

If any, done the petitioner, and at the same time leave the state authorities in a position to deal with him thereafter, within the limits of proper authority, instead of discharging him by habeas corpus proceedings, and thereby depriving the state of the opportunity of asserting further jurisdiction over his person in respect to the crime with which he is charged. \* \* \* Without passing, therefore, upon the merits of the question as to the constitutionality of the provision of the Code under which the supreme court proceeded in disposing of the case, when it was before it, or upon the question of the validity of the judgment rendered by the state courts in the case, we are of opinion, for the reasons stated, that the order of the circuit court refusing the application for the writ of habeas corpus was correct, and is accordingly affirmed."

Following the rule laid down in the case just cited, I am compelled to deny the application for the writ asked for by the petitioner. He is not entitled to be set at liberty, because he has not been acquitted of either of the minor offenses charged in the information; and this court has no authority to remand the petitioner to the custody of the state court, with instructions to proceed to try him for such minor offenses. Such direction, however, could be given by the supreme court of the state after a reversal of its judgment by the supreme court of the United States upon a writ of error.

It may be that the petitioner would not be entitled to a writ of error, for the reason that he did not distinctly claim before the supreme court of the state that his conviction deprived him of rights guaranteed by the constitution of the United States; but, if so, that fact would not enlarge the remedy, or give to him any greater rights than he would otherwise be entitled to obtain under a writ of habeas corpus.

Ex parte Ulrich, 42 Fed. 587, relied on by the petitioner, is not authority for the discharge of the petitioner. In that case, it appeared that the petitioner therein had been placed in former jeopardy before a jury, and, after trial begun, the jury was discharged, without his consent, and without legal cause therefor. Such discharge of the jury was, in effect, equivalent to a general verdict of not guilty, and therefore operated as an acquittal of the entire charge contained in the indictment; and, for this reason, it was held that the petitioner was entitled to his discharge. It will thus be seen that that case, on its facts, is widely different from this, and the principle of law upon which the decision in that case rests is not applicable here. Application for the writ asked for in the petition is refused.

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#### UNITED STATES v. MOSES.

(Circuit Court of Appeals, Second Circuit. December 1, 1897.)

No. 12.

#### CUSTOMS DUTIES—CLASSIFICATION—PAPER.

A very light paper, soft, semitransparent, long-fibered, and dull-finished, which is highly absorbent, and therefore much used by dentists, and which is also used for making paper napkins, held to have been dutiable, under paragraph 422 of the act of October 1, 1890, as "paper not specially provided for," and not to have been "tissue paper," so as to be dutiable under paragraph 419.

This is an appeal from a decision of the circuit court, Southern district of New York, which affirmed a decision of the board of

general appraisers, reversing a decision of the collector of the port of New York in regard to the classification for customs duties of certain merchandise.

The merchandise in question is a very light paper, soft, semitransparent, long-fibered, and dull-finished. It is highly absorbent, and for that reason is much used by dentists. It is also used for making paper napkins, and in connection with a machine called the "cyclostyle" for duplicating impressions. It weighs under 10 pounds per ream of 500 sheets, size 20x30. The collector classified it for duty under paragraph 419 of the tariff act of October 1, 1890: "(419) Papers known commercially as copying paper, filtering paper, silver paper, and all tissue paper, white or coloured, made up in copying books, reams, or in any other form, eight cents per pound," etc. The importer claimed, and the board found, that it was dutiable under paragraph 422 of the same act, which reads: "(422) Paper hangings and paper for screens or fireboards, writing paper, drawing paper, and all other paper not specially provided for in this act, 25 per centum ad valorem." The protest referred to this paragraph with sufficient definiteness, although it gave the wrong paragraph number.

H. D. Sedgwick, for the United States.

W. B. Coughtry, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. It is not disputed that, unless the merchandise be tissue paper, it is properly included in paragraph 422. There is no other paragraph specially providing for it. The sole question presented, therefore, is whether it is "tissue paper." We do not find in the phraseology of paragraph 419 any reason for holding that the words "tissue paper," as used therein, are not to be interpreted in accordance with the general rule; or that congress intended them to have any other or different meaning from that which they had in trade and commerce. The testimony before the board of general appraisers upon the question whether this importation was one variety of the "tissue paper" of commerce was very conflicting, and the additional evidence taken in the circuit court presents a like conflict. Under the circumstances we see no reason for reversing the decisions below. Decision of circuit court affirmed.

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#### UNITED STATES v. KEANE.

(Circuit Court, D. South Carolina. December 24, 1897.)

CUSTOMS DUTIES—GINGER BEER—DUTIABLE VALUE—BOTTLES, CORKS, AND WIRING.

Under paragraph 248 of the act of 1894, which imposes on ginger ale or ginger beer a duty of 20 per cent. ad valorem, but provides that "no separate or additional duty shall be assessed on the bottles," the cost of corking and wiring is not to be deducted in ascertaining dutiable value, on the theory that this is a part of the cost of the bottles, and that the bottles are free; but, as ginger beer is always sold in bottles, corked and wired, the duty should be assessed on the whole value of the goods as thus bought and sold, in the place from which they were imported.

This was an appeal by the United States from a decision of the board of general appraisers reversing the action of the collector of