

court, the principles of socialism are directly at war with and antagonistical to the principles of the constitution of the United States of America, and absolutely inconsistent with his being "well disposed to the good order and happiness" of the people and government of this country. I then asked him to state some of its leading principles. He replied that they contemplated the ownership and operation of all railroads and transportation lines of the country by the government, and that, as land was as free as air and water, socialists demanded the forced sale of all lands owned by the citizens in excess of that which was actually necessary to make a living upon (estimated by him at 200 acres), to the government, for the purpose of giving it to those who owned none. I sought to point out to him how such ideas were un-American, impracticable, and dangerous in the extreme to society as organized throughout the civilized world, and particularly in this free country. I furthermore explained to him that private property could not, under the constitution, be taken by the government for private use, and that this was a fundamental principle of the government, and one of the most sacred and jealously guarded rights of the citizen. He repelled these suggestions with derision and scorn, maintaining his right to his views. I informed him that while it was true that he or any naturalized citizen had an indisputable right to such sentiments, and to their free utterance, as well as to any other views they might entertain upon government, yet when a foreigner openly confesses to have such opinions, and, declaring his intentions to promulgate and carry them out, seeks to be admitted to American citizenship, it would be contrary to his oath of naturalization, and violative of the spirit and principles on which this government is founded and depends for its welfare, to admit him to citizenship.

For these reasons, and because I am of opinion that the time is upon us when the safety and perpetuity of our free institutions and of constitutional government in the land, as well as the good order and happiness of the people, demand that those who apply for the privilege, honor, and distinction of becoming American citizens should be free from doctrines which are not only subversive of constitutional government and our free institutions, but of organized society itself, have I deemed it wise and meet to deny the application of Richard V. Sauer, while he harbors such views, to become a citizen of the United States of America.

In re MOORE.

(Circuit Court, D. Washington, E. D. May 12, 1897.)

1. VALIDITY OF TERRITORIAL STATUTE—TITLE OF ACT.

A statute entitled "An act to amend section 812 of the Code of Washington Territory" (Laws 1885-86, p. 84), which changes the age of consent to 16 years, is not in conflict with Rev. St. U. S. § 1924, providing that every territorial law "shall embrace but one object, and that shall be expressed in the title."

2. SAME — TERRITORIAL LAWS ADOPTED BY STATE—EFFECT OF DECISION DECLARING LAW VOID.

Under a provision of the constitution of the state of Washington that all laws of the territory in force at the time of its adoption not repugnant to the constitution shall be continued as laws of the state, a territorial law which seems to the court to be valid will be so treated, though it had been declared by the supreme court of the territory to be in conflict with a statute of the United States, the state court having repudiated the doctrine of that decision.

This was an application by Ira Moore for a writ of habeas corpus.

Del Carey Smith, for petitioner.

Alex M. Winston, Asst. Atty. Gen., John A. Pierce, Pros. Atty., and Harris Baldwin, opposed.

HANFORD, District Judge. The petitioner shows that he was arraigned and tried in the superior court of the state of Washington for Spokane county upon an information charging him with the crime of rape, and, being convicted, he was sentenced to the state penitentiary for a term of years, and is now incarcerated pursuant to said sentence, which proceedings and imprisonment he alleges to be without due process of law, and contrary to the provisions of the constitution and laws of the United States. In obedience to an order to show cause why the writ should not issue, the state of Washington has appeared, by the assistant attorney general, and filed an answer denying the jurisdiction of this court, and alleging that the petition fails to state any facts from which a question of federal law can arise, or any legal grounds for the writ. The prosecuting attorney for Spokane county has also appeared, and, on similar grounds, moved to dismiss. Section 753, Rev. St. U. S., limits the power of this court to grant a writ in a case of this kind, so that the petitioner must show that he "is in custody in violation of the constitution or of a law or treaty of the United States." As the case has been presented, therefore, the question at issue is whether the petition shows that the imprisonment of the petitioner is in violation of the constitution or any law of the United States.

The alleged criminal act of the petitioner, as set forth in the information against him, was that on the 23d day of October, 1894, in Spokane county, he did willfully, unlawfully, and feloniously carnally know and abuse a certain named female child, under 16 years of age. The petitioner shows that he was not accused in the information of using force, and in the evidence it was not pretended that the girl did not consent; and in fact she was at the time over 12 years of age,—the common-law age of consent. Section 812 of the Code of Washington Territory of 1881 also, by a positive enactment, makes that the age of consent. The legislature of Washington territory, however, in 1886, passed an act entitled "An act to amend section 812 of the Code of Washington territory," by which act the age of consent was changed to 16 years (Laws Wash. T. 1885-86, p. 84); and this amendatory act was never annulled by congress, nor repealed by the territorial legislature, nor by any act of the state legislature, prior to the conviction of the petitioner. The constitution of the state provides that all laws of the territory in force, which are not repugnant to the constitution, shall be continued as laws of the state. In the case of *Harland v. Territory*, 3 Wash. T. 131, 13 Pac. 453, and *Rumsey v. Territory*, 3 Wash. T. 332a, 21 Pac. 152, the supreme court of Washington territory held an act entitled "An act to amend section 3050, chapter 238 of the Code of Washington Territory," void, because the title failed to express the object of the act, and therefore came in conflict with that part of section 1924, Rev. St. U. S., which provides that every law enacted by a territorial legislature "shall embrace but one object, and that shall be expressed in the title." And in the cases of *State v. Halbert*, 14 Wash. 306, 44 Pac. 538, and *State v. Smith*, 15 Wash. 698, 46 Pac. 1119, the supreme court of the state of Washington decided

