

"*Second.* Chinamen, who are not laborers, and who may have heretofore resided in the United States, are not prevented by existing law or treaty from returning to the United States after visiting China or elsewhere. No certificates or other papers, however, are issued either by the department or by any of its subordinate officers, to show that they are entitled to land in the United States, but it is suggested that such persons should, before leaving the United States, provide themselves with such proofs of identity as may be deemed proper, showing that they have been residents of the United States, and that they are not laborers, so that they can present the same to and be identified by the collector of customs at the port where they return."

It is impossible for merchants of Chinese nativity, established and domiciled within this country, to obtain from the government of China or any other country certificates meeting the requirements of the sixth section of the restriction act as it has been amended, for which reason the treasury department has interpreted that law as being inapplicable to them, and has made the above regulation to enable them to go and return, without opening a way for others to gain admittance fraudulently. Pursuant to this regulation, many merchants of this class have been permitted to go out of the country temporarily with the assurance from United States officials of the right to return, and have been permitted by United States officials to return without having certificates issued to them by any government. All such merchants who are now within the United States are liable to be arrested and banished if the law requires that this defendant be so treated. I am not inclined to hesitate about enforcing the law, even if it be harsh, but it is my duty to carefully inquire and find authority for it in the law before making a decision which may work ruin to a large number of unoffending persons. The defendant did not return from his visit to Victoria clandestinely or fraudulently. Every question as to his right to return has been once passed upon by a representative of the United States, specially authorized and required to make careful inquiry as to the facts, and decide such questions. There is no law providing for a review of any decision of that officer in such a case by any court; on the contrary, the law does require that the collector's decision shall not be subject to review except by the secretary of the treasury. Of course, if any officer of the executive branch of the government misconstrues or misapplies the law, his action based upon such error may be annulled or disregarded by a court in any case coming within its jurisdiction. But by a line of decisions of the supreme court a general principle has become fixed as part of our national jurisprudence. It is this: When an officer or special tribunal is expressly empowered to receive and examine proofs, and decide any question of fact necessary to be determined in the course of administration of the government or execution of the laws, and no power of review is given to the courts by any statute, the finding of facts made by such officer or special tribunal pursuant to such authority is conclusive upon the parties affected and upon the courts, unless it can be impeached for fraud. Upon this principle the courts are precluded from reopening a case once passed upon by such an authorized officer or special tribunal for the mere purpose of inquiring whether or not the decision was predi-

cated upon legal or sufficient evidence. *Johnson v. Towsley*, 13 Wall. 72; *Steel v. Smelting, etc., Co.*, 106 U. S. 451, 1 Sup. Ct. Rep. 389; *Baldwin v. Stark*, 107 U. S. 465, 2 Sup. Ct. Rep. 473. For the reasons above given I conclude—*First*, that the defendant is not in fact one of the class of persons not lawfully entitled to remain in the United States; *second*, That, having been permitted by a collector of customs to land, after a temporary absence from the United States, without fraud on his part, the defendant cannot be lawfully sent out of the United States because of a mere error of a collector in not exacting legal evidence of the facts as to his identity and the nature of his business. In my opinion, the law does not authorize, but forbids, the execution of the warrant issued by the commissioner in this case. It is the judgment of this court, therefore, that the order and judgment of the commissioner be reversed. The United States attorney having signified a desire to have my decision reviewed by the court of appeals for this circuit I will not discharge the defendant, but will admit him to bail, upon a recognizance with sureties, conditioned for his appearance at the next term of this court, and to abide the final determination of this case after the decision of the appellate court.

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UNITED STATES *v.* SPRAGUE *et al.*

(District Court, E. D. Wisconsin. November Term, 1882.)

1. UNITED STATES BONDS—FRAUDULENT IMITATIONS.

Under Rev. St. U. S. § 5430, denouncing a punishment against any one having in possession "any obligation or other security" after the similitude of any obligation issued by the United States with intent to sell or otherwise use the same, it is no offense to so have in possession a bond issued by a mining company, and resembling a United States' bond, but not purporting to be executed by any party whatever. The want of execution is not merely a fact which the jury may consider in determining as to the degree of similitude, but is a complete bar to a conviction.

2. SAME.

To constitute the offense it is not necessary that the instrument should purport to be an obligation of the United States, or bear such a likeness thereto as to deceive experts or cautious men. It is sufficient if it is calculated to deceive a sensible and unsuspecting man of ordinary observation and care, dealing with a man supposed to be honest.

At Law. Indictment of James D. Sprague and others for having in possession fraudulent imitations of United States bonds. Heard on motion for new trial. Motion granted.

G. W. Hazelton, Dist. Atty., for the United States.

N. S. Murphey, for defendants.

DYER, J. The defendants have been convicted, under section 5430 of the Revised Statutes, of the offense of having in their possession an obligation engraved and printed after the similitude of an obligation issued under the authority of the United States, with intent to sell or oth-