

clause refers to any pledge, payment, transfer, assignment, or conveyance by a bankrupt, directly or indirectly, absolutely or conditionally, of any part of his property, for the purpose of preferring any creditor, or for the purpose of preventing the property from coming into the hands of the assignee. If these judgments had been followed by sale on execution of the bankrupt's property, there would have been an indirect transfer of his property for the purpose of preventing its coming into the hands of the assignee, and the case would have been within the ninth clause. *In re Pitts*, 8 Fed. Rep. 263. But this is not alleged. Nothing appears to have been done after entry of judgment. It does not even appear that any attempt was made by the plaintiffs to collect their judgments from the assigned estate either by execution or claim of payment by the assignee. Upon the case as stated by this specification, I am compelled to conclude that there is no ground shown therein to prevent the discharge. The third specification must, therefore, be stricken off. Let an order be prepared accordingly.

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*In re* HIRSCH BERJANSKI.<sup>1</sup>

(District Court, E. D. New York. September 2, 1891.)

**HABEAS CORPUS—IMMIGRATION—ACT OF MARCH 3, 1891—SPECIAL INQUIRY—DUTY OF SUPERINTENDENT.**

The act of March 3, 1891, relative to immigration and the importation of contract labor, makes it the duty of the superintendent of immigration, upon the arrival of an immigrant in this country, to take the oath of the immigrant, or of some other person, as to any facts tending to show *prima facie* that the immigrant belongs to one of the excluded classes. But thereafter the immigrant has the right to demand a special inquiry, and at such inquiry to show affirmatively, by any competent testimony, that he does not belong to any of the excluded classes. When such inquiry has been had, the decision of the inspection officers is conclusive upon the courts. The remedy, if the decision is wrong, is by an appeal to the superintendent of immigration, and then to the secretary of the treasury.

At Law. On return to petition for *habeas corpus*.

*A. D. Sarasohn*, for petitioner.

*Jesse Johnson*, U. S. Dist. Atty.

BENEDICT, J. In this case it appears by the petition for *habeas corpus* that the petitioner is an immigrant in the custody of James O'Beirne, acting commissioner of immigration, who is about to send him back to the place whence he came, notwithstanding the fact that the petitioner has demanded a special inquiry to be held, touching his right to enter the United States, and has offered on such inquiry to show affirmatively and satisfactorily that he does not belong to one of the excluded classes. This averment is not denied by the acting commissioner of immigration, who contends that, inasmuch as he took from the immigrant an affidavit

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

which showed him to be one of an excluded class, the special inquiry provided by the first section of the statute has been had, and that the only remedy open to the immigrant is by an appeal to the superintendent of immigration. I do not agree with this view of the law. In my opinion, the act of March 3, 1891, makes it the duty of the inspector of immigration, upon the arrival of an immigrant in this country, to take the oath of the immigrant, or of some other person, as to any facts tending to show *prima facie* that the immigrant belongs to one of the excluded classes; but that the immigrant has thereafter the right to demand a special inquiry, and at such inquiry to show affirmatively, if he can, by any competent testimony, that he does not belong to one of the excluded classes. The statute expressly confers upon the immigrant the right to such an inquiry, which the statute declares shall be a "special inquiry." This special inquiry is to be instituted upon the request of the immigrant, and he is entitled to a reasonable time to make such a request after being informed as to the result of the ordinary inquiry instituted in the first instance by the inspector. It should proceed with all reasonable dispatch, at a time and place fixed by the acting commissioner, of which fair notice has been given to the immigrant. The testimony upon such inquiry must be under oath, and the statute declares that all testimony taken upon such inquiry shall be entered of record. This is in order that the testimony before the inspector may be presented to the superintendent of immigration, and afterwards to the secretary of the treasury, in case the appeal allowed by section 8 shall be taken to those officers. When such an inquiry has been had, the decision is conclusive upon the courts, and will not be disturbed. The remedy, if the decision be wrong, is by an appeal to the superintendent of immigration, and then to the secretary of the treasury. The difficulty in the present case is that it is shown by the petition that no such special inquiry as the statute provides has been had; that, on the contrary, it has been demanded and refused. In this position of the case it would seem that the immigrant is entitled to be discharged, inasmuch as he cannot lawfully be sent back. But, inasmuch as the acting commissioner of immigration expresses his willingness to hold such special inquiry now, the proper course is to postpone the hearing upon the petition to give the acting commissioner opportunity to hold such special inquiry, and to state his doings thereon in return to this writ. The hearing is therefore adjourned to the day agreed on by the parties.

*In re* FEINKNOFF.<sup>1</sup>

(District Court, E. D. New York. September 18, 1891.)

## IMMIGRATION—ACT OF MARCH 3, 1891—SPECIAL INQUIRY—EVIDENCE—DETERMINATION BY INSPECTOR.

In order to lawfully debar and return an alien immigrant by virtue of the act of March 3, 1891, on the ground of his being a person likely to become a public charge, there must be a determination by the inspection officer that the immigrant is likely to become a public charge, such determination being made upon competent evidence tending to show such to be the fact; hence, where the record showed a determination that an immigrant was likely to become a public charge, made by the inspector without any evidence to prove the fact, and contrary to evidence adduced by the immigrant, which evidence was disbelieved by the inspector, *held*, that there had been no such determination as the statute contemplates, and no valid order for the return of the immigrant can be made.

At Law. On return to writ of *habeas corpus*.

A. H. Sarasohn, for petitioner.

Jesse Johnson, U. S. Dist. Atty.

BENEDICT, J. This case comes before the court upon the return made by James O'Beirne, as acting commissioner of immigration and inspection of immigration, to a writ of *habeas corpus* issued upon the petition of Adolph Feinknopf, an alien immigrant, who has arrived by water at the port of New York, and has been ordered by the said inspector of immigration to be returned to the port whence he came. The return shows that the petitioner, upon arrival, was inspected by the inspector, and, a special inquiry having been demanded by the petitioner, such special inquiry was had by the said inspector; and thereupon it was determined and decided by the said inspector that the petitioner was a person likely to become a public charge, and therefore the inspector directed that the petitioner be detained, and sent back to the place whence he came. In connection with the return is the testimony taken upon the special inquiry held by the inspection officer. This evidence, which is set forth at length in the return, consists of the testimony of several sworn witnesses produced by the petitioner, whose testimony, if believed, shows that the petitioner is 40 years old; that he is a native of Austria; that he is a cabinet-maker by trade, and has exercised that trade for 25 years; that he has no family; that he has baggage with him, worth \$20, and 50 cents in cash; that he is a man who can find employment in his trade, and is willing to exercise the same. The affidavit of the immigrant before the inspection officer on the preliminary inquiry stated the same facts, and, in addition, that the immigrant has not been an inmate of an almshouse, and has not received public aid or support, and has not been convicted of crime. No testimony was offered upon the special inquiry to contradict this testimony, and upon the argument here it was conceded on behalf of the inspector that there was not before him testimony from any witness tending to contradict the testimony produced by the immigrant. Of course this testimony,

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.