that the act raising the age of consent to 16 years was not in force at the time of the adoption of the state constitution, and therefore was not continued as a law of the state, because the decisions of the supreme court of the territory in *Harland v. Territory* and *Rumsey v. Territory* robbed it of all vital force. If, in fact, the act raising the age of consent to 16 years is repugnant to section 1924, Rev. St., then the prosecution of the petitioner founded upon the act referred to is in violation of a law of the United States, and the writ should issue. But I find that the act does embrace but one object, and the title serves as well to express that object as any title that might have been contrived. The design or object of the legislature was to amend one particular section of the then existing law, and the title adopted shows clearly that the legislative mind was intent upon that, and that only. The organic law of the territory required nothing more than that the one particular object of the law should be expressed in the title, and did not require the title to specify minutely the means by which it was proposed to reach the object in view. The supreme court of the state has repudiated the doctrine of *Harland v. Territory* and *Rumsey v. Territory*, and fully exposed the unsoundness of those decisions, in the able and exhaustive opinion of Mr. Justice Hoyt in the case of *Marston v. Humes*, 3 Wash. St. 267, 28 Pac. 520. I concur in the reasoning and conclusions of that opinion, and will follow it in my decision of the case now in hand. I hold also that the erroneous decisions referred to could not have the effect ascribed to them in the opinions rendered by a majority of the justices in the cases of *State v. Halbert* and *State v. Smith*. The courts are not authorized to repeal or nullify valid laws, and their erroneous decisions are subject to correction upon further consideration of the same questions in cases which may be subsequently brought before them. The law which was declared to be void in *Harland v. Territory* had been held to be valid in a series of cases, commencing with *Rosencrantz v. Territory*, 2 Wash. T. 267, 5 Pac. 305. The change in the position of the court was in consequence of a change of judges composing the court, and, inasmuch as some of the judges who composed the court when the *Harland* and *Rumsey* Cases came before it were displaced by other judges prior to the formation of the state government, there is no reason for supposing that the court as it was then constituted would have extended the errors of those decisions so as to nullify the act amendatory of section 812, if a case founded upon that law had been presented. The supreme court of the state seems to have become tired of the rule laid down in the *Halbert* and *Smith* Cases; for in this case the petitioner shows that he has made an application to that court to be discharged upon a writ of habeas corpus, and said application had been denied.

It is my opinion that the act of 1886, raising the age of consent to 16 years, is not void, that it was in force as part of the laws of Washington territory adopted by the people as laws of the state, that the prosecution and conviction of the petitioner founded upon said act were not in violation of the constitution or any law of the

United States, and that this court has not jurisdiction to grant the application of the petitioner for a writ of habeas corpus. The motion of the district attorney for Spokane county to dismiss the proceedings under the petition herein will be granted.

In re WAITE.

(District Court, N. D. Iowa. June 14, 1897.)

1. OFFICERS OF UNITED STATES—ACTS IN OFFICIAL CAPACITY—STATE PROSECUTIONS.

An officer or agent of the United States, engaged in the performance of a duty arising under the laws and authority of the United States, is not liable to a criminal prosecution in the courts of a state for acts done by him in his official capacity.

2. SAME—RELEASE ON HABEAS CORPUS.

When an officer of the United States is sought to be held in a state court for punishment for acts done in the performance of his duty to the United States, it is not a sufficient reason for refusing his release upon habeas corpus that he may raise the question of his immunity in the state court, and carry the matter by writ of error to the United States supreme court, if necessary, since the operations of the federal government would in the meantime be obstructed by the confinement of its officer.

3. SAME—CONSTITUTIONAL LAW—STATE AUTHORITY—PENSION EXAMINERS.

In matters committed to the sole jurisdiction of the United States, statutes of the state have no application, and a criminal prosecution for violation of a state statute cannot be based upon acts done in such matters, but the determination of the rightfulness of such acts depends wholly upon the laws of the United States, and belongs to their courts. Accordingly *held*, that the statute of Iowa (Code, § 3871), providing for the punishment of one who maliciously threatens to accuse a person of a crime in order to compel him to do an act, has no application to a United States pension examiner, charged with the duty of investigating fraudulent pension claims.

4. SAME.

Petitioner, a duly-authorized United States pension examiner, was indicted and convicted in a state court for an alleged violation of the statute of Iowa for the punishment of threats to accuse a person of crime in order to compel him to do an act, based upon his acts while investigating, in the course of his duty, an alleged fraudulent claim. His conviction was affirmed by the state supreme court, and he applied to the federal court for his release upon habeas corpus. *Held*, that he should be discharged.

Upon Writ of Habeas Corpus. Submitted on petition, return, reply, and evidence.

F. W. Reed, Daniel Fish, and Cato Sells, U. S. Dist. Atty., for petitioner.

Wilbraham & Upton and Botsford, Healy & Healy, for respondent.

SHIRAS, District Judge. The facts out of which this proceeding has arisen, briefly stated, are as follows: Early in the year 1893 facts had come to the knowledge of the commissioner of pensions tending to show that many frauds were being perpetrated upon the United States in connection with claims for pensions and for increase of pensions which were represented by George M. Van Leuven, as pension attorney, whose office was located at Lime Springs, Howard