

court to dismiss the petition for habeas corpus, for the reason that upon the return of the writ it is shown that the petitioners are held under a warrant issued by the honorable secretary of the treasury, and it appearing that, the secretary had jurisdiction and authority in the matter of issuing said warrant, the matter is not reviewable by this court. This motion having been overruled, witnesses were examined, the facts stated in the petition for habeas corpus and the above-recited facts were proved by witnesses, and thereupon the court ordered in each case as follows: "It not appearing that the petitioner had come into the United States in violation of law, it is ordered that the petition be granted, and he [naming petitioner] be discharged from custody," whereupon the United States appealed to this court, assigning errors as follows: "First, that the court erred in refusing to grant the motion of the said attorney to dismiss the petition upon the ground set forth in said motion; second, that the court erred in permitting any evidence to be introduced at the hearing; third, that the court erred in discharging the petitioner."

F. B. Earhart and Frank Clark, for the United States.

Before PARDEE and McCORMICK, Circuit Judges, and TOULMIN, District Judge.

PER CURIAM. A majority of the judges being of opinion that these cases are controlled by the principles declared in the opinion of the supreme court in *Fong Yue Ting v. U. S.*, 149 U. S. 698, 13 Sup. Ct. 1016, and consequently that the action of the secretary of the treasury in ordering the deportation of aliens who have arrived in this country within a year cannot be reviewed nor questioned by the courts, it is ordered that the judgments of the circuit court for the Southern district of Florida in the above-entitled cases be, and the same are, reversed, and the said cases, and each of them, are remanded, with instructions to enter judgments discharging the writ of habeas corpus, and remanding the relators to the custody of the immigrant inspectors of the United States.

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UNITED STATES v. AMOR et al. (six cases).

(Circuit Court of Appeals, Fifth Circuit. May 7, 1895.)

Nos. 265, 266, 291, 297, 302, and 309.

IMMIGRATION—CONTRACT LABOR LAWS—DEPORTATION—HABEAS CORPUS.

Aliens held in custody by immigrant inspectors for deportation under the contract labor laws, and by virtue of a warrant from the secretary of the treasury, which does not contain the names of the prisoners, or any names idem sonans, are held without authority, and may be released by habeas corpus. *U. S. v. Arteago*, 68 Fed. 883, distinguished.

Appeal from the Circuit Court of the United States for the Southern District of Florida.

These were writs of habeas corpus issued upon the relation of Joaquin J. Amor and five others, who were held in custody by immigrant inspectors at the port of Key West for the purpose of deportation under the contract labor laws. The circuit court entered an order discharging the relator in each case, and the United States appealed.

F. B. Earhart and Frank Clark, for the United States.

Before PARDEE and McCORMICK, Circuit Judges, and TOULMIN, District Judge.

PER CURIAM. These cases, in the main similar to *U. S. v. Arteago* (just decided) 68 Fed. 883, are distinguished from them in that the warrant of deportation issued by the honorable secretary of the treasury does not contain the names of the petitioners in the court below (appellees here), nor any name or names idem sonans, and there is no evidence, even if such were admissible, tending to identify the appellees with any name or names recited in the warrants. As the return to the writ of habeas corpus shows no authority to detain the petitioners, the judgments of the circuit court are correct, and the same are affirmed.

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In re DANA et al.

UNITED STATES v. DANA et al.

(District Court, S. D. New York. June 24, 1895.)

1. CRIMINAL LAW—REMOVAL OF OFFENDERS—REV. ST. § 1014—STATE PRACTICE TO BE FOLLOWED—INDICTMENT IN ANOTHER DISTRICT INSUFFICIENT, IF INCONSISTENT AND CONTRADICTORY—LIBEL—PLACE OF COMMITMENT.

The editor of the *New York Sun* was indicted in Washington for an alleged libel published first in New York and afterwards circulated in Washington. On an affidavit, stating the indictment and annexing a copy, he was arrested in New York under a warrant issued by a United States commissioner, and held for trial in Washington upon proof of identity. It appeared that he had not been in Washington. Further evidence of no criminality was excluded. The indictment charged in one count the writing and publishing of the libel in New York; in another count it charged the writing in the District of Columbia; and its averments as to Mr. Dana's own acts were uncertain. On application under section 1014, Rev. St., for an order to remove the accused to Washington for trial: Held (1) that this proceeding was independent of that in Washington; (2) that it must conform to the state practice; (3) that facts and circumstances showing criminality must appear by oath or affidavit, and the committing magistrate be thereby satisfied of probable cause; (4) that the accused has the right to an examination, when demanded, and to show want of probable cause; and that the evidence offered should have been received; (5) that an indictment which presents a clear and consistent statement of facts is equivalent to an affidavit thereof upon the faith of the witnesses indorsed on it; (6) that such an indictment, though secondary evidence, is receivable, and is sufficient if not controverted; (7) that where, as in libel, the place where the offense was committed is material, vague and contradictory statements in the indictment forbid its reception as equivalent to an affidavit of facts, and reduce it to its strict office, viz., as a pleading only; (8) that this indictment was of that character, and hence insufficient as a basis of removal.

2. SAME—SECTION 33, JUDICIARY ACT—"OFFENSES AGAINST THE UNITED STATES"—FEDERAL OFFENSES—LOCAL OFFENSES UNDER LOCAL LAW EXCLUDED.

Removable offenses under section 1014, Rev. St., are the same as under section 33 of the judiciary act; the latter refers only to federal offenses, created by the general legislation of congress, and does not embrace offenses such as libel under the local or common law of the District of Columbia alone; the "offenses against the United States" referred to, are such as are triable in the federal courts; libel is not such an offense; the language of section 33 excludes its application to such local offenses in the District of Columbia; the acts of 1871 and 1874 do not extend the