

as would give full effect to the supreme law of the land, and protect any right secured by it to the accused, was the same as that resting upon the courts of the United States. If the final judgment of the state court be adverse to this petitioner, he may then invoke the protection of the federal court in case of any denial of his constitutional right. In *Robb v. Connolly*, 111 U. S. 624, 4 Sup. Ct. 544, the supreme court expressly decides that the states have the right, by their own courts, to inquire into the grounds upon which any person, within their respective limits, is restrained of his liberty, and to discharge him from arrest if such restraint is illegal, even though such illegality arise from a violation of the constitution or laws of the United States. In view of the principles of right and law underlying the forbearance which the federal and state courts exercise towards each other in order to avoid conflict, I should not be justified in passing upon such questions in advance of the proceedings in the state courts. In the brief time which has elapsed since the argument, I have examined most of the cases cited by counsel for the petitioner in support of his claims. They show that whenever a federal court has inquired into the constitution of a grand jury, or the validity of indictments found by it, the original case either arose in a federal court, or, as in *Ex parte Farley*, 40 Fed. 66, the petition for the writ was brought after trial in the state court. The conclusions announced are confirmed by the very recent decision of the supreme court of the United States in *Pearce v. State*, 15 Sup. Ct. 116, which I have examined since the argument. In that case the asylum state refused to inquire into the sufficiency of the indictment, but left those questions to be determined by the demanding state. The supreme court held that such refusal did not deny to the petitioner any constitutional right. The motion to quash the return is denied, without prejudice to the petitioner to hereafter renew his petition to this court, provided the circumstances render it proper to do so.

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IRWIN et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. March 5, 1895.)

No. 90.

CUSTOMS DUTIES—CLASSIFICATION—HYDRATE OF ALUMINA.

The fine powder known as "hydrate of alumina," and manufactured from the crude mineral known as "bauxite," is not entitled to free entry, as bauxite, under paragraph 501 of the free list of the act of October 1, 1890, but is dutiable, under paragraph 9, at six-tenths of one cent per pound, as alumina. 62 Fed. 150, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was an application by Thomas Irwin & Sons, importers, for a review of the decision of the board of general appraisers reversing the decision of the collector of the port of New York as to the rate of duty on certain imports. The circuit court re-

versed the decision of the board, and affirmed that of the collector. 62 Fed. 150. The importers appeal.

Stephen G. Clarke, for appellants.

James T. Van Rensselaer, Asst. U. S. Atty., for the United States.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

**PER CURIAM.** This appeal from the circuit court involves the question whether the fine powder known as "hydrate of alumina," and manufactured from the crude mineral known as "bauxite," should be classified for tariff purposes, under the free list of the tariff act of October 1, 1890, as bauxite, or as alumina, under paragraph 9 of the same act, and dutiable at six-tenths of one cent per pound. The opinion of Judge Coxe (62 Fed. 150) states clearly and at length the various reasons which induced him to affirm the decision of the collector, and to hold that the article was not bauxite, but was dutiable under the name of "alumina." In those reasons we fully concur. While the article, technically speaking, is hydrate of alumina, it sufficiently appears from the testimony taken for use before the circuit court that in common speech the terms "hydrate of alumina" and "alumina" are used as synonymous. The decision of the circuit court is affirmed.

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LA MANNA et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. March 5, 1895.)

**CUSTOMS DUTIES—CLASSIFICATION—SARDINES.**

The act of October 1, 1890, provides (Schedule G, par. 291) that anchovies and sardines imported in boxes measuring "not more" than (giving dimensions) shall pay 10 cents per whole box; in "half boxes" measuring "not more" than (giving dimensions), 5 cents each; in "quarter boxes" measuring "not more" than (giving dimensions), 2½ cents each; "when imported in any other form, 40 per cent. ad valorem." *Held*, that sardines imported in boxes much smaller than quarter boxes, and commercially known as "eighth boxes," were not subject to a specific duty of 2½ cents per box, but only to the ad valorem duty of 40 per cent.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was an application by La Manna, Azema & Farnan, importers of certain sardines in boxes, for a review of the decision of the board of general appraisers sustaining the decision of the collector of the port of New York as to the rate of duty on said merchandise. The circuit court affirmed the decision of the board, and the importers appealed.

William B. Coughtry (Stephen G. Clarke, of counsel), for appellants.

Wallace MacFarlane, U. S. Atty., and Chas. Duane Baker, Asst. U. S. Atty.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.