CHICAGO, M. & ST. P. RY. CO. *v.* CITY OF SABULA and another.

(Circuit Court, N. D. Iowa, E. D. January 3, 1884.)

RAILROAD BRIDGE—TAXATION—LAWS OF IOWA.

The constitution of Iowa requires the property of all corporations for pecuniary profit to be taxed in the same way as that of individuals. In 1872 the legislature passed an act providing that railroad property within the state should be assessed for taxation by a special board appointed by the state, and not by the local authorities. This statute was held by the courts to be constitutional, on the ground that it applied to all railroad property whether owned by corporations or by individuals. Section 10 of the act of 1872 declared that no provisions of the act should apply to any railroad bridge across the Mississippi or Missouri river, but that such bridges should be taxed as individual property. At the time the act was passed none of the bridges over those rivers were owned by railroad companies, but the companies paid rent or toll for the use of them. In 1880 the Chicago, Milwaukee & St. Paul Railroad built a bridge of its own across the Mississippi at Sabula. *Held*, that the nature of the property and not the ownership determined whether it fell within section 10 of the act, and that the bridge was therefore subject to be taxed by the local taxing district.

Bill in Equity. Motion for temporary injunction.

W. J. Knight and *J. W. Cary*, for complainant.

Fouke & Lyon, *W. C. Gregory*, and *J. Hilsinger*, for defendants.

SHIRAS, J. The bill in this cause sets forth that the complainant is a corporation organized under the laws of the state of Wisconsin, and is the owner and lessee of about 5,000 miles of railroad in the states of Wisconsin, Illinois, and Iowa; that, among others, it operates a line running from Chicago, Illinois, to Council Bluffs, Iowa, which crosses the Mississippi river at the town of Sabula, by means of a bridge constructed by complainant under the authority of the act of congress, approved April 1, 1872, the said bridge being used solely for the passage of the trains of complainant, and being owned solely by complainant, the same as other portions of its track. The bill further alleges that in the years 1881, 1882, and 1883, the general manager of complainant made a statement of the number of miles of railroad operated by complainant in the state of Iowa, with the number of cars, and the amount of earnings, as required by the statute of Iowa, and furnished the same to the executive council, which statement included the length of so much of said railroad bridge at Sabula, Iowa, as is within the state of Iowa, and that the executive council, as required by law, assessed the total valuation of complainant's property, including so much of said bridge as is within the state of Iowa, and apportioned the same over the entire road of complainant, in accordance with the requirements of the statutes of Iowa, regulating the assessment and taxation of railroad property. The bill further charges that the town of Sabula, and county of Jackson, have each assessed the bridge in question and levied taxes thereon for the years 1881, 1882, and 1883, and are threatening to enforce the payment

thereof, by seizure and sale of complainant's property, to prevent which the court is asked to issue a temporary injunction.

The question presented is, therefore, whether, for the purposes of taxation, the bridge, owned and used by complainant across the Mississippi river at Sabula, Iowa, is to be deemed and taken to be a component part of the entire line of road owned by complainant, the same as the bridges across the Des Moines, the Iowa, and other streams within the state of Iowa, and, as such, to be valued and assessed by the executive council of the state, or whether it is to be deemed and taken to be a railway bridge within the meaning of section 808 of the Code of Iowa, and as such to be assessed and taxed the same as the property of individuals in the same county; that is, by the local assessors and the board of equalization. Previous to the year 1872, the property of railroads in Iowa was taxed through the gross earnings of the companies, 1 per cent. being levied upon such earnings, one-half of which tax was paid to the state, and the other half to the respective counties through which the roads were operated. In 1872 an act was passed by the legislature, providing for the assessment to be made by the census board or executive council. The act required the officers of each railroad company to furnish to the census board a statement showing the whole number of miles operated by the company within the state, and within each county in the state, with a detailed statement of the number of engines, cars, and other property used in operating the railroad within the state, and of the gross earnings of the entire road and of so much thereof as is situated within the state.

Section 1 of the act declares it to be the duty of the census board, on the first Monday of March in each year, "to assess all the property of each railroad company in this state excepting the lands, lots, and other real estate of a railroad company not used in the operation of their respective roads."

In section 3, it is provided that "the assessment shall be made upon the entire road within the state, and shall include the right of way, road-bed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel-beds, and all other property, real and personal, exclusively used in the operation of said railroad."

