

"Bills of this sort," says Mr. Justice Story, "have been most usually passed in England in times of rebellion or gross subserviency to the crown, or of violent political excitements; periods, in which all nations are most liable (as well the free as the enslaved) to forget their duties, and to trample upon the rights and liberties of others." Comm. § 1344.

"In these cases," says Mr. Justice FIELD, "the legislative body, in addition to its legitimate functions, exercises the powers and office of a judge; it assumes, in the language of the text-books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense." *Cummings v. Missouri*, 4 Wall. 323.

The petitioner is entitled to her discharge, and it is so ordered.

In re TONG WAH SICK et al.

(Circuit Court, N. D. California. October 17, 1888.)

CHINESE—EXCLUSION ACT OF 1888—DEPARTURE FROM UNITED STATES.

Chinese subjects purchasing through tickets, and embarking in an American vessel, from one American port to another, who do not leave the vessel when she, having leave to do so, touches at a foreign port, have not departed from the United States within the meaning of the Chinese exclusion act of congress of October 1, 1888.

Petition for Writ of *Habeas Corpus*.

T. D. Riordan, for petitioners.

John T. Carey, U. S. Atty., *contra*.

Before SAWYER, Circuit Judge, and HOFFMAN, District Judge.

SAWYER, J. The three petitioners being Chinese subjects, residents of Washington Territory, embarked on the American steam-ship *Umattilla*, for San Francisco, Cal., since October 1, 1888, having purchased a through ticket. The steam-ship, with leave to do so, touched at Victoria, B. C. but the petitioners did not go ashore, or leave the ship. On her arrival at San Francisco, the collector of the port refused to permit the petitioners to land, on the ground that they had departed from the United States since the passage of the late exclusion act, the ship having stopped at a foreign port, and that the late act forbade their return. We are satisfied that there was no departure from the United States, within the meaning of the act. They left one American port for another, upon a through passage upon an American vessel, without any intention of landing in any foreign country. They were all the time within the jurisdiction of the United States, and, constructively, in the territory of the United States. An analogous question was decided by

Mr. Justice FIELD, with the concurrence of the circuit judge, in the case of *Ah Sing*, the Chinese cabin waiter, in 7 Sawy. 537, 13 Fed. Rep. 286, and the case of *Ah Tie et al.*, the Chinese laborers, 7 Sawy. 542, 13 Fed. Rep. 291. This is a stronger case in favor of petitioners. The petitioners are, therefore, unlawfully restrained of their liberty, and must be discharged, and it is so ordered.

In re JACK SEN et al.

(Circuit Court, N. D. California. October 24, 1888.)

CHINESE—EXCLUSION ACT OF 1888—CHINESE SEAMEN.

A Chinese laborer, who ships on an American vessel, at an American port, for a round voyage, and who does not land at any foreign port, but remains on board until the voyage is completed, does not depart from the United States within the meaning of the exclusion act of October 1, 1888.

Petition for Writ of *Habeas Corpus*.

T. D. Riordan, for petitioners.

J. T. Carey, U. S. Atty., *contra*.

Before SAWYER, Circuit Judge.

SAWYER, J. The petitioners are 10 Chinese laborers, subjects of the emperor of China. They were in the United States on November 17, 1880, and have been residents of the country ever since. On August 29, 1888, the petitioners, at the port of San Francisco, shipped on board the steamship Colima, as part of the crew, for a voyage from said port to the port of Panama, in the state of New Granada, and return to San Francisco, the shipment being for the round voyage, and San Francisco the port of their discharge. The steamship Colima is an American vessel, sailing under the American flag, regularly engaged in the transportation of passengers and merchandise between the said ports of San Francisco and Panama. The said vessel sailed from the port of San Francisco for Panama and return on August 30, 1888, having said petitioners on board, as a part of her crew for the round voyage. She arrived at Panama on September 22, 1888, and sailed from Panama on October 1, 1888, on her return voyage to San Francisco, where she arrived on October 21, 1888, with said petitioners on board, as a part of her crew, the said petitioners having remained on said ship, and not landed therefrom in any foreign land from the time the ship left San Francisco till her return to said port. On their return to San Francisco, the collector of the port refused to permit them to land, on the ground that they had departed from the country, and under the exclusion act passed October 1, 1888, it had become unlawful for them to return to the United States. This writ of *habeas corpus* was thereupon issued upon their petition, to determine their rights under the act mentioned.