

a case of unjust discrimination. But the offenses denounced are only such acts as bring about unjust discrimination. Discrimination, therefore, with all that it implies, must be alleged and proven as an element of the crime; else there can be no conviction. The indictment must be quashed.

I concur with counsel for the government in the public importance of these prosecutions, or any prosecutions for the violations of this act. The cost of transportation is an important element in the calculations of every merchant and manufacturer, and discrimination by the carrier is a direct and unjust interposition in the causes that bring about success or failure among competitors in these fields. A free hand to the carrier to enlarge or diminish these elements of expense, at his whim, or from a friendship for individual merchants or manufacturers, would invest him with a power that the commercial world can never tolerate. This case illustrates, that whatever difficulties there are in the enforcement of this act are not so much due to the law itself, as to the failure of the prosecution to gather up and lay before the grand jury the essential facts of a case. The facts difficult to obtain—the transaction between the carrier and the favored shipper—are fully spread upon this indictment. The facts not difficult to obtain—the identity of the shipper discriminated against—constitute the fatal omission. Ordinary alertness and intelligence would have avoided this pitfall. If there were, in fact, unjust discrimination, the grand jury ought to have had no trouble in discovering the parties discriminated against. Commercial interests discriminated against never purposely hide their complaints.

For the reasons given, the indictments against Thomson, Morris, and Jenkins must be quashed, as well as the second and fourth counts of the indictment against Hanley and Reinhart. The first and third counts of the indictment against Hanley and Reinhart will stand, under the provision prohibiting variation from the schedule rates.

UNITED STATES v. SPRUTH.

(District Court, E. D. Pennsylvania. January 10, 1896.)

No. 10, Aug. Term, 1895.

IMMIGRATION—UNLAWFUL LANDING—MASTER'S LIABILITY—BURDEN OF PROOF.

Upon an indictment against the master of a vessel under the eighth section of the act of congress of March 3, 1891, for knowingly or negligently landing or permitting to land any alien immigrants, the burden of proving such willful or negligent permission is upon the prosecution. *Warren v. U. S.*, 7 C. C. A. 368, 58 Fed. 559, distinguished and criticised.

This was an indictment charging the defendant, Fritz Spruth, with knowingly and negligently landing and permitting to land certain alien immigrants at the port of Philadelphia on the 14th day of July, 1895, contrary to the form of the act of congress in such case made and provided. The defendant was the master of the steamship Mark-

omanina, and after an examination and special inquiry before four officers acting as inspectors, duly designated by the superintendent of immigration to conduct said examination, the said immigrants were adjudged as persons likely to become public charges, and were ordered to be detained on board the said steamship, as he, the said defendant, then and there well knew.

The indictment further charged that the said defendant "did knowingly, fraudulently, and willfully neglect to detain them, the said immigrants, on board the said vessel." Upon the trial the jury, by instructions of the court, found the defendant guilty as indicted, and the court imposed upon him a fine of \$200 and costs of prosecution. A motion for new trial was made on December 5, 1895, in support of which the following reasons, *inter alia*, were urged: (1) The questions whether the defendant adopted due precautions to prevent the landing of the immigrants, and whether he knowingly or negligently permitted them to land, were questions for the jury, and should have been submitted to them; (2) because, under the act of March 3, 1891, defendant could not be convicted without a finding of the jury that he had failed to adopt due precautions, or had knowingly or negligently permitted the escape.

The act of March 3, 1891 (26 Stat. 1084; 1 Supp. Rev. St. p. 934), creates two distinct offenses for which distinct and different penalties are adopted. The offense created by the eighth section is knowingly or negligently permitting to land any immigrant at any place or time other than that designated by the inspection officers. The offense created by the tenth section is the neglect to detain on board immigrants who had unlawfully come to the United States. The evidence showed that the immigrants escaped while being detained by the inspectors for a further hearing to determine the point whether they had unlawfully come to the United States. The case of *Warren v. U. S.*, 7 C. C. A. 368, 58 Fed. 559, relates only to section 10 of the act.

Ellery P. Ingham, for the United States.

Frank P. Prichard, for defendant.

BUTLER, District Judge. On the trial of this case *Warren v. U. S.* [7 C. C. A. 368], 58 Fed. 559, was cited as controlling, and the defendant's counsel as well as the district attorney believed it to be so. As applied to the eighth section of the statute, under which alone the evidence warranted a conviction in the case before us, I was unable to understand how such a construction could be given to the language involved. This section renders the officers responsible criminally for failure to "adopt due precautions to prevent the landing of any alien immigrant at any place or time other than that designated by the inspection officers" and provides that "any such officer * * * who shall either knowingly or negligently land or permit to land any alien immigrant at any place or time other than that designated by the inspection officers shall be deemed guilty of a misdemeanor." To justify a conviction it seems so clearly necessary to prove willful or negligent permission to escape that I expressed surprise at what was supposed to be decided in *Warren v. U. S.*, but ordered a conviction in deference to that case. Upon further examination it is found that *Warren v. U. S.* arose under the tenth section of the statute, in which the language used is different, and although the eighth section is cited and apparently treated as if it should receive a similar construction, the decision is not applicable

to the case in hand. It is not improbable that it will be followed with reluctance even as respects the tenth section. The wisdom of such a construction of language in a criminal statute may be doubted. A new trial is therefore granted.

UNITED STATES v. SING LEE.

(District Court, D. Oregon. January 7, 1896.)

No. 4,033.

CHINESE LABORERS—DEPORTATION.

Prior to October 1, 1894, and at the date of the passage of the Geary act, of May 5, 1892, S. was a Chinese merchant residing in San Francisco. He obtained a lease, running from October 1, 1894, to September 30, 1897, of certain fruit land in California, on which he employed laborers; and he performed certain manual labor himself,—the extent of which did not appear,—in assisting such laborers to care for and gather the fruit. S. failed to register as a laborer under the Geary act, and proceedings for his deportation were commenced. *Held*, that S., having been a merchant at the time of the passage of the act, and during the time for registration, was not made liable to deportation by subsequently becoming a laborer.

Daniel R. Murphy, U. S. Atty., and Charles J. Schnabel, Asst. U. S. Atty.

Chester V. Dolph, for defendant.

BELLINGER, District Judge. This is a proceeding for the deportation of the defendant on the ground that he is a Chinese laborer, and that he has failed to register as required by law. The defendant is a resident of the state of California, where he has lived many years. He swears, and proves by the testimony of a number of Chinese witnesses, that he is a merchant doing business in San Francisco. It appears that he is the lessee of some fruit land in California for a term of years, upon which he employs laborers; and the fact is stipulated in the case that he performed manual labor, in aiding the laborers employed by him to work said farm in caring for the fruit during its growth and picking. It is held in *Lew Jim v. U. S.*, 14 C. C. A. 281, 66 Fed. 953, that a Chinese person, who, during his residence in the United States, was engaged in business as a member of a firm of dealers in fancy goods, but occasionally, during a year previous to his departure for a temporary visit, worked for short periods as a house servant, in order to accommodate an old employer at times when he was without a servant, was engaged in manual labor, within the meaning of section 2, Act Cong. Nov. 3, 1893, known as the "McCreary Act." In *Lai Moy v. U. S.*, 14 C. C. A. 283, 66 Fed. 955, it is held that a Chinese person, who, during half his time, is engaged in cutting and fitting garments for sale by a firm of which he is a member, is not a merchant, within the meaning of the same section. It is thus established that a Chinese person who works for others for short periods