical problem was whether the "Bird" was art or whether it was a new form of tax evasion used to import bronze, as though it were piping or plumbing in a disguised shape.

The Government had members of the National Academy and the National Sculpture Society as its advisors and witnesses. Its chief witness was Robert Aitken, a sculptor and member of the National Academy. Chief witnesses for the plaintiff were Edward Steichen, the noted photographer and owner of the "Bird" that was on trial; Jacob Epstein, the sculptor; Frank Crowninshield, art collector and Editor of Vanity Fair; Henry McBride, art critic on The Sun; William H. Fox, Director of the Brooklyn Museum; and Forbes Watson, Editor of The Arts.

The U. S. Customs inspector contended, and was supported in his contention by advisors and witnesses, that the "Bird" was not art because it did not conform to the standard prescribed by the court in an earlier decision, i.e.:

"Sculpture as an art is that branch of the free fine arts which chisels or carves out of stone or other solid material or models in clay or other plastic substance for subsequent reproduction by carving or casting, imitations of natural objects in their true proportions of length, breadth, and thickness, or of length and breadth only."

The judge was baffled. The sculpture certainly did not look like any bird he had ever seen. It had no feathers, wings, eyes, legs, or any other physical characteristic he associated with a bird. He called witnesses for the defense.

Forbes Watson then told the Court that art could not be defined in terms of length, breadth, and thickness. Jacob Epstein, another defense witness, submitted a bit of stone which he assured the Court was a hawk, a piece of Egyptian sculpture of 3000 B. C. which had been recovered from a tomb in the Valley of the Kings.

The Judge thought that the two pieces of art were some-

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what of the same type. Other witnesses were called, who explained that it was not an exact image of a bird but the spirit of a bird or the spirit of flight which Brancusi had attempted to convey in his sculpture.

The decision handed down was favorable to Brancusi. The champions of modern art felt that a great victory had been won. Brancusi had been vindicated in his own definition of art: "What is real is not the external form, but the essence of things. Starting from this truth it is impossible for anyone to express anything essentially real by imitating its exterior surface."

The "Bird in Space" will be placed on exhibition at the Museum of Modern Art Monday, August 13.

The Brancusi "Bird" contest recalls another famous case where art was tried in a court of law. In 1878 James A. McNeill Whistler sued John Ruskin for libel because of Ruskin's published criticism of a Whistler painting to the effect that it was "a pot of paint flung in the public's face."

Ruskin was the beloved essayist and art critic of the day, with an enormous popular following not only in England but all over the world. Whistler was noted for his wit and peculiarities, but was scarcely popular, either as an artist or as an individual. As in the case of Brancusi, his art was too modern to receive immediate justice in his day. He claimed he had been financially injured by Ruskin's criticism and sued him for libel. He won the suit--but the damages awarded were one farthing!

Law and modern art have never been friendly, and when the tariff enters the question strange compromises must sometimes be made. In bringing works of art into this country for exhibition, The Museum of Modern Art is occasionally bewildered by the customs designation given the pieces. At present the Museum is sending on a country-wide tour the greater part of the International Exhibition of Theatre Art it held in New York last winter. The Exhibition is composed of paintings and drawings of theatrical scenery, curtains, backdrops, and costumes, as well as models of stage sets. Some of the pieces are four hundred years old and if age has anything to do with art, these should qualify. But old or new, all the foreign pieces in the

Exhibition have been rated by customs as "paper goods" and travel about the country under that designation, bonded to insure their eventual return to the foreign port from which they came.

On Monday, August 13, when the Brancusi "Bird in Space" is placed on view, The Museum of Modern Art will also open to the public a small exhibition of reproductions of watercolors and pastels by American and European artists. A room on the fourth floor of the Museum will be devoted to their display. The artists represented will be Manet, Signac, Cézanne, Derain, Guys, Picasso, Chagall, Heckel, Marc, Laurencin, Léger, Lurçat, Masson, Pascin, de Vlaminck, and Kokoschka.

In October this exhibition of reproductions will be ready for circulation throughout the country. It will include, in addition to works by the artists already mentioned, reproductions of watercolors and pastels by Renoir, Gauguin, Klee, and Boardman Robinson.