

Of similar import are *Carpenter v. Holcomb*, 105 Mass. 285; *Lawrence v. Miller*, 86 N. Y. 131; *Nelson v. Elevating Co.*, 55 N. Y. 480.

None of the cases cited by the plaintiff in error sustain the doctrine which he contends for. Among others is cited the case of *North's Adm'r v. Pepper*, 21 Wend. 636, where it was held, that if a purchaser of property gives notice to the vendor that he has abandoned the contract, and will not accept a conveyance, it is sufficient to support an action of covenant by the vendor to allege the fact that he has received such notice, and it is not necessary that he aver a tender of the deed or readiness to perform, nor that he had title to the premises which he had agreed to convey. But the court in that case expressly recognized the principle that, if the vendor had not the title nor such contractual relation thereto as to render it certain that he could procure the same, he had no ground upon which to recover damages, and held that, in the case of notice of refusal to perform the contract upon the part of the purchaser, it would be a sufficient defense to an action by the vendor to plead that the latter had no title. The case at bar comes directly within the principle declared in that case. It is alleged in the answer in the record in this case that the plaintiff had no title to the Market street lot, and that allegation is affirmatively sustained by the findings. Judgment will be affirmed, with costs to the defendants in error.

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In re PRICE.

(Circuit Court, S. D. New York. November 23, 1897.)

**1. CRIMINAL LAW—REMOVAL OF OFFENDERS—NECESSITY OF EXAMINATION.**

A person arrested in any state on a bench warrant issued by the supreme court of the District of Columbia, on an indictment there found, can only be removed to that District for trial by proceedings under Rev. St. § 1014, which require an examination in accordance with the practice of the state where the arrest is made.

**2. SAME—SUFFICIENCY OF SHOWING.**

A complaint charging theft, under Rev. St. § 5356, committed in the District of Columbia, testimony tending to prove such theft, and an indictment showing that the prisoner is wanted in that District, constitute a sufficient showing to warrant his removal there to answer the charge.

Application by John Price for a Writ of Habeas Corpus.

J. Laffin Kellogg, for the motion.

Max J. Kohler, Asst. U. S. Atty., opposed.

**LACOMBE**, Circuit Judge. The return of the marshal shows that he holds two original bench warrants against defendant, issued out of the supreme court of the District of Columbia on indictments, and also a warrant of removal, signed by the United States district judge in this district, directing his removal to the District of Columbia; the warrant of removal having been issued under section 1014 of the United States Revised Statutes. It will not be necessary to enter into any discussion of the proposition advanced by the district attorney,

that bench warrants of the supreme court of the District of Columbia run into every district of the United States, and that, under them, individuals may be seized and transported to Washington without any examination, either as to identity or probable cause, conducted by some proper judicial officer in the district where they may be seized, in accordance with the provisions of section 1014. The method would, no doubt, be "expeditious, logical, and certain." It would also be intolerably oppressive, and, in the absence either of express legislation or controlling authority, this court is not prepared to assent to the proposition here advanced. In so doing, it concurs with the views expressed by the district court in *Re Dana*, 68 Fed. 893. The warrant of removal, however, seems to have been properly issued in conformity with the provisions of section 1014. A complaint, sworn to on information and belief, was presented to the United States commissioner, who issued thereon a warrant for the arrest of Price. This complaint averred that on March 31, 1897, he did, in the city of Washington, District of Columbia, "unlawfully and feloniously steal, take, and carry away 1,330 U. S. notes of the denominations and values of five dollars each, 317 United States notes of the denomination and value of one dollar each, 105 United States silver coins of the denomination and value of twenty-five cents each, 23 U. S. silver coins of the denomination and value of ten cents each, and 17 U. S. nickel coins of the denomination and value of five cents each, all lawful money of the United States, of the goods, chattels, and money of one Arthur O. Babendrier." Price was arrested, and demanded a hearing, and the commissioner proceeded to take testimony both as to identity and probable cause. Babendrier and three other witnesses were examined, and the commissioner found that there was probable cause, and committed Price to the custody of the marshal until the warrant for his removal should be issued by the district judge. The testimony is not strong, but it does tend to show the commission of the offense charged; and, under well-settled rules, the finding of the commissioner as to probable cause should not be disturbed. It is contended that the district judge overruled this finding, but the record does not bear out the contention. There seems to have been a curious failure of the indictments found in Washington to properly charge the offense. The first indictment charged larceny of silver certificates only, and a second indictment presents the same defect. The third indictment, however, charges a taking and carrying away of 105 silver quarters, 23 silver dimes, and 17 nickel five-cent pieces, with intent to steal and purloin, under section 5356, Rev. St. U. S. We have, then, a complaint charging the theft of some coins and several hundred dollars more, evidence tending to show such theft, and an indictment showing that the prisoner is "wanted" in Washington to stand trial for stealing the coins. Inasmuch as the statute (section 5356) makes no distinction between grand and petit larceny, the offense charged in the indictment is the same offense as was charged in the complaint upon which prisoner demanded a hearing, and as to which the commissioner has found probable cause. The district judge treated the indictment merely as proof that the prisoner was wanted

