UNITED STATES v. MICHIGAN CENT. R. CO.

(*Circuit Court, N. D. New York.* December 10, 1891.)

IMMIGRATION—ALIEN CONTRACT LABOR LAW.

A railroad company which knowingly employs at its office in New York, near the Canadian border, a person who resides in Canada, and comes daily to his work in the United States, is not engaged in assisting or encouraging the "importation or migration" of an alien, within the meaning of the alien contract labor law. Act Cong. Feb. 26, 1885, § 3.

At Law. Action to recover the penalty for a violation of the alien contract labor law. Judgment for defendant.

John E. Smith, for the United States.

Daniel H. McMillan, for defendant.

WALLACE, J. This is an action to recover the penalty imposed by section 3 of the act of congress of February 26, 1885, entitled "An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its territories, and the District of Columbia." Briefly stated, the facts are these: The defendant, a Michigan corporation, operates a railway between Chicago and Buffalo, the route of which, between the states of Michigan and New York, is through Canada. It has an office at Suspension Bridge, in New York. One Blount applied at that office for employment as a clerk, and was engaged by the defendant at wages of $50 per month, but for no stated period. He continued in the employ of the defendant for several months. Before the expiration of the first month the officers of the defendant ascertained that Blount was an alien, residing in Canada, and having a family there, and that he came from his home each morning to the office of the defendant, and after performing his day's work returned home each night. Nevertheless defendant retained him in its service.

The defendant's liability under the act of congress is precisely the same as though it had made a new contract with Blount at the beginning of his second month of service, with full knowledge of the facts. At the end of the first month the existing contract between them was at an end, and thereafter there was an implied contract of the same tenor. The statute, by section 1, makes it unlawful for any person or corporation to prepay the transportation, or in any way assist or encourage the importation or migration, of any foreigner into the United States under contract or agreement, express or implied, made previous to the importation or migration of such foreigner; and, by section 3, declares that for every violation of the provisions of section 1, the person or corporation violating the same, by knowingly encouraging the migration or importation of an alien to perform labor or service of any kind under contract or agreement, expressed or implied, made with the alien previous to his becoming a resident or citizen of the United States, shall forfeit and pay for such offense the sum of $1,000. Notwithstanding the defendant

knowingly encouraged a foreigner to come into this country and perform services here under an implied contract previously made with him, it is not liable for the penalty unless it has encouraged the "importation or migration" of the foreigner. The statute, being penal, must be strictly construed, and cannot be extended to a case which is not manifestly within its meaning. Some light upon the meaning of the terms "importation or migration" is derived by reading other sections of the act. One of these imposes a penalty upon the master of a vessel in which the assisted foreigner has been brought here; another prohibits collectors of ports from permitting such foreigners to land; and another authorizes the secretary of the treasury, "in case he shall be satisfied that an emigrant has been allowed to land" contrary to law, to cause such emigrant to be returned at the expense of the importing vessel, or, if he entered from an adjoining country, at the expense of the person previously contracting for his services.

The several provisions of the act are directed against assisted immigrants, as well as those who prepay their transportation or encourage their migration or importation by previous contract. Blount was not an immigrant, because he did not come here intending to acquire a permanent or a temporary home. As he did not migrate here, the defendant did not encourage his "migration." He was not imported, nor did the defendant assist in his "importation," any more than he was exported, and assisted in his exportation, when he went home at night. It may be that such a case as this is within the mischief which the promoters of the law intended to remedy, but it is not within the ordinary import of the words of the statute. If every person who comes into this country migrates or is imported, within the meaning of the statute, because he remains temporarily and works here, the statute will reach many cases in which its application would be a manifest absurdity. If the construction of the act contended for by the government is correct, every alien sailor who is engaged in a foreign port for a round voyage, and comes here on the ship, and performs his duty while she is within one of our seaports, migrates here or is imported here; and the vessel owner who engages him assists in his "importation or migration," and is liable for the penalty imposed. There are other railroad corporations besides the defendant whose railways are operated both in Canada and in this country. If one of them, like the Grand Trunk for instance, having its domicile and main line in Canada, has branches or a terminus here, and a conductor or brakeman who is a Canadian brings in one of its cars, it would be liable, according to the contention for the government, to the penalty of the act, if it engaged the conductor or brakeman in Canada. This does not seem to be a reasonable interpretation.

Judgment is ordered for the defendant.

UNITED STATES v. COPPELL *et al.*

(*District Court, S. D. New York.* February 13, 1891.)

CUSTOMS DUTIES—TRANSPORTATION BOND—LIABILITY OF PRINCIPAL AND SURETY.

Where transportation bonds, pursuant to sections 3000, 3001, Rev. St. U. S., were executed by principals and surety, conditioned for the transportation of merchandise from bonded warehouse in New York city to be entered and rewarehoused in New Orleans, La., and where such merchandise, through no fault of the principals on the bonds, was not entered at the port of New Orleans, nor rewarehoused therein, but was, upon arrival at New Orleans, shipped by rail to its destination in the republic of Mexico, through a mistake or oversight of the United States inspector of customs at New Orleans, *held*, that the principals and surety upon the bonds remained liable for double the amount of the duties upon said merchandise, according to the condition of the bonds and the provisions of sections 3000 and 3001, Rev. St. U. S.

At Law.

This was a consolidated action, brought by the United States government to recover the penalties upon two transportation bonds given by the defendants as principals and surety. The bonds were in the same form, both dated May 23, 1889,—one being in the penal sum of $100, the other in the penal sum of $300,—conditioned for the transportation from New York to New Orleans, La., of certain drums of caustic soda, which merchandise was contained in bonded warehouse at the port of New York. The condition in both of the bonds was in the usual form provided by articles 725 and 726 of the United States treasury regulations of 1884, and was as follows:

"Now, therefore, the condition of this obligation is such that, if the above-bounden principals shall within four months [days] from the date hereof transport or cause to be transported in Cromwell's line of steamers to New Orleans, and shall within the time herein specified deliver the same to the collector at the said port of destination, and cause due entry thereof to be made for rewarehousing, and shall also within the time herein specified produce to and deposit with the collector of said port of withdrawal a certificate of the collector of the said port of destination that the said merchandise has been delivered to him according to law and rewarehoused, and the duties thereon paid or secured, or, failing so to do, shall pay to the proper collecting officer of the United States at the said port of withdrawal the amount of duties to be ascertained as due and owing on the merchandise aforesaid, and an additional duty of 100 per cent., pursuant to the statute in such case made and provided, then this obligation to be void; otherwise it shall remain in full force."

The merchandise was withdrawn from bonded warehouse at the port of New York by two transportation entries in the usual form, both dated May 21, 1889, and providing that the "merchandise was intended to be withdrawn from warehouse by M. P. & Co. for transportation to New Orleans by route or vessel, Cromwell's line, SS. New Orleans." It was proved upon the trial that the merchandise in both cases was shipped at the port of New York on the steamer New Orleans, of Cromwell's line, on or about the 25th of May, 1889, and arrived in the said steam-ship at the port of New Orleans on or about the 3d day of June, 1889. The special manifest in each case was in the usual form prescribed by the