

*In re BUCCIARELLO et al.**(Circuit Court, S. D. New York. February 28, 1891.)***IMMIGRATION—LANDING OF IMMIGRANTS—POWERS OF COLLECTOR.**

The regulation of the secretary of the treasury declares that the superintendent of immigration at the port of New York shall examine into the condition of passengers arriving at that port, and report to the collector whether any person is within the prohibition of Act Cong. Feb. 26, 1885. Act Cong. Feb. 23, 1887, amending the act of 1885, provides that if, on such examination by the superintendent, any person shall be found within the prohibition of the act, and the same is reported to the collector, such person shall not be permitted to land. *Held*, that such power of determination is vested in the superintendent of immigration, and not in the collector.

At Law.

Robert D. Benedict, for petitioners.

Edward Mitchell, U. S. Dist. Atty., and *John O. Mott*, Asst. U. S. Dist. Atty., for collector.

WALLACE, J. Under the regulations of the secretary of the treasury of the date of April 15, 1890, the duty is devolved upon the superintendent of immigration at the port of New York, or the officers assigned and employed under his supervision, to examine into the condition of passengers arriving at that port, and report to the collector in writing whether in such examination there has been found any person included in the prohibition of the act of congress of February 26, 1885, as amended February 23, 1887. Section 6 of the amendatory act of February 23, 1887, declares that if in such examination there shall be found any person included in the prohibition of the act, and the same is reported in writing to the collector, such person shall not be permitted to land. Undoubtedly, under the powers conferred upon the secretary of the treasury by sections 6 and 7 of the amendatory act, the power of determination might have been conferred by the secretary of the treasury upon the collector. But by the regulations it has not been conferred upon the collector, and devolves upon the superintendent of immigration, or the officers acting under his supervision. Consequently, the collector has no judicial functions, and is not called upon to decide whether any passenger belongs to any one of the prohibited classes. It follows that, if there was any competent evidence to justify a report by the superintendent of immigration or the acting superintendent that the petitioners migrated under a contract to perform labor or service, the decision of the superintendent or of his assistant is conclusive. This court cannot undertake to weigh conflicting evidence for the purpose of ascertaining whether a correct conclusion was reached. If the only evidence of a contract with the petitioners were that contained in the letter from Nicola Grilli to Alberico Serafino, and the letter from Serafino to Barsotti, I should hold, without any hesitation, that it did not appear that the petitioners came here under a previous contract. But the affidavits made by the emigrants may justify the conclusion that the letter had been written to Serafino by Barsotti, promising to employ them at specified wages *per diem*, and in that

view that there was a contract, within the prohibition of the statute. If the superintendent of immigration chooses to make a supplemental report to the collector, to the effect that the basis of this report is the evidence of the previous contract contained in the letters of Grilli and Serafino, and no other evidence, the collector may amend his return on or before the 3d day of March, setting forth that such a report has been filed. The further hearing of the case is postponed until the 4th day of March.

McKEOIN v. NORTHERN PAC. R. Co.

(Circuit Court, D. Montana. January 15, 1891.)

1. RAILROADS—RIGHT OF WAY—PLEADINGS.

Where, in an action on an award of damages against the Northern Pacific Railroad Company for a right of way across plaintiff's land, the answer, after denying the allegations of the petition, sets up an easement of way under a grant by Act Cong. July 2, 1864, over the land, which at that time was public land, and alleges that plaintiff's entry thereon was subject to the grant, but fails to aver specifically a compliance with all the provisions of the statute which are prerequisites to the taking effect of the grant, and the replication admitted the grant, but alleged that the right of way across his farm was not the route selected under the terms of the statute, which had been located some years before several miles further south, and that the company's claim to a right of way under the grant was exhausted thereby, it was error to enter judgment for defendant on the pleadings.

2. AWARD FOR DAMAGES—ACTION—PLEADING.

Where a complaint in an action on an award appraising damages sustained by plaintiff from the building of a railroad across his land sets out his ownership of the land, that defendant, a railroad corporation, has constructed its road over his premises, and appropriated a way therefor, the appointment of commissioners by a court of competent jurisdiction, their award, and the failure of defendant to pay the same, a cause of action is stated, without negating any defense which defendant may have.

3. EVIDENCE—JUDICIAL NOTICE—MAP OF RIGHT OF WAY.

Where the issue is as to the selection and location by defendant railroad company of a right of way across public land, under Act Cong. July 2, 1864, and the defendant omits to plead the specific acts constituting the alleged location, the court cannot take judicial notice of the filing of the map of its route with the secretary of the interior on February 21, 1872, or that the route thereby fixed was its general route, and not its definite route, the fixing of which required further surveys, although the map by the filing became a part of the department records.

At Law.

J. H. Shober and J. W. Kinsley, for plaintiff.

Cullen, Sanders & Shelton, for defendant.

KNOWLES, J. This case was brought in the territorial district court. On motion of defendant, judgment was rendered against the plaintiff upon the pleadings. The plaintiff appealed from this judgment to the supreme court of the territory, and the case was pending there when Montana became a state in the Union. From this latter court it was transferred to this court, under the provisions of the act under which Montana was admitted into the Union. The ruling of the court in granting the motion for judgment on the pleadings is assigned as error.

The action in this case was brought on what may be called an award