Having ascertained the total valuation, the value per mile is ascertained by dividing the total value by the number of miles, and this valuation, with the number of miles situated in each county, is transmitted to the board of supervisors of each county, by whom the length of the track, and the assessed value of the same within each city, town, township, and lesser taxing district within the county is determined.

By section 10 of the act it is declared that "no provision of this act shall be held to apply to any railroad bridge across the Mississippi or Missouri rivers, but such bridges shall be assessed and taxed on the same basis as the property of individuals."

When this act of 1872 was adopted there were several bridges across the Mississippi and Missouri rivers, but these were, save the Rock Island bridge, which was owned by the United States, owned by bridge companies, by whom the bridges were constructed, and the use thereof was leased or otherwise contracted to the railroad companies, who paid a rental or toll for crossing the same. In 1880 the complainant constructed its bridge over the Mississippi river at Sabula, for the purpose of making a continuous line of road from Milwaukee and Chicago to Council Bluffs. The bridge is used only for the passage of the cars of the complainant's trains, and no rental or toll is paid for crossing the same by any shipper of freight or passenger upon complainant's road. In other words, this bridge forms part of complainant's line of railway, the same as any of the other bridges spanning the streams, great or small, that are crossed in going from Sabula, on the Mississippi, to Council Bluffs, on the Missouri.

On part of complainant it is claimed that as this bridge forms part of its continuous line of road, it comes within the enumeration of the property to be taxed by the census board, as found in section 3 of the act of 1872, and that section 10 does not take it out of this enumeration, that section being intended to cover the bridges across the Mississippi and Missouri rivers which are owned by bridge companies, and for the use of which the railroad companies pay a rental or toll. On part of the defendants it is claimed that the provisions of section 10 must be held applicable to all bridges across the rivers named, which are used for railroad purposes in the crossing of trains over the same; that it is the use made thereof, and not the ownership, which makes the structure a railroad bridge within the meaning of this section.

In the case of *City of Dubuque* v. *C., D. & M. R. Co.* 47 Iowa, 196, the question of the constitutionality of this act of 1872 came before the supreme court of Iowa, it being claimed that the act was in contravention of section 2, art. 8, of the state constitution, which provides that "the property of all corporations for pecuniary profit shall be subject to taxation, the same as that of individuals." The majority of the court held the act to be constitutional upon the theory that the mode of assessment and taxation provided in the act applied to all property of the character named, without reference to whether it was owned by a corporation, a partnership, or an individual. That the act does not provide a special manner of assessing the property of railroad companies as such, but rather of railroad property, and that such property would be properly taxable under its provisions, whether owned by an incorporated company, a partnership, or an individual. In other words, the court holds that the general provisions of the act were intended to apply to all property used for railroad purposes, and not solely to property owned by railroad corporations, the use, and not the ownership, determining the question whether the act was applicable thereto.

Under this construction of the act it follows that, as a general rule, all property used in the operation of a railroad, no matter whether the same is owned by a corporation or individuals, is to be assessed by the census board in the mode pointed out in the act in question. Section 10 of the act, however, provides for an exception to the general rule thus laid down, by enacting that the provisions of the act shall not "apply to any railroad bridge across the Mississippi or Missouri river, but such bridges shall be assessed and taxed on the same basis as the property of individuals."

As already stated, the question at issue between the parties to these proceedings is whether this section shall be held to apply to all bridges used for railroad purposes, without regard to the ownership thereof, or shall be confined to bridges owned by bridge companies. In the latter case, the assessment of the bridge at Sabula would be made solely by the census board; but in the former case, the bridge would be assessed and taxed the same as any other structure erected in the town of Sabula. If it be true that the general provisions of the act of 1872 are intended to apply to property used in the business of railroading, without reference to the question of the same being owned by a corporation, partnership, or by individuals, then it would seem only consistent to hold that the same rule should be applied in construing section 10 of the act, and that therefore, when it is stated that "no provision of the act shall apply to any railroad bridge across the Mississippi and Missouri rivers," the meaning is that that particular species of railroad property is excepted from the operation of the act, without reference to whether it is owned by a railroad corporation, a company, or an individual. Within the meaning of this act, a railroad bridge is a structure used for the purpose of the passage of locomotives and cars over the same, by means of rails laid along the structure. If the structure is used for that purpose, it is a railroad bridge, no matter by whom it was built and is owned.

