

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.

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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

court with reference to that matter, and the cautions which it gives the inferior federal tribunals, come very often. We referred to some of them in the opinion passed down in *Murphy's Case* (May 18, 1898) 87 Fed. 549. Since then a resumé of the decisions and the rule stated in *Murphy's Case* have been given and reiterated on several occasions,—one in *Tinsley v. Anderson*, 171 U. S. 101, 104, 105, 18 Sup. Ct. 805, and the latest in *Fitts v. McGhee*, 172 U. S. 516, 532, 533, 19 Sup. Ct. 516. The substance of the position is that although the habeas corpus statute of the United States is very peremptory in its letter, that the writ shall issue on application, yet the supreme court has practically so construed it as to hold that it does not deprive the federal courts of the use of a certain judicial discretion with reference to the granting of such petitions; and that court has, in the many cases which have been before it, so cut down that discretion as to leave very little power in this matter, and, in substance, to reprove its exercise, unless the application is made by a federal official, or has relation to the obstruction of interstate commerce, or to some other unlawful and unconstitutional obstruction of a continuing character. The distinction is referred to in *Ohio v. Thomas*, 173 U. S. 276, 19 Sup. Ct. 453. There is nothing presented by this petition of an exceptional character, and nothing to indicate that the petitioner will not receive prompt and complete relief, either by writ of error or on habeas corpus, in the courts of the state, with the undoubted right, in case a federal question should be raised and determined against him, to go to the supreme court on error. Under the circumstances, we are satisfied that the supreme court has not left us the power to exercise our judicial discretion in favor of granting this petition. Petition denied.

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CALIFORNIA FIG-SYRUP CO. v. WORDEN et al.

(Circuit Court, N. D. California. June 5, 1899.)

No. 12,378.

UNFAIR COMPETITION—RIGHT TO RELIEF—CALIFORNIA FIG SYRUP.

The California Fig-Syrup Company is entitled to protection from unfair competition in its business in the production and sale as a medicine of the compound known as "Syrup of Figs," irrespective of any question of trade-mark, and to an injunction against the production and sale of a similar article put up in such form that it can be sold to an ordinary purchaser as the preparation of such company. The fact that the preparation may not, as a medicine, accomplish all that is claimed for it, is not sufficient evidence of fraud to deprive the company of the right to relief in a court of equity.<sup>1</sup>

This was a suit in equity for infringement of trade-mark, and unfair competition. On final hearing.

Warren Olney, for complainant.

Purcell Rowe and John H. Miller, for respondents.

<sup>1</sup> As to unfair competition in trade, see note to *Scheuer v. Muller*, 20 C. C. A. 165, and supplementary thereto, under same title, note to *Lare v. Harper*, 30 C. C. A. 376.