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purpose of determining that title, and having a trust declared in his favor under the listing which had been made. The cases of *Tyler v. Houghton*, 25 Cal. 26, and *Thompson v. True*, 48 Cal. 601, 608, indicate that this might be done, but such, as we have seen, is not the purpose of this suit. For all the purposes of the present inquiry, the right of the state to have the lands listed under the act of 1841 must be considered as admitted, and the litigation confined to the contest between the parties as to which has the better right to buy from the state. According to the respective claims of the parties, Merrill did buy in 1857, and Mace made application to buy in 1874. Both claim under the state. If Merrill actually did buy, as he says he did, the title of the state inured to his benefit under the act of Congress as soon as it passed from the United States. If he did not, then, so far as the record discloses, Mace might have had the right to buy when he made application for that purpose. The determination of this question, as the case comes here, involves no Federal right in Mace which has been denied him by the decision of the court below. We consequently have no jurisdiction, and the cases of *Romie v. Casanova*, 91 U. S. 379, *McStay v. Friedman*, 92 U. S. 723 and *Hastings v. Jackson*, 112 U. S. 233, are directly to that effect. Indeed the case of *Hastings v. Jackson* is strikingly like this in its material facts.

The writ of error is dismissed for want of jurisdiction.

EX PARTE MIRZAN.

ORIGINAL.

Submitted December 20, 1886. — Decided January 10, 1887.

This court will not issue a writ of *habeas corpus*, even if it has the power (about which no opinion is expressed), in cases where it may as well be done in the proper Circuit Court, if there are no special circumstances in the case making direct action or intervention by this court necessary or expedient.

Statement of Facts.

This was a motion for leave to file a petition for a writ of *habeas corpus*. The allegations were that the petitioner was a citizen of the United States temporarily residing in Alexandria, in Egypt, in the Ottoman Dominions, in 1880; that while there at that time he was accused of the murder of one Alexander Dahon in Alexandria; that by direction of the then Secretary of State, Horace Maynard, Esq. then Minister of the United States at Constantinople proceeded to Alexandria for the purpose of presiding over his trial on that accusation; that he was arraigned before Mr. Maynard on a criminal information presented by George O. Batchellor, and held to answer for a capital crime without presentment or indictment by a grand jury, and without a trial by jury or by any person except the minister; that he was convicted and, by the said minister, was sentenced to death; that thereafter by order of the President of the United States he was removed from the Ottoman Dominions to the penitentiary at Albany, in the state of New York; that he was at the time of the motion deprived of his liberty and held in custody in said penitentiary under color of authority of the United States; that during all these times it was time of peace, and not time of war or public danger; and that the case did not arise in the land or naval forces or in the militia of the United States, nor was the petitioner at any time in such forces or militia. The petition alleged that all these acts took place without warrant of law, and were void, and in violation of the Constitution and laws of the United States, and of the rights of the petitioner as a citizen of the United States, for various reasons which were set forth at length in the petition. The prayer of the petition was as follows:

“Wherefore your petitioner prays that the writ of *habeas corpus* do issue from this court, directed to John McEwen, the Warden of the Penitentiary of the state of New York at Albany, commanding him, on a day certain therein to be named, to bring before this court the body of the petitioner, together with the cause of his detention, and to abide such further orders as your Honors and this court may direct.

“And your petitioner further prays that each, every, and all

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the proceedings aforesaid, and the sentence aforesaid, may be declared by this court to be null and void; and that the petitioner be released and discharged from the custody and imprisonment in which he is now held by color of the authority of the United States."

Mr. Lorenzo Ullo for petitioner.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This motion is denied. As since the act of March 3, 1885, 23 Stat. 437, an appeal lies to this court from the judgments of the Circuit Courts in *habeas corpus* cases, this court will not issue such a writ, even if it has the power — about which it is unnecessary now to express an opinion — in cases where it may as well be done in the proper Circuit Court, if there are no special circumstances in the case making direct action or intervention by this court necessary or expedient. In this case there are no such special circumstances, and the application may as well be made to the Circuit Court for the Northern District of New York as here. Our right to exercise this discretion is shown by the principles on which the decisions in *Ex parte Royall*, Nos. 1 and 2, 117 U. S. 241, and *Ex parte Royall*, 117 U. S. 254, rest. This practice was suggested by us and followed in *Wales v. Whitney*, 114 U. S. 564. *Denied.*

HANCOCK *v.* HOLBROOK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA.

Submitted December 13, 1886. — Decided January 10, 1887.

A suit cannot be removed from a State Court to a Circuit Court of the United States on the ground of prejudice or local influence, under subsection 3 of § 639 Rev. Stat., unless all the plaintiffs or all the defendants are citizens of the state in which the suit was brought, and of a state other than that of which those petitioning for the removal are citizens.