

ience can result to places within it, by reason of a less rate for a long haul than a short one in the same direction. Besides, the transportation of goods to a point without the state is interstate commerce, and beyond the power of the state to regulate. And it can make no difference in principle or result that the goods so shipped are carried over different lines of transportation within the state before passing beyond its limits. It is the intent or purpose of the shipper concerning the destination of the goods at the time of shipment that determines the question whether they are within the exception or not. Whether the road upon which they are first placed is an interstate one or not is immaterial. Any road which leads beyond the limits of the state, or forms a link in a line of extra-state transportation, upon which goods are shipped with intent to transport them beyond the limits of the state, is so far exempt by the proviso from the operation of the act. *Pacific Coast S. S. Co. v. Railroad Com'rs*, 9 Sawy. 253; S. C. 18 Fed. Rep. 10; *The Daniel Ball*, 10 Wall. 557. The question in each case is one of fact, and must be determined by its own circumstances. The receiver is therefore instructed that in hauling wheat or other property from Corvallis, or other points on his road, that is *en route* for San Francisco, or other point beyond the limits of the state, he may make a rate therefor without reference to the act.

LAIRD v. MAYOR OF DE SOTO.¹

(Circuit Court, E. D. Missouri. September 30, 1885.)

MANDAMUS—FEDERAL COURTS SHOULD CONFORM TO STATE PRACTICE IN ISSUING.

A federal court should not issue a *mandamus* ordering the mayor of a city to collect a tax for the payment of a judgment against the city, without an execution having first been issued and returned unsatisfied in whole or in part, where the statutes of the state in which the court is held only permit a *mandamus* to be issued by state courts after an execution has been so returned.

Motion to quash an alternative writ of *mandamus* ordering the collection of a tax to pay an execution. The section of the Revised Statutes of Missouri referred to below is as follows:

"Whenever an execution, issued out of any court of record in this state against any incorporated town or city, shall be returned unsatisfied in whole or part for want of property whereon to levy, such court, at the return term, or any subsequent term thereof, may, by writ of *mandamus*, order and compel the chief officer, trustees, council, and all other proper officers of such city or town, to levy, assess, and collect a special tax to pay such execution and all costs: provided, the rate of taxation so ordered to be levied and assessed shall in no case exceed the rate prescribed by its charter."

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

Mills & Flitcraft, for plaintiff.

Dyer, Lee & Ellis, for defendant.

BREWER, J., (*orally*.) In this case a judgment was rendered against the defendant, an incorporated city, upon certain municipal obligations. An alternative writ was issued without a prior execution. The statutes of Missouri provide that if an execution be issued against an incorporated city and be returned unsatisfied, then a writ of *mandamus* may go. 1 Rev. St. § 2415. I understand that the practice in this court has conformed to the provisions of this statute. It should so conform. No right of the judgment creditor is lost; all that results is a slight delay. And the acts of congress indicate the propriety, if not the duty, of conformity. *Desty*, Fed. Proc. § 914; *U. S. v. Keokuk*, 6 Wall. 514; *Moran v. City of Elizabeth*, 9 Fed. Rep. 72. Hence the writ was prematurely issued, and the motion to quash will be sustained.

In re CHOW GOO POOL on *Habeas Corpus*.

(*Circuit Court, D. California.* January 26, 1884.)

1. CHINESE RESTRICTION ACT—DETENTION OF CHINAMEN—HABEAS CORPUS.

Where a Chinese person is detained on board of a ship and refused the right to land, whether by the authority of the master in pursuance of the provisions of the Chinese restriction act, or by the refusal of the collector to grant him permission to land, he is restrained of his liberty under or by color of the authority of the United States, and he is entitled as of common right to sue out a writ of *habeas corpus* that the legality of his detention and restraint may be passed upon by the court.

2. SAME—PRODUCTION OF BODY IN COURT—CUSTODY—DETENTION OF SHIP.

When his body is produced in court in obedience to the writ, the control of his person remains with the court, and he may be committed to the custody of the marshal, or be held to bail to await the decision of the court; and if on investigation the court should be of opinion that he had no right to land, it is its duty to remand him to the custody from which he was taken, if the ship be in port and about to return to the country from which he came; but the court has no right, nor color of right, to detain the ship.

3. SAME—RIGHT TO JURY TRIAL.

A Chinaman thus brought before the court has no right to a trial by jury in the investigation before the "justice, judge, or commissioner" to ascertain and find out whether he is unlawfully within the United States.

4. SAME—REMANDING CHINAMAN TO CUSTODY—DUTY OF COURT.

Where the "justice, judge, or commissioner" finds that the petitioner is a Chinese laborer, prohibited by law from landing or from being or remaining in the United States, and, if the ship were in port, and about to return to China, would remand him to the ship to be carried to the country from whence he came, such a finding amounts to a finding in effect that he is unlawfully in the United States, and the court should order him to be remanded by the marshal to the custody from which he was taken, and when the marshal returns that the ship has sailed, a supplemental order may be passed committing him to the custody of the marshal to be held for a reasonable time to await the direction of the president.

5. SAME—ORDER OF PRESIDENT AS TO REMOVAL.

The order of the president may be either general or special. It may be re-