

partures exceed the number of arrivals by 12,000. Not only, therefore, has the number of the Chinese on this coast not increased, but it has been diminishing (after making due allowance for those who may have clandestinely crossed the northern boundary of the United States) at the rate which ought to satisfy the sturdiest opponent of this class of laborers,—a rate which could not be largely increased without serious disturbance to the industries of this coast. But, even if this were not so, there is a price too high to be paid, without absolute necessity, in any case, for the exclusion of Chinese laborers, and that price is the national honor. And especially, when, as I have shown, the plighted faith of the nation may be kept without impairing the effectiveness and satisfactory operation of the law. By the construction here adopted, also, the treaty and the law are in harmony; and the various provisions of the act are consistent and in accord with each other. But, on the construction insisted upon by the United States attorney and sanctioned by the presiding justice, the treaty and the law conflict, and various provisions of the restriction act itself are inharmonious and inconsistent with each other.

I therefore dissent from the decision of the presiding justice, and from the order remanding petitioner.

CASE OF THE CHINESE WIFE.

In re AH MOY, on Habeas Corpus.

(Circuit Court, D. California. September 29, 1884.)

CHINESE IMMIGRATION—BAILING REMANDED PRISONER.

When a Chinese person, after final hearing on *habeas corpus*, has been remanded to the marshal to be deported from the United States upon the vessel by which she was brought to this country, and such vessel has departed, she cannot be admitted to bail upon a recognizance that she will appear when a vessel is ready to depart. Per FIELD, Justice; SAWYER, HOFFMAN, and SABIN, JJ., dissenting.

Application to Allow Prisoner Remanded to Give Bail.

T. D. Riordan and *L. I. Mowry*, for petitioner.

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

Before FIELD, Justice, and SAWYER, HOFFMAN, and SABIN, JJ.

FIELD, Justice. In this case Ah Moy was remanded to the custody of the marshal, to be deported from the United States upon the vessel by which she was brought to the port of San Francisco, or some other vessel of the steam-ship company. It appears from the statement of her counsel that the vessel in which she was brought has departed, and that no other vessel of the company will leave this port

under two weeks. He therefore asks that, in the mean time, she may be admitted to bail, upon a recognizance that she will appear when the vessel is ready to depart. The application cannot be granted. According to our decision, the petitioner was, under the law, prohibited from landing. We have no authority to allow this law to be evaded upon any conditions. We cannot say she shall be allowed to land for 15 days, upon giving bail for her appearance at the end of that time, without a violation of its provisions. Application denied.

SAWYER, J., *dissenting*.¹ Ah Moy, the wife of a Chinese laborer, came from China on the steam-ship City of Tokio, with her husband, who was entitled to re-enter the United States and was permitted to land. The wife, who had never been in the country before, was not permitted to land, and was, consequently, detained on the ship by the master. A writ of *habeas corpus* having been obtained, she was produced in court upon the return of the writ, and by the court admitted to bail pending the proceeding to determine whether or not she was entitled to land. Upon the final hearing the question arising under the restriction act was determined against her, and she was remanded to be retransported to China, and ordered into the custody of the marshal for the purpose of returning her to the custody whence she had been temporarily taken under the writ for the purposes of the inquiry as to her rights. Upon attempting to execute the order to remand petitioner it was found that the ship on which she came had departed on her regular voyage, and would not return for several weeks, and that no other steamer belonging to the same company would depart for 15 days. The agents of the ship refused to receive her till a ship should be ready to leave for China. There was no other ship of any line that would depart for several days. The marshal, upon this state of facts, confined the petitioner in the county jail for safe-keeping until he could execute the order, and thereupon she makes this application to be admitted to bail pending the delay thus necessarily and unavoidably occurring. A final order remanding the petitioner having been made, and she being in custody for the purpose of executing the order, and there being no appeal, the circuit justice is of the opinion that the court has no further jurisdiction or power to admit her to bail, and that she must continue in the custody of the marshal till the order remanding her can be fully executed. From this ruling I am compelled to dissent.

