

wherein they reside, the laws excluding immigrants who are Chinese laborers are inapplicable to a person born in this country, and subject to the jurisdiction of its government, even though his parents were not citizens, nor entitled to become citizens, under the laws providing for the naturalization of aliens; that any person alleging himself to be a citizen of the United States, and desiring to return to his country from a foreign land, and that he is prevented from doing so without due process of law, and who on that ground applies to any United States court for a writ of *habeas corpus*, is entitled to have a hearing and a judicial determination of the facts so alleged; and that no act of congress can be understood or construed as a bar to such hearing and judicial determination. The evidence in the case shows that it is an admitted fact that the appellant is of Chinese parentage. His appearance and language proves that he is in all respects, save, possibly, in the one matter of his legal citizenship, a Chinaman, and not an American. He testifies that he was born in San Francisco in 1877, that he was taken to China by his parents when he was under three years of age, and that he remained there continuously until October, 1890. Under the circumstances stated by him, but little, if any, credence should be given to his own evidence as to the place of his birth, and he is corroborated on this vital point only by the testimony of other Chinese persons, who confessedly have seen him but a few times, and can give only hearsay evidence. There certainly is not disclosed in this record anything to justify this court in reversing the judgment of the district court on the ground of error in its findings of fact.

The judgment appealed from is affirmed, and the cause remanded for such further proceedings as may be necessary.

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LEM HING DUN v. UNITED STATES. LEE FOO v. SAME. LUM SUEY CHEONG v. SAME. TOY QUONG TEUNG v. SAME.

(Circuit Court of Appeals, Ninth Circuit. January 25, 1892.)

Appeals from the District Court of the United States for the Northern District of California.

Petition for writs of *habeas corpus*. Petitioners appeal from judgments remanding them. Affirmed.

Charles L. Weller, for appellants.

W. G. Witter, Asst. U. S. Atty.

Before DEADY, HANFORD, and HAWLEY, District Judges

HANFORD, District Judge. The opinion of this court in the case of *Gee Fook Sing v. U. S.*, 49 Fed. Rep. 146, (just filed,) disposes of all the questions of law in these cases. The evidence is not sufficient to make a case in favor of the appellant so clear as to warrant this court in reversing the judgment of the district court upon the facts. As to each of the cases we consider that the evidence, as a whole, does not make as good a case for the appellant

as it might be reasonably expected a man would make out in his native city, after time for ample preparation; and the case is such as any impostor could easily make.

We hold that when, upon a candid consideration of all the evidence in a case, there appears to be room for a difference of opinion as to the material facts in issue, this court ought not to reverse the judgment on a question of fact alone.

Judgments affirmed and causes remanded.

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UNITED STATES v. EBBS.

(District Court, W. D. North Carolina. November Term, 1881.)

1. UNITED STATES MARSHALS—FEES FOR ARRESTS.

A United States marshal who reads a warrant of arrest to a person charged with crime, but afterwards permits him to go free upon his verbal promise to appear before the commissioner for examination, is not entitled to a fee for the arrest.

2. SAME—APPEARANCE BOND.

The acceptance by a United States commissioner of an appearance bond, tendered by the friends of an absent offender, supersedes a warrant of arrest theretofore issued, and the marshal is not entitled to a fee for a subsequent arrest upon the same warrant, under the verbal direction of the commissioner.

3. SAME—DUTY TO ARREST PROMPTLY.

A deputy United States marshal who has a warrant of arrest is bound to be prepared at all times to execute the same, and if he comes into the presence of the accused, but does not arrest him, because the warrant was left at home, he is not entitled to fees for time subsequently spent in making the arrest.

4. SAME—GUARDING PRISONER.

When a United States commissioner holds an accused person to trial before the court, and verbally commits him to the custody of the marshal until bail is obtained, the latter is entitled to fees for guarding him, as he has no authority to commit him to jail without a written *mittimus*. The marshal is sole judge as to whether a guard is necessary while the prisoner is before the commissioner.

At Law. Prosecution on a criminal charge. On a rule for the relaxation of costs.

V. S. Lusk, in support of rule.

C. M. McLoud, for marshal.

DICK, District Judge. The exceptions presented in the affidavit to the costs taxed before the commissioner are as follows: (1) The marshal charges for service of the warrant when there was no valid service. (2) The marshal charges expenses for 14 days in endeavoring to arrest the defendant, when the defendant might have been easily arrested, as he made no effort to evade the process of the law. (3) The marshal charges for attending the court of the commissioner, and guarding the defendant, when there was no necessity for such service, as the defendant was upon bail.

As to the first exception, it appears in evidence that the deputy-marshal, while he had the warrant in his hands, met the defendant, and read the warrant to him, and told him that he was under arrest. The defendant at once submitted to the authority of the deputy-marshal, who told him that he might depart from custody if he would promise to