

introduce a provision like this: every Chinese person "except the wife and child of a Chinese man presenting the required certificate." That would, also, be legislating, rather than construing. We do not perceive that it would make any great difference, when the construction becomes known, and it is the natural construction which any one would put on the act. The husband, when he obtains a certificate for himself, can as readily obtain it for his wife and child,—either an independent certificate, or have the name and facts showing the relations of the parties introduced into his own certificate concerning them all. Any other construction would open the door to extensive frauds that might be perpetrated, because there can be no distinction between an infant from the time he is born until he is 21 years of age. He, in law, is a minor—an infant—until his majority, under the control of his father and a part of his father's family. There are a great many coming here from 12 to 21 years of age, and any one who might choose to father these minor children might bring any number of them hither if the construction claimed for it is allowed. It would open the door to frauds and difficulties, whereas, now, on the construction adopted, the requirements of the act are very clear, and can be readily complied with by the party applying for a certificate for himself, by, at the same time, procuring one for his wife and child, or having the proper facts incorporated into his own certificate. These are the propositions which we adopt in the construction of the new act, and which we propose to apply in passing upon the questions arising in the cases that are now before us.

UNITED STATES v. WEBSTER.¹

(District Court, D. Indiana. May Term, 1884.)

1. INDICTMENT—SOLDIERS' DISCHARGE PAPERS—WITHHOLDING OF.

The act of May 21, 1872, (17 St. at Large, 13,) "prohibiting the retention of soldiers' discharges by claim agents and attorneys," is still in force as to the retention of soldiers' discharges; and while not carried into the Revised Statutes, neither is any portion of it embraced in any section of the Revision, within the meaning of the "repeal provisions," (Rev. St. §§ 5595, 5596,) and it is not therefore affected nor changed by the Revision.

2. SAME—REV. ST. § 5485—LAND-WARRANTS.

Section 5485, Rev. St., is taken textually from section 31, act of March 3, 1873, (17 St. at Large, 535,) which act impliedly repealed that part of the act of 1872, *supra*, relating to the withholding of land-warrants; but section 5485, Rev. St., *per se*, does not in any way concern nor affect the act of 1872 in respect to discharge papers.

On Motion for Instruction to Jury.

Baker, Hord & Hendricks, for defendant.

¹ Reported by Chas. H. McCarer, Esq., Asst. U. S. Dist. Atty.

Chas. L. Holstein, U. S. Atty., and *Chas. H. McCarer*, Asst. U. S. Atty., for the United States.

Woods, J. The first count of the indictment is predicated upon the act of congress approved May 21, 1872, and charges the defendant with having unlawfully withheld a discharge paper from its owner. Counsel for the defendant ask an instruction to the jury to the effect that this law was repealed by the enactment of the Revised Statutes of the United States, section 5485, of which, it is claimed by counsel, embraces a portion of the act in question, namely, the portion which makes it a misdemeanor to withhold a land-warrant from the owner without his consent. In the judgment of the court the instruction must be denied. The "repeal provisions" of the Revised Statutes (title 74, §§ 5595, 5596) are to the effect that the Revision shall be deemed to "embrace the Statutes of the United States, general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of congress," and that "all acts of congress passed prior to said first day of December, * * * any portion of which is embraced in any section of said Revision, are hereby repealed: provided, that * * * all acts of congress passed prior to said last-named day, no part of which are [is] embraced in said Revision, shall not be affected or changed by its enactment."

While the act of 1872, in the terms of its enactment, embraces *land-warrant* as well as *discharge papers*, it had been repealed in respect to land-warrants before the enactment of the Revision, and consequently it cannot be said with propriety that the provisions of section 5485 of the Revision, in respect to the withholding of land-warrants, was taken from the act in question. On the contrary, it is plain that section 5485 was taken textually from section 31 of the act of congress, approved March 3, 1873, entitled "An act to revise, consolidate, and amend the laws relating to pensions." 17 St. 535. This section (31) declares it to be a high misdemeanor to withhold wrongfully from the owner the land-warrant issued to him, and provides for different and severer punishments than are required for the like offense by the act of 1872, and consequently, by implication, repeals that act in respect to land-warrants; but as a repeal by implication, in such a case, goes no further than the inconsistency between the later and the earlier statute, it must be held that in respect to discharge papers the law of 1872 is still in force.

ESTES and others v. WILLIAMS and others.

(Circuit Court, S. D. New York. July 31, 1884.)

TRADE-MARK—FOREIGN PUBLISHER—AMERICAN ASSIGNEE—USE OF A NAME—RIGHT OF ACTION.

The publisher of "Chatterbox," in England, having assigned the exclusive right to use and protect that name in this country, the assignee may maintain his action against any other person who undertakes to publish books under that name in the United States.

In Equity.

J. L. S. Roberts, for orators.

Walter M. Rosebault and *Roger Foster*, for defendants.

WHEELER, J. Mr. James Johnston, of London, England, appears to have published a regular series of juvenile books of uniform appearance, and in a style of peculiar attractiveness, and called them the Chatterbox, until they have become widely known and quite popular by that name, in that country and this. He assigned the exclusive right to use and protect that name in this country to the orators for 10 years from January 1, 1880. The defendants have since that time commenced the publication of a series of books, and called them by that name, and made them so similar in appearance and style to those of Johnston as to lead purchasers to think they are the same. As a matter of fact it is found that they intended to make the books appear to be the same, and to avail themselves of the popularity which the books had attained by the labor and skill bestowed upon them by and at the expense of Johnston. There being no copyright to prevent, the defendants claim the right to so print and publish the series of books in this country, and that if they have not the right, the orators have no right to prevent them. There is no question but that the defendants have the right to reprint the compositions and illustrations contained in these books, including the titles of the several pieces and pictures. *Jollie v. Jaques*, 1 Blatchf. 618. That does not settle the question as to the right claimed here. There is work in these publications aside from the ideas and conceptions. Johnston was not the writer of the articles nor the designer of the pictures composing the books, but he brought them out in this form. The name indicates this work. The defendant, by putting this name to their work in bringing out the same style of book, indicate that their work is his. This renders his work less remunerative, and while continued is a continuing injury which it is the peculiar province of a court of equity to prevent. These principles are discussed, settled, and applied in *McLean v. Fleming*, 96 U. S. 245.

It has been argued that there have been various publications from earlier times by the same name, so that no new right to the use of that name could be acquired. This would be true, doubtless, as to all such publications as those to which the name was applied, but not as