Under this construction of the act all bridges over the Mississippi and Missouri rivers used for the passage of railway trains will be assessed and taxed under one and the same statute. If it be held, however, that a bridge used solely for the passage of railway trains is to be taxed by the census board, if owned by a railway company, but if owned by an individual, is to be assessed and taxed by the local assessors, then we would have different modes of assessment and taxation, applied to similar property, used for a like purpose, and differing only in the ownership. It can hardly be supposed that the legislature intended to enact such a law, in view of the constitutional provision already quoted. As an illustration, take the bridge over the Mississippi river at Dubuque. It is owned by a bridge company, but is used solely for the passage of railway trains over the same. It is always spoken of as a railroad bridge, and is assessed and taxed, not by the census board, but by the local assessors, the same as other realty in the city and county of Dubuque. If the Illinois Central Rail-

road Company should purchase this bridge from its present owners, and continue the running of their trains over the same, it would then constitute a part of the main line of the company, connecting Cairo and Chicago with Sioux City, just as the Sabula bridge constitutes part of the line of the Chicago, Milwaukee & St. Paul Railroad Company, and, according to the contention of complainant, a change in the ownership of the bridge in the supposed case would be followed by a change in the mode of assessment and taxation of the bridge, although the structure and the use made thereof remains unchanged.

It is urged in argument that there is a difference between a bridge owned by a company, such as the one at Dubuque, and one owned by a railway company, as is the one at Sabula, in that a toll is charged by the bridge company and paid by the railway company for each car and passenger that passes over the bridge; whereas, in the latter case, the railway company treats the bridge as part of its continuous line, and makes no special charge for carrying freight and passengers over the same, in distinction from any other part of its line. This difference, however, so far as it affects the question under consideration, is more apparent than real. In both cases the companies use the bridges for the same purpose. In the one case the railway company meets the cost of transporting its trains over the river by paying for the use of the bridge, while in the other, the company meets the cost by paying for the erection of the bridge, and the current expenses of maintaining it. It is nevertheless true that the structures and the uses to which they are put are the same in both instances, and the mode of their construction, and the use to which they are put, show them to be alike railroad bridges, and no good reason is perceived why the modes of assessment and taxation should be varied by reason of a difference in the ownership.

The act of 1872, as construed by the supreme court of Iowa, is intended to provide for the taxation of property used in the operations of railroading, without regard to its ownership by a corporation, a partnership, or individuals. If there were no exceptions in the act, all railroad bridges crossing the Mississippi and Missouri rivers, being structures used in the operation of railways, would fall within the provisions of the act, and in that case would be assessable by the census board, and in no other manner. But by section 10 of the act, one kind of property used in the operation of railways is specially excepted, to-wit, all railway bridges across the Mississippi and Missouri rivers, it being declared that "such bridges shall be assessed and taxed on the same basis as the property of individuals." Under this section the census board have no right or authority to assess any railroad bridges spanning the rivers named, because the first clause of the section expressly declares that no provision of the act shall be held applicable to such bridges, and it is only by virtue of the provisions of this act that the census board have the right to assess any railroad property for taxation. The first clause, therefore, of section

10 negatives the claim that railroad bridges over the Mississippi and Missouri rivers are assessable by the census board, and the latter clause of the section expressly declares that these bridges shall be assessed and taxed on the same basis as the property of individuals, by which is meant that these bridges shall be assessed in the same mode as is pursued in regard to other property situated in the same taxing district, or, in other words, these bridges are to be assessed and taxed through the agency of the local assessors.

In considering the construction to be given to the act of 1872, I have viewed it in the form in which it was passed by the legislature, and not as it is now found incorporated in the Code of 1873. An examination of the Code shows that section 1 of the act of 1872 forms section 1317 of the Code, and sections 2, 3, 4, 5, 6, and 11 of the act of 1872 are condensed into sections 1318, 1319, 1320, 1321, and 1322 of the Code. Sections 8 and 10 of the act of 1872 are found incorporated together as section 808 of the Code. The changes thus made in the language used, and in the relative positions of these sections, do not change the legal effect thereof, so far as the question under consideration is concerned. These sections, 808 and 1318 to 1322, inclusive, deal with the same subject, and are therefore to be construed together. While section 1317 declares that the executive council shall assess all the property of each railway corporation in the state, "excepting the lands, lots, and other real estate belonging thereto not used in the operations of any railway," yet, section 808 declares that "lands, lots, and other real estate belonging to any railway company not exclusively used in the operation of the several roads, and all railway bridges across the Mississippi and Missouri rivers, shall be subject to taxation on the same basis as the property of individuals in the several counties where situated." Being *in pari materia*, the two sections must be construed together; and it follows that the general declaration in section 1317, that all the property of each railway corporation is to be assessed by the executive council, must be held to mean all property not excepted in some other section of the statutes dealing with the same subject-matter.