When the body of a petitioner is produced in court, on the return to a writ of *habeas corpus*, the petitioner is in the control of the court. Pending the proceeding to determine her rights the court can temporarily and provisionally commit the petitioner to the party detaining her, if deemed safe and proper to do so, or may commit her to the custody of the marshal, or may admit her to bail. In either

¹ HOFFMAN and SARIN, J.J., who sat as consulting judges, concurred in the dissenting opinion of the circuit judge.

case she is in the custody of the law. When an order to remand has been made, and the petitioner placed in the custody of the marshal for the purpose of executing the order to remand, she is still in the custody of the law, and under the control of the court till the order to remand has been finally executed. The marshal is but the executive arm of the court, and while the petitioner is still in his custody, by reason of the order to remand not having been fully carried out, both she and the marshal are under the control of the court; and the court, in my judgment, has jurisdiction and authority to admit to bail during any further necessary detention or any unavoidable delay which prevents an immediate execution of the order to remand. In my judgment, the admission to bail under such circumstances and for such purposes would not, in contemplation of law, be a landing of the petitioner contrary to the provisions of the Chinese restriction act. As was said in the *Case of Ah Kee, ante*, 701, recently decided, while provisionally taken into the custody of the court, and temporarily removed from the ship in order that she may not be carried away pending the proceedings to determine the legality of her detention, in contemplation of law she has not been landed. This being so, she cannot be deemed to have been landed till the court has divested itself of its custody and control of her person by either discharging her altogether or fully executing the order to remand her. She is still in the custody and control of the law while lawfully on bail. I therefore dissent from the order denying bail.

Conceding the power of the court to admit the applicant to bail under the circumstances stated, I think it would be a great hardship, not to say a gross violation of her personal rights, to refuse it upon security satisfactory to the court. I think she should be admitted to bail. But the statute expressly provides, in case of an opposition of opinion between the judges, that a judgment or order shall be made in accordance with the views of the presiding judge. The opinion of the presiding justice must therefore prevail, till the question shall be finally decided by the supreme court on the certificate of opposition of opinion certified to it by the disagreeing judges for that purpose.

LAWTHER v. HAMILTON and another.

(Circuit Court, E. D. Wisconsin. June 2, 1884.)

PATENTS FOR INVENTIONS—LAWTHER PROCESS FOR TREATING OLEAGINOUS SEEDS.

Patent No. 168,164, granted to Alfred B. Lawther, September 28, 1875, for an improvement in processes of treatment of oleaginous seeds, compared with other methods in use previous to the granting of such patent, and *held*, that the Lawther patent cannot be sustained as a patent for a process.

In Equity.

Munday, Evarts & Adcock, for complainant.

Davis, Riess & Shepard and Fred. C. Winkler, for defendants.

DYER, J. This is a suit to restrain the alleged infringement by the defendants of a patent granted to complainant, September 28, 1875, No. 168,164, for an improvement in processes of treating oleaginous seeds. In the specifications of the patent, the patentee states that the object of his invention is "to improve the process of working flaxseed, linseed, and other oil-seeds in such a manner that a greater yield of oil is obtained at a considerable saving of time and power in the running of the crushing, mixing, and pressing machines, while also a cake of superior texture is produced." The specifications proceed as follows:

"Hitherto, it has been the practice to crush the oil-seeds between revolving rollers, and completing the imperfect crushing by passing them under heavy stones known as edge runners or mullers, under addition of a quantity of water, the crushed and moistened seed being then taken from the muller stones and stirred in a heated steam jacketed reservoir preparatory to being placed in the presses for extracting the oil. This process has been found imperfect in regard to many points, but mainly on account of the overgrinding of portions of the seed and the husks or bran when the seeds were exposed for too long a time to the action of the muller stones, so as to form a pasty mass and produce an absorption of oil by the fine particles of bran; while, on the other hand, the under-grinding, by too short an action of the stones, rendered the presses incapable of extracting the full amount of oil from the seed.

* * * * *

"My process is intended to remedy the defects of the one at present in use, and consists mainly in conveying the oil-seeds through a vertical supply tube and the feeding roller at such degree of pressure to powerful revolving rollers that each seed is individually acted upon and the oil-cells fully crushed and disintegrated. They are then passed directly, without the use of muller stones, to the mixing machine, to be stirred, moistened, and heated by the admission of small jets of water or steam to the mass, and then transferred to the presses. The oil-seeds are, by my new process, first conveyed to a hopper and fluted seed-roller at the top of an upright feed-tube of the crushing machine, by which the seeds are fed, under suitable pressure, to revolving rollers of sufficient power, which run at a surface speed of about one hundred and fifty to two hundred feet per minute. The pressure on the seeds in the feed-tube is necessary, as the oil-seeds would otherwise not feed readily into the rollers revolving under great pressure. The oil-seeds are thereby compelled to pass evenly and steadily through the rollers, which have, therefore, a chance to act on all of them, and break the oil-cells uniformly without re-