

such extent. In *Ex parte Reggel*, 114 U. S. 651, 5 Sup. Ct. Rep. 1148, it was held that the petitioner "was entitled, under the act of congress, to insist upon proof that he was within the demanding state at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process." In *Roberts v. Reilly*, 116 U. S. 80, 6 Sup. Ct. Rep. 291, the question whether or not Roberts was a fugitive from justice was considered solely in reference to the date when he left the state of New York, in which it was alleged that the offense had been committed. In *Ex parte Cook*, 49 Fed. Rep. 833, the sole question was as to the date of the prisoner's departure from the state, relatively to the date upon which the alleged crime was consummated. Nor, upon principle, and in the absence of controlling authority, should the statute be construed as authorizing an inquiry into the guilt or innocence of the prisoner in the tribunals of the state where he is found. As stated in the elaborate and able opinion of Judge Choate, (*Leary's Case*, 6 Abb. N. C. 43,) extradition between the states is in the nature of a national police regulation, for securing the persons of those as to whom there is probable cause to believe they are offenders against the laws, for trial in the locality where the alleged offense was committed. To the extent provided for in the constitution, the states gave up their independent sovereignty, and pledged themselves, each to the others, that it would become to that extent an agency as to the administration of the laws of the others against treason, felony, or other crime. The constitution (article 4, § 2) provides for the return of "a person charged with treason, felony, or other crimes," and the statute uses similar language. When the executive of the state in which the alleged offender is found is furnished with proof that he is so charged, the demand of the state from the jurisdiction of whose tribunals he has absented himself should be complied with, and the courts will not go behind the "indictment" or "affidavit," if regular in form, and specifically charging the commission of the offense within the jurisdiction of the demanding state, to try the question whether a crime was in fact committed, though identity will always be investigated, and it is proper to inquire whether the prisoner was in fact within the demanding state when the alleged crime was committed; for, if he were not, it could not be properly held that he had fled from it. On neither of these points, however, was there any question in this case.

The order of the circuit court, dismissing the writ, is affirmed.

UNITED STATES v. LONG HOP.¹

(District Court, S. D. Alabama. February 8, 1892.)

1. CHINESE EXCLUSION—ACT OF 1888 OPERATIVE.

The Chinese exclusion act of September 13, 1888, (25 St. at Large, p. 476,) has a field of operation despite the nonratification of the proposed treaty of March 12, 1888, between the United States and China, and is

¹Reported by Peter J. Hamilton, Esq., of the Mobile, Ala., bar.

now in force excepting sections 2-4 and 15. U. S. v. Jim, 47 Fed. Rep. 431, followed.

2. SAME—PROCEDURE UNDER EARLIER ACTS.

The Chinese exclusion acts of 1882 and 1884 provided no procedure, and it rested with the president to direct the course to be pursued in removing a Chinese person found to be unlawfully in this country.

3. PRACTICE—RETURN OF PROCESS UNDER EXCLUSION ACTS.

In general, process is not returnable in a different district from that of its issue, but the Chinese exclusion act of 1888 alters this rule so far as relates to inquiry into the right of a Chinese person to be in the United States.

4. EVIDENCE—PASSENGER LIST.

Evidence of the contents of a ship list of Chinese passengers is inadmissible unless the list is shown to be authoritative, and a certified copy produced.

5. CONSTITUTIONAL LAW—DUE PROCESS UNDER EXCLUSION ACTS.

Under the Chinese exclusion acts, due process of law requires that the United States, when prosecuting, should show that the defendant is unlawful in this country, and not that he should show a right to be here.

Appeal by Long Hop, a Chinese person, from commissioner's order of committal, for being unlawfully in the United States. Defendant discharged.