It is a familiar rule of construction that general statements or provisions in statutes may be restricted or qualified by special clauses found therein. Therefore, when we find that section 1317 declares, generally, that all the property of railway companies used in the operation of their roads is to be taxed by the executive council, and that section 808 provides for the taxation of lands, lots, and other property not used in the operation of the roads, and of railroad bridges, by the local assessors, we must hold that the special exceptions named in section 808 qualifies and restricts the general language used in section 1317. By this rule both sections are harmonized, and neither abrogates the other. That this construction effectuates the true intent of the legislature, is shown by a reference to the act of 1872, wherein, as already stated, we find the general de-

claration as now set forth in section 1317 of the Code, but with the proviso found in section 10, declaring that the provisions of the act should not apply to any railroad bridge across the Mississippi and Missouri rivers. To give this section the construction claimed for it on behalf of complainant would require the interpolation of the words, "unless owned by a railroad corporation," or the equivalent thereof, so as to make the section read, "that no provision of this act should be held to apply to any railroad bridge across the Mississippi or Missouri rivers, unless owned by a railroad corporation."

It is argued that this must have been the intent of the legislature, in effect, because, when the act of 1872 was passed there were no bridges across these rivers that were owned by the railway companies, and hence that the exception contained in section 10 could not have been intended to apply to such bridges when they were afterwards built. The act of 1872 was prospective in its operation. It was intended to provide a mode for the taxation of railway property in the future, and was intended to, and does apply to, all railways in the state, whether then built or not. While it may be true that in 1872 there were no railway bridges across the Mississippi or Missouri rivers owned by the railroad companies using the same, still it cannot be fairly claimed that the improbability of such bridges being built and owned by the railroad companies was so great that it must be presumed that the legislature did not contemplate such bridges being built, and therefore did not intend to include them within the general term of railroad bridges, as found in section 10 of the act of 1872.

It was certainly known to the legislature that railroad companies, both in Iowa and other states, were frequently in the habit of building and owning bridges across rivers of very considerable magnitude, and that there was no special reason why in the future some railway company might not build and own a bridge across the Mississippi. It was also undoubtedly known to the legislature, when the act of 1872 was passed, that congress had, in 1866, authorized the Chicago, Burlington & Quincy Railroad Company to construct and maintain a railroad bridge across the Mississippi river, connecting its lines in Illinois and Iowa, and in the same act had authorized the Winona & St. Peter Railroad Company to construct and maintain a railroad bridge across the Mississippi river at Winona, Minnesota, and that in 1870 had authorized the St. Joseph & Denver City Railroad Company to construct and maintain a railroad bridge across the Missouri river at St. Joseph, Missouri, and in 1871, had authorized the Louisiana & Missouri Railroad Company to construct and maintain a railroad bridge across the Mississippi river at Louisiana, Missouri, and in 1872, but a few days before the passage of the act of the legislature in question, had authorized the Western Union, and Sabula, Ackley & Dakota Railroad companies to construct and maintain a railroad bridge across the Mississippi at some point in Clinton or

Jackson counties, in Iowa,—the bridge in question at Sabula being afterwards built under the authority of this act of congress, by the present complainant, as the assignee of the rights of said Western Union, and Sabula, Ackley & Dakota companies. Under these circumstances, the claim made in argument, that the legislature could not have contemplated the possibility of the construction of any railroad bridges across the Mississippi and Missouri rivers by a railroad company, and hence, did not intend the exception found in section 10 of the act of 1872 to apply to such bridges, cannot be sustained, in view of the broad terms used in that section.

If the views herein stated are correct, it follows that the executive council of the state have no authority to include the bridge at Sabula in the enumeration of the property owned by complainant to be assessed by such council. Being a railroad bridge, it is to be assessed and taxed on the same basis and by the same modes that are applicable to other realty situated in the same taxing district; and, as a necessary consequence, it follows that the application for a temporary injunction must be overruled.

