

*In re* BLUMLEIN. *In re* ROSENWALD. *In re* CULLMANS. *In re* SCHUBART.

(Circuit Court, S. D. New York. February 2, 1891.)

CUSTOMS DUTIES—APPRAISERS' DECISION—REVIEW—RETURN.

On proceedings in the circuit court to review the action of the board of general appraisers in the classification of certain merchandise, under act June 10, 1890, "to simplify the laws in relation to the collection of the revenues," the return of the board stated that all the facts involved in the case were contained in its annexed opinion and decision, but the opinion merely affirmed the collector's assessment of duty, stating that for certain reasons it "was not deemed advisable to enter into the merits" of the question involved in the importer's protest. *Held*, that the return was not sufficient under section 15 of the act, providing that it shall contain "a certified statement of the facts involved in the case," and that it should be sent back to the board to be conformed to the requirements of that section.

At Law. Motion for further return of board of general appraisers under the act of June 10, 1890, entitled "An act to simplify the laws in relation to the collection of the revenues."

*Charles Currie*, and *W. Wickham Smith*, for petitioner.

*Edward Mitchell*, U. S. Atty., and *Henry C. Platt*, Asst. U. S. Atty., for collector.

LACOMB, Circuit Judge. In these four cases the collector of this port liquidated the duty upon certain importations of the petitioners at 75 cents per pound, as leaf tobacco suitable for wrappers, and possessing certain other characteristics which the tariff (paragraph 246) specified. Against this liquidation the importers protested, setting forth in their protests the facts which, as they claimed, showed both that errors had been made in the classification of the tobacco, and that the examination of the importations had not been such as the statutes required. All the papers were transmitted to the board of general appraisers, which affirmed the action of the collector. The importers having applied to this court for a review of the action of the board, orders were heretofore made calling for returns of the "record and the evidence taken by them, together with a certified statement of the facts involved in the case, and their decisions thereon." Section 15, Act 1890. The returns filed in response to this order each state that "all the facts involved in said case, so far as ascertained by the board, are fully stated in [a certain] opinion and decision [annexed thereto.]" In such opinion it is stated that, inasmuch as some of the questions raised by the protest are "understood to be now pending in the United States courts, [they] do not deem it advisable to enter into the merits of the same at this time, but affirm [the collector's] assessment of duty." Both the counsel for the petitioners and the district attorney move the court to send back these returns as not in conformity to the requirements of the statute, insisting that neither the importer nor the government can safely proceed further in the cases until a proper return is filed. Certainly these returns do not contain any certified statement of "the facts involved in the case," which, under the

statute, it is the duty of the board to make. The joint motion must therefore be granted, and the returns sent back to the board, to be conformed to the requirements of the statute as stated in the former orders.

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*In re* WHITE.

(Circuit Court, D. Minnesota. March 10, 1891.)

1. EXTRADITION—RES ADJUDICATA—HABEAS CORPUS—DISCHARGE.

Petitioner was duly charged before a magistrate in Wisconsin with the crime of grand larceny, and a warrant of arrest issued, on which was based a requisition to the governor of Minnesota, to which state petitioner had fled. The requisition, however, stated that the crime committed was burglary, and petitioner was discharged on *habeas corpus*. Thereupon a new proceeding was had before the Wisconsin magistrate, and a new warrant of arrest issued and a new requisition made, in which the crime was properly stated as grand larceny. Petitioner procured a new writ of *habeas corpus*. *Held*, that the former discharge was not *res adjudicata* unless it was shown that it was granted on the question of identity of petitioner with the person charged before the magistrate.

2. SAME—REQUISITION—SUFFICIENCY—ANNEXED PAPERS.

Though the requisition does not show on its face that it was based on an original proceeding had in the proper court, it is sufficient where it refers to papers annexed to it, and certified to be correct, which do show that fact.

Appeal from District Court.

*James J. McCafferty*, for petitioner.

*W. H. Frawley*, for respondent.

SHIRAS, J. Briefly stated, the facts in this case are as follows: On the 20th day of January, 1891, the governor of Minnesota issued a warrant in due form to the sheriff of Ramsey county, reciting that the governor of Wisconsin had demanded the arrest and delivery of one Joseph White as a fugitive from justice, the said White being charged by affidavit made before a magistrate in the county of Eau Claire, in the state of Wisconsin, with the crime of grand larceny, and directing the said sheriff to arrest said White, and to deliver him to John Higgins, the agent appointed by the governor of the state of Wisconsin to receive said White. The arrest having been made as directed, thereupon a writ of *habeas corpus* was sued out by said White from the United States district court for the district of Minnesota, and upon the return made thereto a hearing was had in said court, and an order entered discharging said writ, and remanding the petitioner to the custody of the sheriff of Ramsey county. From this ruling an appeal was taken to the circuit court, under the provisions of section 763 of the Revised Statutes of the United States, and by the consent of parties the same has been submitted at the present term of this court. From the record on file it appears that on the 17th day of January, 1891, a complaint made by Gunder Thompson under oath was filed before E. M. BARTLETT, judge of the municipal court of the city of Eau Claire, Wis., charging Joseph White