In re QUONG WOO.

(Circuit Court, D. California. August, 1882.)

1. MUNICIPAL CORPORATIONS—LEGISLATION.
   A city ordinance which makes it unlawful for any person to establish, maintain, or carry on any laundry within certain limits without first having obtained the consent of the board of supervisors, which shall only be granted upon the recommendation of not less than 12 citizens and tax-payers in the block in which the laundry is proposed to be established, and which punishes by fine or imprisonment for a violation of its provisions, is invalid.
2. SAME—POWER TO LICENSE TRADES.
   Under their authority to license trades and callings, supervisors cannot delegate their power to others, or make its exercise depend upon the consent of others. The legislative power vested in them is a public trust, which can only be executed in consonance with the general purposes of the municipality, and in subordination to the general laws and policy of the state
3. SAME—RESTRICTION ON POWERS.
   Licenses for callings, trades, and employments may be required by supervisors where the nature of the business requires special knowledge or qualifications, or where they are issued as a means of raising revenue for municipal purposes; but they cannot be required as a means of prohibiting any of the avocations of life which are not injurious to public morals, offensive to the senses, nor dangerous to public health and safety.
4. ALIEN RESIDENTS—RIGHTS OF—UNDER TREATY WITH CHINA.
   Under the treaty with China, a Chinese resident of this country is entitled to all the rights, privileges, and immunities of subjects of the most favored nations with which this country has treaty relations; and where he was a resident here before the passage of the act of congress restricting immigration of Chinese, he has a right to remain and follow any of the lawful ordinary trades and pursuits of life, and his liberty so to do cannot be restrained by invalid legislation.

McAllister & Bergin and *Thomas D. Riordan*, for petitioner.
L. E. Pratt, Dist. Atty., *contra.*

FIELD, Justice. In May of the present year an ordinance was passed by the board of supervisors of the city and county of San Francisco, which took effect on the tenth day of June following, to regulate the establishment, maintenance, and licensing of laundries within certain designated limits, and prescribing punishment for establishing or carrying on the business of a laundry in violation of its provisions. In its first section the ordinance declares that after its passage it shall be unlawful for any person "to establish, maintain, or carry on any laundry within that portion of the city and county of San Francisco lying and being east of Ninth and Larkin streets, without having first obtained the consent of the board of supervisors, which shall only be granted upon the recommendation of not less than 12 citizens and tax-payers in the block in which the

laundry is proposed to be established, maintained, or carried on." The second section declares that the license collector shall not issue a license to any person or persons proposing to establish, maintain, or carry on a laundry within the limits mentioned, unless he, she, or they shall first have obtained from the board of supervisors their written consent thereto, based upon the recommendation of citizens and tax-payers, as provided in the first section. The third section makes the violation of these provisions a misdemeanor, upon conviction of which the party may be punished by a fine not exceeding $1,000, or by imprisonment not exceeding six months, or by both.

The petitioner is a subject of the emperor of China, residing in the city of San Francisco under the provisions of the treaty between that country and the United States, and alleges that he has for the last eight years been engaged in carrying on the business of a laundry within the limits of the district mentioned, and has at all times paid the license tax exacted from him under previous ordinances, and is still ready to pay any such license tax; that his license issued under said ordinances expired on the thirtieth of June last; that there now exist, and have existed for years, with the residents of the city and county of San Francisco, and its citizens and tax-payers, great antipathy and hatred toward the people of his race; that combinations among such residents have been formed to drive them from the country; that in consequence of this feeling it has been impossible for him to obtain the recommendation of 12 citizens and tax-payers to carry on his business in the block where he is now engaged, as required by the ordinance of June 10th; and that for carrying on his business without a license issued upon such recommendation he has been arrested, and is now restrained of his liberty by the chief of police. That officer returns that he holds the petitioner under a warrant issued by a justice of the peace and acting police judge of the city and county, issued upon a charge of misdemeanor against him for violating the provisions of the ordinance in question, and accompanies his return with a copy of the warrant.