Recognizing the importance of the question presented in this case, I have given as much time to its investigation as was possible, since its submission, but its importance demands that it should not be left dependent upon the conclusions of a single judge reached upon an argument upon a motion for a temporary injunction, and it is the desire of the court that, upon the final hearing of the case upon its merits, the question may be presented to a full bench.

In re TUNG YEONG.

(*District Court, D. California.* February 1, 1884.)

1. CHINESE IMMIGRATION—CUSTOM-HOUSE CERTIFICATES.
   By the treaty of 1880, Chinese laborers then in the United States were accorded the privilege of coming and going at pleasure. The restriction act of 1882 extends this liberty to all who arrive before the expiration of 90 days after the passage of the act. This law also requires incoming Chinamen to produce custom-house certificates. The language of the act is ambiguous and might be so construed as to require the certificate from those who left the country between the adoption of the treaty and the passage of the restriction act, but as no provisions existed during that period for the issue of such certificates, this construction would be clearly repugnant to the treaty. The court, therefore, holds that Chinese laborers who were in the United States at the date of the treaty, and who departed before the act took effect, are entitled to land without producing custom-house certificates.
2. SAME—MERCHANTS.
   Only Chinese laborers are excluded. Those who come to engage, in good faith, in mercantile occupations are *held* to be entitled to land, and their Canton certificates are *prima facie* evidence of their mercantile character.
3. SAME—CHILDREN.
   Nothing in the law is held to prevent parents living here from sending for their children who are two young to be classed as laborers.

On *Habeas Corpus.*

S. G. Hilborn, U. S. Atty. for California, and *Carroll Cook*, Asst. U. S. Atty. for California, for the United States.

Lyman J. Mowry, for the detained.

Milton Andros, for Williams, Dimond & Co., agents Pacific Mail S. S. Co., who held petitioners.

HOFFMAN, J. The very great number of cases in which writs of *habeas corpus* have been sued out of this court by Chinese persons claiming to be illegally restrained of their liberty, and which were of necessity summarily investigated and disposed of, has rendered it impossible for the court to deliver a written opinion in each case. The evidence in the various cases and the rulings of the court have been very imperfectly reported by the press, and the latter, though much criticised, have not, it is believed, been thoroughly understood. It is deemed proper to set forth in an opinion, as succinctly as may be, the general nature of these cases, of the evidence upon which the decision of the court has been based, and its rulings upon the more important of the questions which have been presented for its determination.

The applications for discharge from a restraint claimed to be illegal may be divided into three classes:

First. Applications on the ground of previous residence. By the second article of the treaty it is provided that "Chinese laborers now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nations." 22 St. 827. By the third section of the law, known as the restriction act, the same privilege is indirectly extended to laborers "who shall have come into the United States before the expiration of ninety days next after the passage of this act." The date of this treaty is November 17, 1880. The date of the passage of the law is May 6, 1882. During this interval large numbers of Chinese laborers, who were protected by the treaty, have left the country, of course, unprovided with custom-house certificates, for there was no law then existing which required them to obtain them or authorized the custom-house authorities to furnish them.

The language of the law is ambiguous, and perhaps admits the construction that the laborers who left this country during the interval I have mentioned should be required to produce the custom-house certificate provided for in the act. It was not doubted by the court that if the treaty and the law were irreconcilably conflicting, the duty of the court was to obey the requirements of the law, but it was considered that no construction should be given to the law which would violate the provisions of the treaty, if such construction could be avoided. It was therefore held that a Chinese laborer who was here at the date of the treaty, and who left the country before the law went into operation, might be admitted without producing a cus-

tom-house certificate, which it would be impossible for him to obtain, and that it was inadmissible, if not indecent, to impute to congress, when legislating to carry into effect our treaty with China, the intention to deprive laborers of the right to come and go of their own free will and accord, which was explicitly recognized and secured by the treaty, by exacting as a condition of its exercise the production of a certificate which it was out of their own power to obtain. *In re Chin A On*, 18 FED. REP. 506. It was also held that Chinese who were not in the country at the date of the treaty were not embraced within the provisions of the second article, and also that a Chinese laborer who, although in the country at the date of the treaty, had left after the law went into practical operation, and who neglected to procure a certificate, was not entitled to return. As to the soundness of the last ruling, doubts may be entertained. It is understood that the question will shortly be submitted to the circuit court.

