

The same general suggestions are contained in *U. S. v. Sprague*, supra. Same opinion is given under heading of *U. S. v. Williams*, 14 Fed. 550, wherein it is said (page 552):

"Of course, the defendants cannot be prosecuted in this court on the ground that they are confidence men, or that they have attempted to perpetrate a fraud. Their prosecution must proceed wholly under the statute, and their conviction must rest wholly upon proof of the charge that they unlawfully had in their possession an obligation made after the similitude of an obligation of the United States."

The statutes in force in Iowa, as enacted by the lawmaking power of this state, contain abundant provisions for the conviction and punishment of the defendant, if guilty of intentionally passing Confederate notes as good money. And we may well leave to the state courts the duty of apprehending and punishing those guilty of cheating and defrauding the citizens of this state in the manner above suggested. Criminal statutes are inelastic. The court may not attempt to stretch the statutory provisions beyond their legitimate boundaries; and especially may the federal court decline thus to press the statute, where the state statutes are fully sufficient and competent to take jurisdiction of the offense. "The object of the provision of the statute under which this indictment is framed is, manifestly, to preserve the integrity of the national treasury and bank note currency, and to prevent the imposition on the public of worthless notes or obligations of any kind purporting to be the genuine obligations of the United States." *U. S. v. Stevens*, supra. Adopting the course pursued by Judge Hallett in the *Wilson Case*, supra, "this offense may be prosecuted under the statutes of the state if the state authorities are inclined to pursue it; and we will turn over the defendant to the state authorities, if they want him for that purpose." The motion to quash the indictment must be sustained. I will, however, delay entering formal order on this holding until the district attorney and the state authorities shall have had reasonable time to consider the course desired to be pursued. I may adopt this course without injury to the defendant, since he is out on bail.

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UNITED STATES v. BAIRD.

(District Court, D. New Jersey. March 24, 1897.)

ARREST—STATE AND FEDERAL COURTS—WITNESSES.

A witness coming into the state in obedience to a subpoena from a federal court is not subject to arrest on state criminal process, and, if so arrested, will be released on habeas corpus, and safely conducted from the state by the marshal.

In the matter of the application of John J. Boyle to be discharged from the custody of the sheriff of the county of Camden, under an order and warrant of commitment issued by Jehu Evans, a justice of the peace of said county of Camden, and dated March 18, 1897.

On March 4, 1897, a subpoena was issued by James M. Cassady, a United States commissioner for the district of New Jersey, to John J. Boyle, of the city of Philadelphia, Pa., to appear before the said commissioner at a commissioner's court at Camden, N. J., in the district of New Jersey, on March 18,

1897, to testify on behalf of the United States in the matter of a certain criminal complaint then pending and undetermined before said commissioner, between the United States and Bushrod W. J. Redheffer and Aman A. Redheffer; the same being a complaint made before the said commissioner by a United States postal inspector against the defendants for an alleged violation by them of the criminal laws of the United States concerning postal matters, and which proceedings were instituted by the United States before the said commissioner for the purpose of having the defendants held to await the action of the United States grand jury. The subpoena, which was in due form, was legally served on the said Boyle in the city of Philadelphia, Pa., and in pursuance of the command of said subpoena he attended before the said commissioner, at his court in the city of Camden, N. J., on the 18th day of March aforesaid, having gone from Philadelphia to Camden on said day for that purpose. After testifying before the commissioner in said cause on behalf of the United States, and as he was leaving the commissioner's office, he (the said John J. Boyle) was arrested by a constable of Camden county by virtue of a certain warrant issued by Jehu Evans, a justice of the peace of the county of Camden, N. J., which warrant was issued by said justice upon a complaint made by Bushrod W. J. Redheffer aforesaid, charging the said John J. Boyle, on the 10th day of April, 1896, with having committed perjury in violation of the laws of the state of New Jersey. The constable, after arresting the said Boyle, took him before the justice of the peace who issued the warrant, and who committed the said John J. Boyle, on said 18th day of March, 1897, to the common jail of the county of Camden, N. J., to await the action of the grand jury of the state of New Jersey in and for the county of Camden, N. J., in default of giving bail in the sum of \$1,200. Afterwards, on the 22d day of March, the said John J. Boyle presented, by his attorney, Mr. Henry I. Budd, Jr., of the New Jersey bar, a petition for a writ of habeas corpus to the Honorable ANDREW KIRKPATRICK, judge of the United States district court for the district of New Jersey, alleging his arrest as before set forth, and complaining of its illegality. Judge KIRKPATRICK allowed the writ, and the prisoner was produced before him on March 23, 1897, when the matter was turned over to the United States attorney for the district of New Jersey. The cause was continued until March 24th, so that the sheriff of Camden county could properly amend his return to the writ of habeas corpus, and so that the prosecutor of the pleas of Camden county, N. J., representing the state of New Jersey, could attend, if he desired, to oppose the discharge of the prisoner. On March 24th the case was heard by Judge KIRKPATRICK, and was argued on behalf of the United States by J. Kearny Rice, United States attorney for the district of New Jersey, and by Wilson H. Jenkins, the prosecutor of the pleas of Camden county, N. J., for the state of New Jersey. Judge KIRKPATRICK, after the arguments had been concluded, held that the arrest of Boyle by the Camden authorities was illegal, and ordered his discharge from custody, and also directed that the United States marshal for the district of New Jersey safely conduct the said Boyle to the city of Philadelphia, from whence he came to testify on behalf of the United States as aforesaid. Judge KIRKPATRICK held (in which Judge ACHESON, who was sitting in the circuit, concurred) that Boyle, having been subpoenaed by the United States to attend in New Jersey as a witness, and having left Pennsylvania for that purpose, was entitled to protection from arrest by the state authorities of New Jersey for any alleged offense before then charged to have been committed by him. Judge KIRKPATRICK also held that he was entitled to be protected by the United States in returning to Philadelphia after having given his testimony before the United States commissioner in Camden, N. J.

