ceptation of the phrase, washing is a useful and inoffensive occupation, unless it is made offensive by the fact that the labor is here principally performed by the Chinese. But while this circumstance may excite race prejudice, it by no means makes the business "offensive" to the senses. It may be admitted that the immediate vicinity of a wash-house is not the most desirable location for a residence or some kinds of business, and therefore those who can afford it will generally seek some more costly or secluded location. But if this makes an occupation "offensive," within the meaning of the statute, a majority of the occupations, and a large portion of the residences of the city, are so. *The Laundry Ordinance Case*, 7 Sawy. 529; S. C. 13 FED. REP. 229. Besides this clause is another general one, leveled at "all offensive trades or occupations," while specifying none, and must, according to the rule, be construed as not applicable to any subject already specially provided for, as this is.

It only remains to consider whether the sum of $20 a year, payable quarterly, is a license fee or a tax; a reasonable sum imposed on the petitioner to meet the probable expenses of the regulation, or an arbitrary one for the purpose of revenue. It is difficult to see how there can be any special or extraordinary expense dependent upon this regulation, except that for issuing and recording the license, and certainly the sum of one dollar is amply sufficient for that. If the license and fee therefor is merely required as a means of regulation, there is no use of going to the trouble and expense of repeating the operation four times a year. An annual license is sufficient for all purposes of regulation, and nothing more is usually required for that purpose. But the provision requiring the license to be taken out quarterly is strongly suggestive of revenue rather than regulation. There is nothing in the business or proposed regulations for which the city is likely to incur any special expense. The provisions concerning the register and drainage are simple matters, and do not require any addition to its police force; while the provision requiring connection to be made with a sewer or cess-pool for the purpose of drainage is nothing more than is or ought to be applicable to every house in the city.

In *Ash* v. *People*, 7 Cooley, 347, it was held that the council of Detroit, under the power to license and regulate the sale of meats, might charge a fee of $5 for such license for, as I infer, the period of one year. And the fee in this case should certainly be no more than in that. In *Duckwall* v. *New Albany*, 25 Ind. 283, it was held that the defendant, under the power "to regulate" ferries having a landing within its limits, could not charge a fee of $300 for a license therefor. Now, $300 per annum for a license to run a ferry on the Ohio river at New Albany, in 1865, was probably a smaller compensation relatively than $20 a year for keeping a wash-house in Portland. There are other cases, as, for instance, *Boston* v. *Schaffer*, 9 Pick. 419, and *Burlington* v. *Putnam Ins. Co.* 31 Iowa, 102, in which comparatively high fees

have been sustained; but there the power to license was backed by the further provision that the municipal council in question might impose such terms or charge such sum for such license as to it might seem just and reasonable, or expedient. And this is, in effect if not in form, a power to tax the licensed occupation. But here there is not even an express power to license, let alone tax. The power to license is only implied from the power to regulate, and can only be used for that purpose. All things considered, it is apparent that the sum required to be paid the city for this license is far beyond any special expense that it may incur on account of the regulation to which it pertains; and it is quite clear from this fact, as well as the time and manner of its payment, that this sum is, in effect, a tax, and was so intended. This being so, the ordinance is so far void, and the petitioner is restrained of his liberty without due process of law, contrary to the constitution of the United States.

No question was made on the argument as to the jurisdiction of the court. The grounds of it are briefly stated in a similar case, (*In re Lee Tong*, 18 FED. REP. 255,) in which it is said: "The power of this court to allow the writ and discharge the prisoner, in case he is in custody in violation of the constitution, or of a law or treaty of the United States, is given by sections 751–755 of the Revised Statutes. And if the prisoner is imprisoned without due process of law, he is deprived of his liberty in violation of the fourteenth amendment, which provides that no 'state shall deprive any person of life, liberty, or property without due process of law;'" citing *Parrott's Case*, 6 Sawy. 376; S. C. 1 FED. REP. 481; *In re Ah Lee*, 6 Sawy. 410; S. C. 5 FED. REP. 899. See, also, *The Laundry Ordinance Case*, 7 Sawy. 526; S. C. 13 FED. REP. 229; *In re Wong Yung Quy*, 6 Sawy. 237.

The *Case of Lee Tong* is referred to in the discussion of "*habeas corpus*," at the meeting of the American Bar Association for 1884, as a "flagrant" one—whatever that may mean. Report A. B. A. 29, 30. But beyond this ornate epithet, the criticism went no further than to complain of the act of 1867, by which the jurisdiction in question was conferred on "the lowest class of federal judges." But it is not denied that the jurisdiction is conferred, and, therefore, no "federal judge," however "low" he may be in the judicial hierarchy, can decline to examine it when a case is brought before him. But if the jurisdiction to discharge a person from imprisonment, who is deprived of his liberty, without due process of law, by a state, was not conferred upon the district and circuit judges, this provision of the fourteenth amendment, that was plainly intended as a bulwark against local oppression and tyranny, as well "up north" as "down south," would be a dead letter. The supreme court is too far away, and the way there is too expensive, to furnish relief in the great majority of cases, either upon a direct application or on an appeal from the state court. But the supreme court ought to have the power to review the

judgments of the district and circuit courts in these cases; and the state, the legality of whose act is involved in the proceeding, ought to have the right to be heard as a party thereto. And it might be well, where the petitioner is imprisoned on final process from a state court, that the writ might be allowed by either the district or circuit judge, returnable only into the circuit court, where the cause should not be heard until two of the judges of that court were present; and that in the mean time the prisoner might be admitted to bail.

UNITED STATES *v.* HAGUE.

(*District Court, W. D. Pennsylvania.* October Term, 1884.)

TAKING ILLEGAL PENSION FEE — REPEAL OF ACT OF JUNE 20, 1878—PAST OFFENSES.

A pending prosecution upon a bill of indictment found for taking an illegal fee in a pension case in violation of the act of congress of June 20, 1878, fell with the repeal of that law by the act of July 4, 1884, the latter act having no saving clause as respects penalties incurred or past offenses.

Sur Motion in Arrest of Judgment.

Wm. A. Stone, U. S. Atty., for the United States.

B. C. Christy, for defendant.

ACHESON, J. On the eighth of May, 1884, an indictment was found against the defendant for a violation of the act of congress, approved June 20, 1878, entitled, "An act relating to claim agents and attorneys in pension cases." 20 St. at Large, 243; Supp. Rev. St. 336. The defendant was put upon his trial at the last term of the court, and on October 22, 1884, was convicted. He has moved the court in arrest of judgment, upon the ground that prior to his trial and conviction the act under which he was indicted was repealed. And such is the fact. The act of congress of July 4, 1884, (St. 1st Sess. 48th Congress, 98,) not only covers the whole subject-matter of the act of June 20, 1878, but in express terms repeals that act. It saves the rights of parties in certain contracts, but makes no reservation as respects penalties incurred, or past offenses. It follows, therefore, that the prosecution here fell with the repeal of the act of June 20, 1878, upon the well-settled principle that after the repeal of a statute there can be no further prosecution of a pending proceeding under it unless there be a saving clause in the repealing act. *U. S.* v. *Tynen*, 11 Wall. 88; *Abbott* v. *Com.* 8 Watts, (Pa.) 517; *Genkinger* v. *Com.* 32 Pa. St. 99. Hence the conviction here was without warrant of law, and no valid judgment can be pronounced thereon. There must be an arrest of judgment; and it is so ordered.