

DAVID KAUFMAN & SONS COMPANY *v.* SMITH, COLLECTOR OF THE PORT OF NEWARK, NEW JERSEY.

## ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

No. 668. Motion to dismiss or affirm submitted February 28, 1910.—Decided March 7, 1910.

To give this court jurisdiction on a direct appeal from, or writ of error to, a Circuit Court on the ground of a constitutional question, such question must be real and substantial, and not a mere claim in words.

The questions involved in this case as to the right of the Government to collect duties on merchandise coming into the United States from the Canal Zone, Isthmus of Panama, under the act of March 2, 1905, c. 1311, 33 Stat. 843, have already been settled by the case of *Downes v. Bidwell*, 182 U. S. 244, and the writ of error is dismissed for want of jurisdiction.

THE facts are stated in the opinion.

*Mr. Frederick B. Campbell and Mr. George Whitefield Betts, Jr.*, for the plaintiff in error.

*The Attorney General, The Solicitor General and Mr. Assistant Attorney General Lloyd* for the defendant in error.

*Per Curiam.* It is established that to give this court jurisdiction on a direct appeal from, or writ of error to, a Circuit Court on the ground of a constitutional question, such question must be real and substantial, and not a mere claim in words.

This was an action brought against the Collector of Customs for the recovery of duties paid under the act of March 2, 1905, 33 Stats. 843, entitled, "An act fixing the status of merchan-

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## Syllabus.

dise coming into the United States from the Canal Zone, Isthmus of Panama," providing "that all laws affecting imports of articles, goods, wares, and merchandise and entry of persons into the United States from foreign countries shall apply to articles, goods, wares, and merchandise and persons coming from the Canal Zone, Isthmus of Panama, and seeking entry into any State or Territory of the United States or the District of Columbia."

Plaintiff claimed that the merchandise in question was not liable to the duties thus paid, but the Circuit Court ruled that in view of the treaty between the Republic of Panama and the United States, and the various acts of Congress relating to such Zone, the principles laid down in *Downes v. Bidwell*, 182 U. S. 244, were decisive of the questions raised herein. We concur in that conclusion and dismiss the writ of error for want of jurisdiction.

*Writ of error dismissed.*

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LEWIS *v.* UNITED STATES.ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF MISSOURI.

No. 202. Motion to dismiss or affirm submitted February 28, 1910.—  
Decided March 14, 1910.

One cannot complain until he is made to suffer, nor can one appeal from an order dismissing him from custody.

Where the indictment has been dismissed and no new indictment has been returned for the same offense and the statutory period of limitations has elapsed, the question whether accused was entitled under the Constitution to a speedy trial becomes a moot one, and a writ of error to review an order dismissing the indictment under such circumstances will be dismissed.

THE facts are stated in the opinion.