The question presented is the validity of the ordinance in requiring, for the issue of a license to "establish, maintain, or carry on" a laundry within the limits mentioned, the recommendation of 12 citizens and tax-payers in the block in which the laundry is to be "established, maintained, or carried on."

The ordinance in terms covers all laundries, whether used for the separate wants of a family or for the washing of clothes of others for hire. We shall assume, however, that it has reference only to

laundries of the latter class. It is directed equally against those who establish them, those who maintain them, and those who carry them on. If the recommendation of any parties in the block can be required as a condition of granting the license for either of these purposes, the number is a matter of discretion with the supervisors. They may require the recommendation of double or treble the number designated; they may exact the unanimous recommendation of the citizens and tax-payers of the block. Nor need they confine the recommendation required to citizens and tax-payers; any other class may be equally designated. They may require it of some of our worthy resident aliens from Europe—gentlemen of Irish or German nativity. Indeed, if they can make the exercise of their legislative power in the granting of licenses dependent upon the approval of anybody else, they may place the approval with whomsoever they may deem best, and no one can control their action. They have the power, by the act of April 25, 1863, "to prohibit and suppress, or exclude from certain limits, or to regulate, all occupations, houses, places, pastimes, amusements, exhibitions, and practices which are against good morals, contrary to public order and decency, or dangerous to the public safety." But the business of a laundry—that is, the washing of clothing and cloths of various kinds, and ironing or pressing them to a condition to be used—is not of itself against good morals, or contrary to public order or decency. It is not offensive to the senses, or disturbing to the neighborhood where conducted, nor is it dangerous to the public safety or health. It would be absurd to affirm that it is. If it be conducted in a manner that is offensive or dangerous, the supervisors may direct the manner to be changed, and prescribe regulations for its prosecution. If the building in which it is carried on is by its structure, form, or material unsafe, the supervisors may, by proper proceedings, have it altered or removed. This power the supervisors possess with reference to all vocations, and the buildings in which they are prosecuted. All business must be so conducted as not to endanger the public safety and health. Here we are concerned only with the business of a laundry by itself; the manner, or the buildings in which it is conducted, are not before us. The ordinance applies as well to a laundry in a fire-proof building, as to one in a wooden shanty. In the business of a laundry by itself, there is nothing objectionable that may not be urged against all occupations in the city and county. If, therefore, the supervisors can make its prosecution depend upon the approval of others in its

neighborhood, they may require a similar approval for the prosecution of other business equally inoffensive. They may require members of the bar to close their offices against professional business unless they can secure the recommendation in their behalf of such parties in the block where the offices are, as may be designated. So, too, with bankers, merchants, traders, mechanics, journalists, publishers, printers,—indeed, with all brain-workers and hand-workers; the pursuit of their vocations in particular localities may be made to depend, not upon their wishes, their means, the position of their property, the facilities afforded for their business, but upon the favor or caprice of others, whose actions they cannot control by any legal proceedings. A party might not even be able to obtain a license to carry on business on his own land, provided he should possess an entire block, and it should not be occupied by others who could give the recommendation exacted. Such a restriction upon the freedom of pursuit of a lawful occupation is not authorized by any power vested in the board of supervisors; and it may be doubted whether it could be authorized by any legislative body under our form of government.

The supervisors are, it is true, empowered by the act of March 3, 1872, to "license and regulate all such callings, trades, and employments as the public good may require to be licensed and regulated, and as are not prohibited by law;" but their power cannot be delegated by them to others, or its exercise made dependent upon others' consent. The power of legislation vested in them is a public trust, which can be excuted only in consonance with the general purposes of the municipality, and in subordination to the general laws and policy of the state. Their ordinances must be reasonable,—that is, not oppressive nor unequal nor unjust in their operation,—or they will not be upheld. Such is the well-established doctrine with respect to the legislation of municipal bodies.

In *Ex parte Frank* it was applied by the supreme court of California to an ordinance passed by the supervisors, under the act in question, exacting a license for selling goods, and fixing a different rate where the goods were within the corporate limits or *in transitu* to the city, and where the goods were without the city and not *in transitu* to it. The ordinance was held to be unjust, oppressive, unequal, and partial, and for these reasons, as well as because it was in restraint of trade between the city and the interior of the state, was adjudged to be void. The decision of the court was accompanied by

some very just observations upon the limitations to the exercise of legislative power in the passage of ordinances by municipal bodies. 52 Cal. 606.