J. Kearny Rice, U. S. Atty.

Wilson Jenkins, for sheriff of Camden county.

Henry I. Budd, Jr., and J. H. Brinton, for John J. Boyle.

KIRKPATRICK, District Judge, after hearing argument, delivered an oral opinion, the substance of which was embodied in the following decree, ordered to be entered in the cause:

This matter having been brought before me, and the return of the said sheriff to the writ of habeas corpus heretofore issued having been made and inspected before me here; and the facts of the case being admitted to be true, as stated in the petition presented to this court by the United States attorney for the district of New Jersey, and by the Honorable Wilson H. Jenkins, prosecutor of the pleas of the county of Camden, N. J., representing the state of New Jersey, and the said David Baird, sheriff of the county of Camden aforesaid; and I having heard the arguments of counsel both for the United States and for the state of New Jersey aforesaid, and having considered the same, and being of the opinion that there is no warrant in the law justifying and authorizing the detention of the said John J. Boyle by the said David Baird, Esq., sheriff of the county of Camden, N. J., under and by virtue of the said warrant of commitment; and there appearing no other cause for the detention of the said John J. Boyle by the said sheriff of the county of Camden aforesaid: It is ordered, and I do direct, that the said John J. Boyle be, and he is hereby, discharged from the custody of the said David Baird, sheriff of the county of Camden, under the said order and warrant of commitment issued by the said Jehu Evans, as such justice of the peace as aforesaid. And it further appearing that at the time of the arrest of the said John J. Boyle under the said warrant issued by the said Jehu Evans, justice of the peace as aforesaid, the said John J. Boyle was attending as a witness, duly summoned on behalf of the United States in a case in which the United States was a party, at a hearing before James M. Cassady, Esq., a commissioner of the United States circuit court for the district of New Jersey, at Camden, N. J., having been previously subpoenaed for that purpose in the city of Philadelphia, in the Eastern district of Pennsylvania, in due form of law: It is further ordered that the said John J. Boyle be safely conducted back to the city of Philadelphia, in the Eastern district of Pennsylvania, from whence he came, and that the marshal of the United States for the district of New Jersey attend so that he shall have safe passage to the place from whence he came.

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In re LEE YEE SING.

(District Court, D. Washington, W. D. February 15, 1898.)

No. 188.

**1. IMMIGRATION OF CHINESE—WHO ARE LABORERS.**

The wives and minor children of Chinese merchants lawfully domiciled in the United States are not laborers, and not within the intent of the exclusion acts, so as to prevent them from entering the country.

**2. SAME—DECISION OF IMMIGRATION OFFICER.**

Under the provision of the appropriation act of August 18, 1894, declaring the decision of the appropriate immigration or customs officers, if adverse to the alien, final, unless reversed by the secretary of the treasury, prevents any review of such a decision on habeas corpus.

This was a petition by Lee Tow Doy for a writ of habeas corpus in behalf of Lee Yee Sing.

Frank Allyn, for petitioner.

Charles E. Claypool, Asst. U. S. Atty., for respondent.

HANFORD, District Judge. The petitioner is a Chinese merchant, residing and carrying on the business of a merchant at Lewiston, Idaho. By his petition he alleges that his son, 15 years of age, is unlawfully detained and imprisoned at Tacoma by the collector of customs. By the return to the writ of habeas corpus, it is shown that the boy came to Tacoma from China, in which country he was born, and upon his arrival the collector, after examination, decided that he was a Chinese person not entitled to enter the United States, and said decision has not been reversed on appeal by the secretary of the treasury.

I adhere to the opinion rendered in the Case of Mrs. Gue Lim, 83 Fed. 136, that the wives and minor children of Chinese merchants lawfully domiciled and engaged in trade in the United States are not laborers, and not, within the intent of the acts of congress, excluded from entering and dwelling with their husbands and fathers within the United States. If the question as to the right of the petitioner's son to enter the United States could lawfully be submitted to me for decision, I would admit him. However, by a provision contained in the act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other purposes, approved August 18, 1894 (2 Supp. Rev. St. p. 253), congress has enacted 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."

In the case of *Nishimura Ekiu v. U. S.*, 142 U. S. 651-664, 12 Sup. Ct. 336, the supreme court affirmed the validity of a similar act of congress, and gave it a broad construction. The decision is directly to the point that power is vested in congress to forbid the entrance of foreigners within the dominions of the United States, or to admit them only in such cases and upon such conditions as it may see fit to prescribe; that the supervision of the admission of aliens into the United States may be intrusted by congress either to the department of state, having the general management of foreign relations, or to the department of the treasury, charged with the enforcement of laws relating to foreign commerce; that the decision of an inspector of immigration within the authority conferred upon him by the act of congress of March 3, 1891, that an alien immigrant shall not be permitted to enter the United States, because within one of the classes specified in that act, is final and conclusive against his right to come, except upon appeal to the commissioner of immigration and the secretary of the treasury; and that such adverse decision of an inspector of immigration cannot be reviewed by a court in

a proceeding upon a writ of habeas corpus. In the Case of Fong Yue Ting, 149 U. S. 698-763, 13 Sup. Ct. 1016, the supreme court reaffirmed the doctrine in the Nishimura Ekiu Case, and also held that the provisions of an act of congress, passed in the exercise of its constitutional authority, must, if clear and explicit, be upheld by the courts, even though it be in contravention of stipulations in an earlier treaty. In view of the statutes enacted by congress and the decisions of the supreme court, I consider that power to decide the question as to the right of any alien to enter the United States is conferred upon administrative officers, that an alien whose right to come in has been denied by an inspector of immigration or customs officer is not entitled to appeal to the courts from such adverse decision, and the courts have no lawful authority to review the decision in a proceeding upon a writ of habeas corpus or in any other way.

I have considered this case with reference to the right of the petitioner as a father, while lawfully residing in the United States, to have the custody and care of his minor son. It is my conclusion that the general rule that the legal domicile of a child is the same as that of his father is not applicable in this case, for the reason that the boy is an immigrant. On arrival at the boundary, he has met a barrier preventing his entering the United States, and that barrier is a legal barrier. The petitioner himself is an alien, whose rights in this country are limited by law, and subject to be abridged at any time by laws enacted by congress. The policy of our government in the matter of permitting aliens to live in this country, and in prescribing the conditions upon which they may enter, rests with congress; and the courts are not clothed with jurisdiction to grant relief from measures which may operate oppressively upon resident aliens, where the relief demanded involves the admission into the United States of another alien, in a manner contrary to a valid law enacted by congress. The petitioner's son is not being detained against his will, except that he is not permitted to enter the United States. He may go elsewhere. His right to enter having been passed upon by the only officer clothed with authority to decide the question, the petition must be denied.

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PITTSBURGH CRUSHED-STEEL CO. v. DIAMOND STEEL CO. et al.

(Circuit Court, E. D. Missouri, E. D. February 7, 1898.)

No. 3,887.

**1. TRADE-MARKS—REGISTRATION—ABANDONMENT.**

The omission from a registered trade-mark of a feature theretofore sometimes used in connection with it is an abandonment of that feature to the public.

**2. SAME—SYMBOLS AND NAMES.**

The use of a conventional diamond-shaped figure gives no trade-mark right in the word "Diamond," where the product has not been sold or become known under that name.

**3. SAME—INFRINGEMENT.**

A trade-mark consisting of a conventional diamond-shaped figure is not infringed by a representation of a rough, irregular, radiant diamond.