If there be error in these rulings it is assuredly not in favor of the Chinese. The right of laborers who can prove they were in the country at the date of the treaty, and had left before the law went into effect, to be allowed to land without the production of a custom-house certificate, being thus recognized, the court held that the burden of proof was on them, and that satisfactory evidence of the facts would be rigorously exacted. In some cases this evidence was such as to establish the facts beyond all reasonable doubt; as, for instance, the former residence and departure of the petitioner was in one case proved by the testimony of the reverend gentlemen at the head of the Chinese mission in this city, who swore not only to his personal recollection of the fact, but produced a record of the proceedings of the sessions of his church, in which the departure of the petitioner and his resignation of the office of deacon, which he held, and the appointment of his successor, are recorded. These records, he testified, were in his own handwriting, and were made at the date which they bore. In another case a young lady connected with the mission proved the departure of the petitioner, (who was a convert and her pupil,) not merely by her own testimony as to the fact, but by the production of a religious book which she gave him at the time of his departure, on the fly-leaf of which were inscribed, in her own handwriting, and signed by herself, some expressions of regard, together with some texts of scripture. This book, she testified, was handed to him on board the vessel at the date of the inscription on the fly-leaf, with the injunction to keep it and bring it back on his return. It was accordingly brought back and produced in court. On proofs such as these no rational doubt could be entertained, and the petitioners were discharged.

But in the large majority of cases proofs hardly less satisfactory were exacted and furnished. The Chinese, on returning to their country, almost invariably procure permits from the companies of which they are members, and which are furnished them on payment

of their dues. The departure of the members and the payment of their dues are recorded in the books of the company. These books the court invariably required to be produced. It also appears that, in most cases, their savings, accumulated in this country, are remitted to China for their account by mercantile firms in this city, and also that their tickets are, in many cases, purchased through the agency of those firms. The production of the firm books showing these transactions was, in like manner, required, and they, together with the books of the companies, were subjected to the critical scrutiny of Mr. Vrooman, the very intelligent, competent, and entirely reliable Chinese interpreter.

In very many cases all these books were produced in court, and, in some instances, the evidence they afforded was corroborated by testimony of white persons in whose employ the petitioner had been, and who testified to the time of his departure. It is, of course, possible that, in some instances, the court has been deceived, but considering that in no case has a person been allowed to land on the plea of previous residence on unsupported Chinese oral testimony, the number of such instances cannot be large. The proofs were in all cases sufficient to satisfy any candid and unbiased mind. Of the whole number thus far discharged by the order of the court, it is believed that those discharged on the grounds stated constitute nearly one-half. In justice to the six companies I should add that their presidents have spontaneously offered to the court to cause copies of their books, with records of departures of their members during the interval I have mentioned, to be made at their own charges, such copies to be verified by Mr. Vrooman, by comparison with the original records, and then to be deposited with the court. When this is done no means will any longer exist of interpolating or adding new names on the books of the companies. It will still remain possible for a Chinese laborer to assume the name, and personate the character of some one whose name appears on the records; but this mode of deception it seems impossible wholly to prevent.

Secondly. Applications founded on the productions of Canton certificates. The investigation of this class of cases proved exceedingly embarrassing to the court, and is attended with difficulties almost insuperable. The certificates furnished at Canton by the agent of the Chinese government, the law declares, shall be *prima facie* evidence of a right to land. This provision of the law, whatever distrust might be felt as the reliability of these certificates, the court could not disregard. The counsel for the petitioner usually presented a Canton certificate to the court and rested his case. The district attorney was necessarily without the means of disproving the truth of the certificate except by such admissions as he might extract from the petitioner himself when placed on the stand, or had been gathered from him upon his examination by the custom-house officials.

The district attorney was therefore allowed to call the petitioner, and cross-examine him in a most searching manner, and contradict, if he could, his statements; in short, to treat him as an adverse witness called by the opposite side. This method, though somewhat irregular, seemed to be the only one to be adopted with any hope of arriving at the truth. Another embarrassment under which the court labored was the inability to attach any distinct and definite signification to the term "merchant;" but, inasmuch as the treaty expressly declares that the only class to be excluded are "laborers," and that no other class is within the prohibition of the treaty, it was held by the court that the inquiry was not so much whether the person was a merchant as whether he was a "laborer," and that that inquiry should relate, not to his occupation or *status* in China, but to the occupation in which he was to be engaged in in this country; as the intention and object of the law was to protect our own laborers from the competition and rivalry of Chinese laborers here.