Licenses for callings, trades, and employments may be required by the supervisors where the nature of the business demands special knowledge or qualifications on the part of the party, as in the case of dealers in drugs. They may also be required as a means of raising revenue for municipal purposes. But in neither case can they be required as a means of prohibiting any of the avocations of life which are not injurious to public morals, nor offensive to the senses, nor dangerous to the public health and safety. Nor can conditions be annexed to their issue which would tend to such a prohibition. The exaction for any such purpose of a license to pursue a vocation of this nature, or making its issue dependent upon conditions having such a tendency, would be an abuse of authority. Such is evidently the tendency and purpose of the conditions required in the ordinance in question in this case, and we have no doubt of its invalidity for that cause.

The petitioner is an alien, and under the treaty with China is entitled to all the rights, privileges, and immunities of subjects of the most favored nation with which this country has treaty relations. Being a resident here before the passage of the recent act of congress, restricting the immigration of subjects of his country, he has, under the pledge of the nation, the right to remain, and follow any of the lawful ordinary trades and pursuits of life, without let or hindrance from the state, or any of its subordinate municipal bodies, except such as may arise from the enforcement of equal and impartial laws. His liberty to follow any such occupation cannot be restrained by invalid legislation of any kind; certainly not by a municipal ordinance that has no stronger ground for its enactment than the miserable pretense that the business of a laundry—that is, of washing clothes for hire—is against good morals or dangerous to the public safety. Rev. St. § 753; *Ex parte Bridges*, 2 Woods, 429; *In re Quy*, 6 Sawy. 237.

It follows that the petitioner is illegally restrained of his liberty, and must, therefore, be discharged. Ordered accordingly.

COTTER *v.* NEW HAVEN COPPER CO. and others.

(*Circuit Court, D. Connecticut.* August 7, 1882.)

PATENTS FOR INVENTIONS—PROCESS—NOT AN INFRINGEMENT.

Where defendants' process is not the patented process, but omits a patented step, and in its stead includes one which the patentee intended to avoid, it is not an infringement.

John S. Beach, George Harding, and *Charles E. Mitchell,* for plaintiff.

Benjamin F. Thurston and *Charles R. Ingersoll,* for defendants.

SHIPMAN, D. J. This is a bill in equity to restrain the defendants from the alleged infringement of reissued letters patent, dated October 16, 1877, to Andrew O'Neil, assignor to Samuel A. Cotter, for an improvement in preparing sheet copper for boilers and other vessels. The original patent was granted to Mr. O'Neil, as inventor, on April 6, 1869.

Prior to the date of the original patent, tinned sheet copper for the manufacture of culinary utensils was furnished to the coppersmith in the form of a soft sheet of copper tinned on one side, and the copper side discolored by the action of the heat and acids employed in the tinning process. This soft, porous, flexible sheet was then made dense and hard by tedious and expensive hand hammering, or "planishing," as it was called, which consisted of hammering the sheet upon an anvil with hammers of a curved surface to make the sheet dense, and then with hammers of a plane surface to smooth and brighten it. Tinned copper had been also sometimes cold rolled, or passed through polished rolls, whereby the sheet was made more dense, but the form in which the coppersmith generally received the sheet for manufacture into utensils was the one which has been described. Sometimes the discoloration was attempted to be removed by the use of acid.

Mr. O'Neil, in 1867, received letters patent for a tinned copper sheet prepared in this way. A varnish, made after a prescribed formula, was applied with a brush to the copper side of the tinned sheets in the rough state "without subjecting them to any acid bath, scouring, planishing, or any other chemical or mechanical preparation." The varnished sheets, when dry, "were passed through highly-polished rolls of steel or case-hardened or chilled iron." In 1869 the original of the reissue which is now in suit was granted to Mr. O'Neil. The specification describes the invention as follows: