

ernment, while the indorsement of the bill of lading is the act by which, in case a claim arises, the indorsee is recognized as the person to whom payment is to be made. When the bill of lading was signed and indorsed, there was no claim against the United States, although one might arise in case the transactions should be completed, and an exportation of the bags should be actually made. *U. S. v. Ferguson*, 45 U. S. App. 457, 24 C. C. A. 1, and 78 Fed. 103. At the beginning of the history of this claim, or at its inception, the plaintiffs were the payees, and no subsequent assignment of it was necessary.

The next question is whether jute bags "leased" to a steamship company for the transportation of grain are exported within the meaning of section 3019. The exportation to which the statute refers is an exportation to a foreign country for use in such country or for sale. It is not necessary that the use should be permanent, for under the tariff act of 1883 (22 Stat. 517) bags returned empty, which, when exported, were filled with American products, were free of duty. By the statute of 1890 (26 Stat. 603) this provision was modified so that, if a drawback had been allowed upon exportation, the bags should pay a duty upon their return equal to the drawback. The provisions all imply that the bags are to be or have been subjected to a foreign, as distinguished from a domestic, use. The bags in this case were leased to a steamship company to be used for the transportation of grain, and to be returned, and were employed on the ship as a part of its appliances for the transportation of freight, and, like the barrows and trucks on board the ship, which are the property for the time of the shipowners, were neither exported nor imported, within the meaning of the tariff laws, but were a part of the furniture or equipment of the ship. The judgment of the circuit court is affirmed.

ZIMMERLING v. HARDING. SAME v. WARBURTON. SAME v.
FISCHER.

(Circuit Court, E. D. Pennsylvania. June 23, 1899.)

INTERNAL REVENUE—TAX ON SUGAR REFINERS—ACT OF 1863.

A firm engaged in boiling molasses, by which process the molasses is advanced in value, are "sugar refiners," within the definition of the amended internal revenue act of March 3, 1863 (12 Stat. c. 74), and are subject to the tax thereby imposed on their product.

These were suits to recover internal revenue taxes paid. Heard on points reserved after verdict directed for the plaintiffs, subject to such reserved questions.

T. W. Neill and Ingham & Newitt, for plaintiffs.
James M. Beck, for defendant.

DALLAS, Circuit Judge. These three cases were tried together. The district attorney asked the court to charge as follows:

"(1) The plaintiff's firm of Feltus, Zimmerling & Co. were 'sugar refiners,' within the meaning of the revenue acts of March 3, 1863, June 30, 1864, March

3, 1865, and July 13, 1866, and the verdict must therefore be for the defendant. (2) Even if the plaintiff be entitled to recover the amount of the taxes claimed by him to have been illegally exacted, he is not entitled to interest on the same. (3) Under all the evidence in this case, it appearing that the plaintiff's firm were sugar refiners, within the meaning of the acts of March 3, 1863, June 30, 1864, March 3, 1865, and July 13, 1866, the verdict must be for the defendant."

In compliance with the mutual request of counsel for both parties, these points were reserved, and, subject thereto, the jury were directed to, and did, find a verdict in each case for the plaintiff for an amount which in each instance was agreed upon by counsel. I then expressed the opinion that, inasmuch as the points as framed seemed to involve questions of fact as well as of law, the desired reservation would not be in conformity with law and the practice of the court; but upon the suggestion of counsel that there were really no serious questions of fact involved, and upon their agreeing that the court should find the facts as well as decide the law, I consented to deal with the cases in accordance with that understanding, and have encountered no practical difficulty in doing so.

During the trial the government offered in evidence the record of a certain proceeding in the court of claims, under section 12 of the act of March 3, 1887. I received it pro forma, but postponed making any ruling as to its admissibility until the close of the case, and the course which was subsequently agreed upon and pursued rendered any determination of the matter at the trial unnecessary. I have, however, since reached the conclusion that this record was not admissible, and therefore, as evidence, have not considered it. In so far, however, as it discloses the opinion of the court of claims upon the question of law here involved, it is, of course, entitled to respectful attention; but even this need not be insisted upon, inasmuch as the opinion I am about to express is independently entertained.

The first and third of the points reserved seem to present but one and the same question, and my conclusion upon it renders it unnecessary to pass upon the second point. The substantial subject of contest is as to whether the plaintiffs should be regarded as sugar refiners, under the act of congress of March 3, 1863, by which sugar refiners were required to pay a tax of $1\frac{1}{2}$ per cent. on the gross amount of the sales of all products of their manufactories, and by which it was expressly "provided that every person shall be regarded as a sugar refiner under this act, whose business it is to advance the quality and value of sugar by melting and recrystallization, or by liquoring, claying, or other washing process, or by any other chemical or mechanical means; or who shall advance the quality or value of molasses and concentrated molasses, melado or concentrated melado, by boiling or other process." It would be quite inconsequential to declare the dictionary meaning or the commercial significance of the term "sugar refiner." The statutory definition is conclusive, and, in my opinion, it is clearly inclusive of these plaintiffs. They were admittedly engaged in "boiling" molasses. By doing so, they produced several "products," with the result, as I think, of advancing the quality, and certainly of advancing the value, of the molasses which they

boiled. That a large proportion of this molasses became sugar is not material; for the evidence shows beyond possibility of doubt that, except by resolving it to sugar, neither the quality nor value of molasses could have been advanced by boiling. I have carefully considered the able arguments, oral and printed, which have been submitted for the respective parties; but as they will no doubt be presented to the court of review, to which I am advised the cases will be removed, no useful purpose would be served by here discussing them at length.

In view of the agreement of counsel to which I have referred, the motions for new trial may be disregarded, and the cases be disposed of by directing that judgment shall be entered in each of them for the defendant notwithstanding the verdict; and it is so ordered.

In re O'BRIEN.

(Circuit Court, D. Massachusetts. March 15, 1899.)

No. 793.

FEDERAL COURTS—HABEAS CORPUS BY STATE PRISONER.

The rule applied that a federal court will not review the proceedings of a state court on a writ of habeas corpus procured by a state prisoner on the ground of a violation of his constitutional rights, where the petitioner's remedy in the state courts has not been exhausted, and the construction and effect of local statutes must be determined before it is clear that any constitutional right is involved, but will leave him to such remedy, and to a final appeal to the supreme court to determine any constitutional question raised and adversely determined by the state tribunals.

This was a petition by Edward F. O'Brien for a writ of habeas corpus.

Charles R. Cummings, for petitioner.

Hosea M. Knowlton and Franklin T. Hammond, for the Commonwealth.

PUTNAM, Circuit Judge. It is not necessary for us, in this case, to call on the state. This petition asks us to review various proceedings of the state courts with reference to matters, some of which are only irregularities, and some of which may involve fundamental questions of constitutional law. Under them lie, to a certain extent, the construction and the determination of the effect of local statutes, which must be disposed of before it is clear that any constitutional right is involved. As the effect and construction of local statutes are peculiarly within the province of the state courts, it is especially proper that those tribunals should have full opportunity of determining them before a federal court takes a case out of their hands. Moreover, at no point during the proceedings in the state courts, so far as the record shows, did the petitioner raise any federal question. Under such circumstances, his appeal to this court is only an afterthought. Even if he had raised any, it would not follow that he would be entitled to have them adjudicated on a writ of habeas corpus issued by this court. The decisions of the supreme