

the time. Subsequently, in the act of August 18, 1894, c. 301 (28 Stat. 390), congress provided that "in every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs' officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the secretary of the treasury." This makes the decision a final adjudication only when adverse to admission. If the immigration or customs officer decides to allow the immigrant to enter, such decision has no more force as a controlling adjudication, when the question of right to be or remain in the United States comes before court or commissioner, than it had under section 9 of the act of 1882, as amended in 1884, which was before the supreme court in *U. S. v. Jung Ah Lung*, supra.

It is further contended that the ruling of the commissioner that the sole proof of petitioner's right to enter was the certificate which he had never obtained was erroneous. Various constitutional objections are advanced, but they have all been raised before, and answered by the supreme court, as may be seen from the exhaustive review of its decisions in *Wong Wing v. U. S.*, 163 U. S. 228, 16 Sup. Ct. 977. There is no question here of any punishment; the order complained of directs petitioner's removal only. The writ of habeas corpus is dismissed, and the decision of the commissioner which was brought up on certiorari is affirmed.

STERNAMAN v. PECK.

(Circuit Court of Appeals, Second Circuit. May 26, 1897.)

1. EXTRADITION—HABEAS CORPUS.

A writ of habeas corpus cannot perform the office of a writ of error in reviewing the proceedings in extradition before an officer authorized to entertain such proceedings, but can only reach error which is fatal to the jurisdiction of the officer over the person of the accused, or over the subject-matter of the accusation.

2. SAME—CONCLUSIVENESS OF COMMISSIONER'S DECISION.

When an officer authorized to entertain proceedings for extradition has before him evidence which, though not satisfactory, and far from convincing, authorizes conflicting presumptions and probabilities as to the guilt of the accused, such evidence, being sufficient to call for the exercise of his judgment upon the facts, gives him jurisdiction of the subject-matter, and his determination cannot be reviewed.

Appeal from the Circuit Court of the United States for the Northern District of New York.

This was an application for a writ of habeas corpus to procure the release of Olive A. Sternaman, who had been committed by a commissioner for extradition to Canada on the charge of murder. The circuit court, after a hearing, discharged the writ (77 Fed. 595), and the petitioner appealed.

Wallace Thayer and Frank C. Ferguson, for appellant.
Wm. A. Poucher and Chas. J. Thomas, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. A writ of habeas corpus cannot perform the office of a writ of error in reviewing the proceedings in extradition before an officer authorized to entertain such proceedings. It is efficient only to reach error which is fatal to the jurisdiction of the officer over the person of the accused, or over the subject-matter of the accusation. In the present case the question as to the jurisdiction of the person of the accused is whether the complaint pursuant to which the warrant for her apprehension issued was sufficient. This question is fully discussed in the opinion of the district judge from whose order denying the writ of habeas corpus this appeal has been taken. We approve his conclusion that the complaint was sufficient, and the reasons assigned for that conclusion, and deem it unnecessary to add anything to his opinion. The question as to jurisdiction of the subject-matter is whether there was competent evidence before the commissioner tending to show that the accused had committed the crime with which she was charged, viz. the murder of George H. Sternaman. In considering this question, the rule is that, if the commissioner had before him competent evidence sufficient to call for the exercise of his judgment upon the facts, his determination cannot be reviewed. *Oteiza's Case*, 136 U. S. 330, 10 Sup. Ct. 1031. In the recent case decided by the supreme court May 10, 1897 (*Ex parte Bryant*, 17 Sup. Ct. 744), the court state the question to be "whether there was any legal evidence at all upon which the commissioner could decide that there was evidence sufficient to justify a commitment for extradition." The depositions taken in Canada were not authenticated by the certificate of the principal diplomatic or consular officer of that country, as required by section 5 of the act of congress of August 3, 1882 (22 Stat. 216). Disregarding these depositions altogether, there was evidence not only that Sternaman died from the effects of arsenical poisoning, and that the accused, his wife, who prepared his food, and administered his medicines, could have administered the poison, but also of a motive upon her part for the act. The evidence was not very satisfactory, and was far from being convincing. Nevertheless, the facts and circumstances proved authorized conflicting presumptions and probabilities as to her guilt or innocence, and it was the province of the commissioner to determine their import, and whether they were such as to justify him in exercising his power to commit her to custody pending the action of the department of state. No useful purpose would be subserved by an analysis or discussion of the evidence.

The order dismissing the writ is affirmed.

BUXBAUM et al. v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. May 26, 1897.)

CUSTOMS DUTIES—GOODS IN BOND—ABANDONMENT—CHANGE OF DUTIES.

When imported goods have remained in bond beyond three years, and are thereupon deemed abandoned to the government by virtue of Rev. St. § 2971, the rights and liabilities of the parties become fixed at once, and the government is entitled to retain from the proceeds of their sale, or to collect upon the bond, the amount of duties according to the then existing law, though a different rate of duty goes into effect before a sale actually takes place.

In Error to the District Court of the United States for the Southern District of New York.

This is a writ of error to review a judgment of the district court, Southern district of New York, entered upon a verdict directed by the court in favor of defendants in error, who were plaintiffs below. The action was to recover damages for the breach of a warehouse bond given by plaintiffs in error (defendants below) to the United States on March 23, 1891.

Walter Carroll Low, for plaintiffs in error.

Henry D. Sedgwick, for the United States.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. Defendants, on March 23, 1891, imported 60 bales of hops into the port of New York, and duly entered the same at the customhouse. The duty at that time was 15 cents a pound, and the entry was liquidated April 2, 1891, at \$3,428.25. The entry being for warehouse, defendants executed the bond in suit, conditioned to be void in any one of these three events: (1) That the goods should be withdrawn within one year from date of importation, and duties paid; (2) or after one year, and within three, if so withdrawn, and duties paid, plus 10 per cent. added; (3) or if within three years they should be withdrawn for export. At various times down to and including February 23, 1893, parts of these hops were withdrawn, and duties paid thereon. A credit for decrease in weight was also allowed. Deducting these payments and credit from the liquidated amount of the duties, there remained still unpaid \$571.35. On March 23, 1894, the three years allowed by the bond expired, and the obligors became indebted to the United States to the extent of the damages sustained by the latter. Rev. St. U. S. § 2971, provides that "any goods remaining in public store or bonded warehouse beyond three years shall be regarded as abandoned to the government and sold under such regulations as the secretary of the treasury may prescribe, and the proceeds paid into the treasury." Section 2972 further provides that "the secretary of the treasury in case of any sale of merchandise remaining in public store or bonded warehouse beyond three years, may pay to the owner," etc., "the proceeds thereof, after deducting duties, charges, and expenses, in conformity with the provision relating to the sale of merchandise remaining in a warehouse for more than one year." This provision relating to goods remaining for more than one year—