

instructed as to their duty in weighing the testimony touching the commercial meaning, if any, of the phrase "steel strips," and there was sufficient evidence as to that to sustain a verdict against the plaintiff. Unfortunately, however, the charge was so framed as to warrant the inference that they might also determine what is the ordinary meaning of the phrase in common speech. Such meaning, however, is a question of law, and is for the court. It is impossible to tell whether the jury found for the defendant because they were satisfied that the phrase had a trade meaning which excluded goods like these, or because they thought that the words "steel strips," as used in common speech, did not include them. If the plaintiff be sound in the contention that his importation is within the dictionary meaning of the words used, he probably could not avail of his exception upon appeal from the verdict as it stands, as the appellate court would be warranted in assuming that the jury decided against him as to the trade meaning.

Verdict is set aside, and new trial ordered.

WILSON et al. v. UNITED STATES, (two cases.)

(Circuit Court of Appeals, Seventh Circuit. May 17, 1893.)

Nos. 16 and 81.

CUSTOMS DUTIES—CLASSIFICATION—HEMSTITCHED HANDKERCHIEFS.

Hemmed or hemstiched handkerchiefs, which are not also embroidered, are dutiable under paragraph 349 of the tariff act of 1890, as "handkerchiefs—composed of cotton or other vegetable fiber," and not under paragraph 373, as "hemstitched and embroidered handkerchiefs." *Rice v. U. S.*, 53 Fed. Rep. 910, followed.

Appeals from the Circuit Court of the United States for the Northern District of Illinois.

P. L. Shuman, for importers.

Thos. E. Milchrist, for the United States.

Before GRESHAM and WOODS, Circuit Judges, and BUNN, District Judge.

PER CURIAM. These cases were submitted together. The question presented is of the proper rate of duty, under the act of October 1, 1890, upon handkerchiefs composed of linen, which were hemstitched but not embroidered. The duty was assessed by the collector at the rate of 60 per cent. ad valorem under paragraph 373 of the act. The duty was paid under protest, the importers claiming in their certificate of dissatisfaction, in the first case, that the proper duty was 35 per cent. ad valorem, as required by paragraph 371, upon "manufactures of flax not otherwise provided for, containing over 100 threads to the square inch," or, if that was not so, then 50 per cent. ad valorem, under paragraph 349, which prescribes that duty upon "handkerchiefs—composed of cotton or other vegetable fiber." No reference to this

paragraph is made in the certificate of dissatisfaction in the second case. The board of general appraisers decided that the duty of 60 per cent. prescribed in paragraph 373 for "hemstitched and embroidered handkerchiefs" was the proper duty, and that decision was affirmed by the circuit court.

Since the argument of these cases, the question has been decided by the circuit court of appeals for the eighth circuit, in the case of *Rice v. U. S.*, (decided January 27, 1893,) 53 Fed. Rep. 910, and we concur in the opinion of that court that a hemmed or hemstitched handkerchief, which is not also embroidered, is not dutiable under paragraph 373 or 371, but is subject to the duty of 50 per cent. ad valorem prescribed by the 349th paragraph of the act.

It follows that the judgment in the first case should be reversed and remanded, with instructions that the duty be reliquidated under paragraph 349, and that in the second case the judgment should be affirmed, and it is so ordered.

In re PRIDGEON.

(Circuit Court, S. D. Ohio, E. D. July 7, 1893.)

No. 654.

CRIMINAL LAW—SENTENCE—EXCESSIVE PUNISHMENT—IMPRISONMENT DOES NOT INCLUDE HARD LABOR—HABEAS CORPUS.

The act of February 15, 1888, (25 Stat. 33,) which prohibits horse stealing in the Indian Territory, under penalty of fine or imprisonment, or both, does not warrant a sentence of imprisonment at hard labor, and a person under such a sentence is entitled to his discharge on habeas corpus.

Application by Sidney S. Pridgeon for a writ of habeas corpus. Granted.

A. H. Johnson and E. C. Irvine, for applicant.

Henry Hooper, Asst. U. S. Atty., for respondent.

SAGE, District Judge. The applicant was indicted by the grand jury of the district court of the first judicial district within and for Logan county, Okl. T., and for the Indian country attached thereto for judicial purposes, sitting with the powers of a district court of the United States, at the September term, 1890, of said court, to wit, on the day of said term which fell on the 28th of November, 1890, for the larceny of one horse, three fillies, seven mares, and six colts, within that part of the Indian Territory attached to said Logan county for judicial purposes. The territory so attached included a described part of the Cherokee Outlet, and all the lands occupied by the Kansas, Tonkawa, Otoe, and Missouri tribes of Indians, together with part of the land occupied by the Osage Indians, and a portion of the Iowa and Kickapoo and Sac and Fox countries. He was tried, convicted, and sentenced by said court to be imprisoned in the penitentiary at Columbus, Ohio, at hard

labor, for the term of five years, and to pay the costs of prosecution. In pursuance of said sentence he was transported to the Ohio penitentiary, and has ever since been, and is now, a prisoner there.

It is conceded that the only statute under which the court could have had jurisdiction is the act of February 15, 1888, (25 Stat. 33,) and volume 1, Supp. Rev. St. U. S. (2d Ed.) p. 578. That statute provides "that any person hereafter convicted in the United States courts having jurisdiction over the Indian Territory or parts thereof, of stealing any horse, mare, gelding, filly, foal, ass, or mule, when said theft is committed in the Indian Territory, shall be punished by a fine of not more than \$1,000, or by imprisonment not more than fifteen years or by both such fine and imprisonment at the discretion of the court." That the court had jurisdiction under this act is not conceded by counsel for the petitioner. It is unnecessary, however, to enter upon the discussion of that question, because of the concession on behalf of the government,—which is undoubtedly correct,—that, unless the court had jurisdiction under that act, it had no jurisdiction at all. Assuming, therefore, for the purposes of this case, that the court had jurisdiction under that act, the application must be granted, for the reason that the sentence was imprisonment at hard labor for five years, and the act provides for "imprisonment, not more than fifteen years." The general rule as stated by Justice Field in *Re Graham*, 138 U. S. 462, 11 Sup. Ct. Rep. 363, is "that a judgment rendered by a court in a criminal case must conform strictly to the statute, and that any variation from its provisions, either in the character or the extent of punishment inflicted, renders the judgment absolutely void." Accordingly, it was held in *Harman v. U. S.*, 50 Fed. Rep. 921, that where the penalty provided by a statute was imprisonment at hard labor, and the sentence was imprisonment, hard labor not being made part of the punishment, the sentence was void. See, also, *Ex parte Karstendick*, 93 U. S. 396; *In re Mills*, 135 U. S. 263, 10 Sup. Ct. Rep. 762; and *In re Johnson*, 46 Fed. Rep. 477.

The statement was made upon the hearing that the case of William Skagg, upon which an application, it was announced, is to be made, will present precisely the same state of facts, and this is conceded by the United States attorney. If so, the application will have to be granted in that case, also.

I have purposely avoided the consideration of other questions argued upon the hearing of the application, and confined myself to the discussion of the one which, in my opinion, is decisive.

UNITED STATES v. WILLIAMS.

(District Court, E. D. South Carolina. July 7, 1893.)

POST OFFICE—BREAKING AND ENTERING TO COMMIT LARCENY—INDICTMENT—
BUILDING PARTLY USED FOR OTHER PURPOSES.

An indictment under Rev. St. § 5478, charging that defendant broke into a building used in part as a post office, "with intent to commit there-