M. D. Wickersham, U. S. Dist. Atty.
Browne & Tucker, for defendant.

TOULMIN, District Judge. My opinion is that the act of September 13, 1888, became a law from and after the date of its approval, and that section 13 of that act became effective from that date. Parts of the act were made to depend upon the ratification of the pending treaty relating to Chinese, and, as that ratification has not taken place, there is no field of operation for them. They are sections 2-4 and 15. The law exists, but there is nothing for it to operate on. But the rest of the act, including section 13, has a field of operation. It is not necessarily dependent upon the provisions of either the first or fifteenth sections. Section 5 provides that from and after the passage of the act no Chinese laborer shall be permitted, after having left the United States, to return thereto, except under certain conditions thereafter stated. Judge Hanford, of the district court of Washington, in his opinion in the case of U. S. v. Jim, 47 Fed. Rep. 431, has so clearly expressed his views on the subject, and in them I so fully concur, that I adopt what he there says as my opinion on the question now under consideration. Judge Hanford is sustained by Judge Wheeler, of the district court of Vermont, and by Judge Swan, of the district court of Michigan, in cases reported in 47 Fed. Rep. 433, (In re Mah Wong Gee,) and 878, (U. S. v. Chong Sam,) and I have found no contrary ruling.

But, besides this, if section 13 of the act of September 13, 1888, is not in force, then the proceeding under which defendant has been tried and convicted is null and void, and, while the result would be a dismissal of the appeal, a habeas corpus would lie, and the defendant be discharged. There is no authority elsewhere to be found in the statutes for such a proceeding as that taken in this case. There is no other statute that I have found that authorizes a warrant to

be issued upon complaint under oath by any justice, judge, or commissioner of any United States court, returnable before any justice, judge, or commissioner, or before any United States court, and that provides for a conviction of the person found unlawfully in the United States. The former acts simply provided for the removal of a Chinese person found unlawfully in the United States after being brought before some justice, judge, or commissioner, and found to be one not lawfully entitled to be in the United States. No mode of proceeding was prescribed, and no process provided for upon which said removal should be made. Clearly, under the acts of 1882 and 1884, the president alone, as the chief executive of the government, had the authority to prescribe and direct the proceeding and the mode of procedure in the removal of the person so unlawfully found in the United States. And, again, if the arrest was to be made under the process of any court or officer, such process could only be executed within the jurisdiction of such court or officer, and made returnable there. In this case the complaint was made before a United States court commissioner in Louisiana, and a warrant issued by him returnable before a United States court commissioner in Alabama, and directed to be executed by the marshal in Alabama. Now, I take it that a commissioner in Louisiana, independently of the act of September 13, 1888, would have no authority to issue a warrant to be executed in Alabama, and be made returnable before a commissioner in Alabama. I am sure it would not be contended that this court, or the judge thereof, could here issue process to be executed and made returnable before the district court or judge in Louisiana; and it would hardly be contended that a commissioner has greater powers than the court from which, it may be, he receives his commission and authority. But the act of September 13, 1888, by giving it a liberal construction, obviates all this. Congress, obviously seeing the *casus omissus* existing under the former legislation on the subject, has provided for it in the act of September 13, 1888. Without that act this proceeding must fail. Being of opinion, then, that the defendant has a right of appeal, the motion to dismiss the appeal in this case is denied.

I will now briefly consider the merits of the case on the proof submitted. The effect of a conviction of the defendant is to deprive him of his liberty in this country, and he cannot be convicted and removed without its being shown that he is unlawfully here. If the evidence fails to establish beyond a reasonable doubt that he is unlawfully in the United States, then the judgment of the commissioner must be reversed, and the defendant be discharged. Objection is made to certain parts of witness Brodie's testimony as illegal and inadmissible. The testimony objected to includes some hearsay, which, however, is not material, and a statement that the witness saw defendant's name on a list of 56 Chinese at New Orleans in transit through from San Francisco to Cuba. The objection to the testimony about the list is well taken (1) because it is not shown who made the list; that it was an authorized list; that it was the list required by law to be made by the customs officials at San Francisco on the arrival of the Chinese there, or the list of the shipmaster re-