At first sight it would seem that the production of the books of a respectable mercantile firm, in which the name of the petitioner was inscribed as a partner, would be sufficient to establish his *status* as a merchant. It was soon found, however, that this mode of proof was, to a great extent, unreliable; for, *first*, the books might be falsified, and the entry made to meet the exigencies of the case; and, *secondly*, it appeared that the Chinese are in the habit of placing their earnings in stores or mercantile establishments, and in virtue of this investment they are admitted to a share of the profits. It might, therefore, often happen that a Chinese laborer would appear on the books of the company as holding an interest to the amount of a few hundred dollars in the concern, while he himself remained a laborer, and could in no sense of the term be called a merchant or a trader. The books above spoken of were in all cases subjected to a rigid scrutiny, with a view of detecting interpolations and falsifications. I am satisfied that in spite of the efforts of the court, which in almost all cases itself subjected the petitioner to a rigid cross-examination, and, in spite of the efforts of the district attorney, some persons have been admitted on Canton certificates who have no right to land, in what numbers it is impossible to say, but this result seemed to be the necessary consequence of the fact that the law made the certificate *prima facie* evidence of the petitioner's right, and of the difficulty of ascertaining the facts. A considerable number of cases were also presented to the court, where the petitioner claimed to be about to enter some mercantile establishment in which his brother or his uncle or his father was interested. The existence of the establishment was usually proved beyond a doubt, but the court was at the mercy of oral testimony as to the intended adoption of the petitioner as a partner. In some instances letters were produced from his relatives in this city, addressed to him in Hong Kong, inviting him to come to

this country to be admitted to the business, but the genuineness of these letters was often doubtful, and no obstacle existed to their manufacture in this city after the arrival of the steamer.

In several cases it appeared by the petitioner's own admission that he was a laborer in China; that he came to this country wholly unprovided with money; and that he expected to enter the store of his brother, or uncle, or other relative, as a porter. In such cases he was remanded to the ship; but even in those cases where the petitioner, or his uncle, or other relatives declared that he was to be admitted to the business, the court became aware that it might be the victim of gross imposition if, on such testimony, any Chinese person engaged in mercantile pursuits here could import as many laborers as he might declare to be brothers, sons, or nephews, and testify that he proposed to admit them to the business. In some instances pretentions of this kind have been summarily rejected. In other instances the court has felt compelled to discharge the petitioner on a preponderance of proof, though not without serious misgivings as to the facts of the case.

Third. Children brought to or sent for by their parents or guardians in this city. In almost all these cases the petitions were filed on behalf of children of from 10 to 15 years of age. Their fathers or other relatives testified that they had sent for them to be brought to the United States with a view of placing them at school to learn the English language, and later to adopt them into their business. The parents who thus claimed to exercise the natural right to the custody and care of their children were, in almost every instance, Chinese merchants; sometimes of considerable substance, resident here, and entitled, under the provisions of the treaty, to all the rights, privileges, and immunities of subjects and citizens of the most favored nation. Absurdly enough, these children, in many instances, were provided with Canton certificates, but, though they were in no sense merchants, many of them being much too young to earn their living, they were certainly not laborers; and it was not without satisfaction that I found there was no requirement of the law which would oblige me to deny to a parent the custody of his child, and to send the latter back across the ocean to the country from which he came.

The foregoing presents a general, but I think sufficient, statement of the various questions which have arisen in these cases, and of the rulings of the court upon them. If there be error in those rulings I am unable to discern it. It will be cheerfully corrected when found to exist by the judgment of a higher court, or even when pointed out by any one who shall first have taken the pains to ascertain what rulings of this court have actually been, a natural, and one would think necessary, preliminary which has hitherto been largely dispensed with by the more vehement of those by whom the action of the court has been assailed. That some persons have been suffered to land under Canton certificates who were in fact within the pro-

hibited class there is great reason to fear. How this could have been prevented by the action of any court, honestly and fearlessly discharging its duty under the law and the evidence, has not been pointed out.