for the offense charged in the complaint, and, probable cause being established otherwise than by the indictment, properly directed removal. A number of wholly unnecessary amendments seem to have been moved for before the commissioner, but their granting or denial in no way changes the situation. I further concur with the district judge in holding that the original complaint sufficiently charged an offense under section 5356. It averred that the offense was committed in the District of Columbia, and all federal courts take judicial notice that said District is within the exclusive jurisdiction of the United States. The writ is therefore discharged. Whether the prisoner will be remanded to the custody from which he was taken, or be detained in custody by this court pending appeal, will be determined when it appears whether or not an appeal is contemplated.

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UNITED STATES v. YONG YEW.

(District Court, E. D. Missouri, E. D. November 23, 1897.)

1. DEPORTATION OF CHINESE—CERTIFICATE OF IDENTITY.

In order to make a certificate of identity required by Act July 5, 1884, § 6 (23 Stat. 115), relating to Chinese immigration, prima facie evidence of the holder's right to come into this country as a merchant, it must conform strictly to the requirements of the statute as to its contents, so as not to permit of evasion or deception.

2. SAME—MERCHANT—LABORER.

Even if the certificate of identity of a "merchant" of China is in due form, he may enter this country only for the purpose of prosecuting his business as a merchant here; and if, upon his arrival, he immediately proceeds to and continues in employment as a laborer, such fact has a strong retroactive bearing as evidence of the intent with which he came here.

3. SAME.

Respondent, a Chinaman, came to this country for the first time in June, 1897. From that time until his arrest on September 9, 1897, under the statute relating to Chinese immigration, he worked in a laundry in Hannibal, Mo. He testified that he had an interest of \$1,000 in the Chinese grocery business conducted under the name of One Lung at 43 Mott street, New York City. *Held*, that this did not constitute him a "merchant," under Act November 3, 1893 (28 Stat. 7), but that he was a "laborer," within section 2, and so liable to deportation.

4. SAME—TRICK OR EVASION—VIOLATION OF STATUTE.

It is as much a violation of the Chinese exclusion acts for a laborer, who by any trick or evasion secures an entry to our ports, to remain in the United States, as it would have been to originally land on our shores.

This was a proceeding, under the Chinese exclusion laws, to procure an order for the deportation of one Yong Yew.

William H. Clopton, U. S. Dist. Atty., and Walter D. Coles, Asst. U. S. Dist. Atty.

Rufus E. Anderson, for respondent.

ADAMS, District Judge. Section 13 of the act of congress approved September 13, 1888 (25 Stat. 476), provides that:

"Any Chinese person, or person of Chinese descent, found unlawfully in the United States, or its territories, may be arrested upon a warrant issued upon