By the constitution and laws of the United States, Chinese persons, in common with all others, have the right "to the equal protection of the laws," and this includes the right "to give evidence" in courts. A Chinese person is therefore a competent witness. To reject his testimony when consistent with itself, and wholly uncontradicted by other proofs, on the sole ground that he is a Chinese person, would be an evasion, or rather violation, of the constitution and law which every one who sets a just value upon the uprightness and independence of the judiciary, would deeply deplore. But while according to Chinese witnesses the right to testify secured to them by the constitution and the law, no means of arriving at the truth within the power of the court have been neglected, and the ingenuity of the district attorney and the court has been taxed in the attempt to elicit the truth by minute, rigorous, and protracted cross-examinations. That it has frequently been baffled was naturally to be expected. But notwithstanding these unavoidable evasions, the practical operations of the act has been by no means unsatisfactory.

Returns obtained from the custom-house show that from the fourth of August, 1882, to the fifteenth of January, 1884, a period of nearly 16 months, there have arrived in this port 3,415 Chinese persons. During the same period there have departed no less than 17,088. It thus appears that not only has the flood of Chinese immigration, with which we were menaced, been stayed, but a process of depletion has been going on which could not be considerably increased without serious disturbance to the established industries of the state. It is stated that the wages of Chinese laborers have advanced from $1 to $1.75 *per diem*,—a fact of much significance, if true. It is much to be regretted that the notion that the law has, through its own defects, or the fault of the courts, proved practically inoperative, has been so widely and persistently disseminated. Such a misapprehension cannot have failed to be injurious to the state by preventing the immigration of white persons from the east to replace the Chinese who are departing.

Another circumstance which, though not contemplated by the law, has incidentally attended its enforcement, may be mentioned. The costs, the attorneys' fees, and the inconvenience and expense of attending upon the courts until their cases can be heard, must, in effect, have imposed upon the Chinese arriving here charges nearly or quite equal to the capitation tax, which in Australia has been found, it is said, sufficient to secure their practical exclusion. On this point I have no accurate information. But the liability to the charges I have mentioned cannot fail to exercise a strong deterring influence upon the lower classes of Chinese laborers.

In the case at bar the proofs establish beyond a rational doubt

that the petitioner was in the United States at the date of the treaty, and that he left the United States before the passage of the law which enabled or required Chinese laborers to procure custom-house certificates. He is therefore, in my judgment, entitled to be discharged.

MISSISSIPPI MILLS CO. *v.* RANLETT and others.[1]

(Circuit Court, E. D. Louisiana. December, 1883.)

INSOLVENT LAWS OF LOUISIANA.

The insolvent laws of Louisiana do not, by their declatory force solely, without any other investiture of title, the possession remaining in the debtor, remove the property of the debtor beyond the reach of a creditor who is a resident of another state, and who proceeds in the circuit court.

Ogden v. *Saunders*, 12 Wheat. 213, followed.

Bank of Tennessee v. *Horn*, 17 How. 159, distinguished.

On Rule to Dissolve Attachment.

E. H. Farrar, for plaintiff.

The court is asked to let go its jurisdiction over and its possession of the defendant's property, and to surrender the same to the state court and its appointed officer, to be there and by him administered under the state insolvent laws. Neither the state court nor its officer, the syndic, ever had any *actual* custody of the property. It was seized by the marshal in the hands of the defendants.

It is contended by the syndic that the cession made by the debtor and accepted by the state court *ipso facto* vested the creditors and the court with the title and the *constructive* possession of the property, so as to place it from that moment *in gremio legis*, and beyond the jurisdiction and control of this court.

The plaintiff contends—

(1) That the insolvent laws of Louisiana are not operative against the plaintiff, who is a citizen of another state, either in whole or in part; in other words, that those laws are to be considered as *not written*, either in a state or in a federal court. The syndic admits that they are inoperative *in part*, but not as a whole. For instance, he admits that they are powerless to stay proceedings in this court. He admits that a discharge of the debtor is inoperative here. But he contends that in one respect they *are operative*, and that one respect is that they have the effect *proprio vigore* to transfer to the state tribunals *sole* jurisdiction over the property of the insolvent, with the *sole* power to sell and distribute the same among his creditors.

The authorities repudiate specifically such a distinction. 5 Gill, 426; 4 Gill & J. 509; 2 Md. 457; 5 Md. 1; *Poe* v. *Suck*, quoted by the

[1] Reported by Joseph P. Hornor, Esq., of the New Orleans bar.