

preciation of values of property and losses of accounts, the ultimate result of the financial panic which had swept over the country."

There being, then, an absence of fraud in the transaction, there can be no doubt the assignees in bankruptcy, or their grantee, the Metropolitan National Bank, have no standing to attack the conveyance. To give such a right to an assignee in bankruptcy, fraud is a *sine qua non*. Section 5046, Rev. St., recites what rights pass to such assignees, viz.:

"All property conveyed by the bankrupt *in fraud* of his creditors, * * * together with the like right, title, power, and authority * * * to sue for and recover and defend the same as the bankrupt might have had if no assignment had been made, shall * * * be at once vested in such assignee."

This statute has been passed upon by the supreme court of the United States in *Warren v. Moody*, 122 U. S. 133, 7 Sup. Ct. Rep. 1063, and *Adams v. Collier*, 122 U. S. 382, 7 Sup. Ct. Rep. 1208, in both of which it was decided that fraud was a necessary element to give the assignee in bankruptcy a right of action, and that insolvency, of itself, or the fact that the property conveyed constituted more in value than the grantor could rightfully withdraw from the reach of creditors, would not, of themselves, vest such a right of action in the assignee. There must be fraud, for so the statute says. In other words, insolvency not then known, and only developed by subsequent events, or the fact that such events showed the property conveyed was an undue part of the grantor's estate, are not to be deemed fraud *per se*; and, as the statute bases the right of the assignee to recover upon the existence of fraud, such fraud must be alleged and proved.

Complaint is made that the appellant was turned out of court on the pleadings. This is not the case. The court expressly stated that, while the case might have rested on that ground, it would decide it upon the proofs. Such being the case, we are not called upon to pass on the pleadings; but, in omitting so to do, we would not be understood as intimating there was error in the court in saying the case might be rested on that point.

Being satisfied, from the evidence, the court arrived at proper conclusions of fact, and to those facts correctly applied the law, its decree must be affirmed, and this appeal dismissed, at the appellant's costs

In re AH YUK.

(District Court, D. Minnesota. January 18, 1893.)

CHINESE—EXCLUSION ACTS—JURISDICTION.

A United States commissioner, while he has authority, in a summary proceeding under the Chinese exclusion acts, to order the deportation of a Chinaman found to be unlawfully within the United States, has no jurisdiction to order him to be imprisoned at hard labor for 30 days prior to the time fixed for his deportation. *U. S. v. Wong Sing*, 51 Fed. Rep. 79, applied.

Petition by Ah Yuk, a Chinaman, for writ of habeas corpus. Prisoner discharged.

H. R. Tinkham; for petitioner.

Eugene G. Hay, U. S. Dist. Atty.

EDGERTON, District Judge. The petitioner, Ah Yuk, was arrested on December 19, 1892, and brought before J. R. Carey, commissioner of the circuit court, for this district, charged with having unlawfully entered the United States, and being on that date unlawfully therein, in violation of an act of congress entitled "An act to execute certain treaty stipulations relating to Chinese, approved May 6, 1882," and the acts amendatory thereof and supplementary thereto; that afterwards, on the said 19th day of December, 1892, the said Ah Yuk was taken before said commissioner, by virtue of said complaint and warrant, who, after a hearing thereon, found and adjudged that said Ah Yuk was a Chinese laborer, and a subject of the Chinese empire; that he came unlawfully to the United States, and was then in the United States contrary to law and in violation of the acts aforesaid; and it was then and there ordered and adjudged by the said commissioner "that the said Ah Yuk be imprisoned at hard labor in the jail of St. Louis county, in said district of Minnesota, for thirty days, and then be removed and deported from the said United States of America to China." The petitioner caused to be issued a writ of habeas corpus, and the return to said writ admits the said allegations.

The sole and only question presented to the court is whether the circuit court commissioner exceeded his authority under the law and constitution when he sentenced the petitioner to be confined at hard labor for 30 days. The petitioner could be arrested, and, upon a summary examination before the circuit court commissioner, could, upon the finding and sentence of that officer, be deported, but this does not necessarily determine that the circuit court commissioner could thus summarily sentence the petitioner to hard labor. In the case of *U. S. v. Wong Sing*, reported in 51 Fed. Rep., on page 79, the learned judge says:

"To give proper effect to all the provisions of this act, it is necessary to give it an interpretation authorizing indictments and criminal prosecutions in those cases in which the government may be able to secure and produce sufficient evidence to justify the same, and at the same time preserving the remedy of summary proceedings in all cases in which criminal prosecutions may be, for any reason, impracticable, and requiring that Chinese persons unable to prove their right to remain in the country, but who cannot be convicted upon a criminal charge, shall be sent to their own country, in accordance with the procedure and practice adopted in enforcing the existing laws. Such procedure and practice permits an information to be filed by the United States attorney, upon which the accused may be brought to trial; and if, on such trial, the judge finds the necessary facts, he may issue process for the removal of the accused to his own country."

If the commissioner had sentenced the petitioner to be deported only, his sentence would not be disturbed, but I think he exceeded his authority, under the law, and also under the limitations and restrictions of articles 5 and 6 of the amendments to the constitution, when he sentenced him to hard labor; and, as that is the charge upon which the writ issued, the petitioner must be discharged from custody.

In re WARE.

(Circuit Court, D. Minnesota, Third Division. June 29, 1892.)

INTERSTATE COMMERCE—LABELING BAKING POWDER.

- In the absence of proof that alum in baking powder is deleterious to health, Gen. Laws Minn. 1889, c. 7, § 1, as amended by Gen. Laws Minn. 1891, c. 119, declaring it a misdemeanor to sell baking powder containing alum, unless the package have a label stating that it contains alum, violates Const. U. S. art. 1, § 8, granting to congress the power to regulate interstate commerce, in so far as it relates to original packages imported from another state.

At Law. Application of R. B. Ware for writ of habeas corpus. Writ granted.

M. D. Munn, for petitioner.

SANBORN, Circuit Judge. Dellafield, McGovern & Co., who were citizens of Illinois, manufactured in that state, and placed in a package which was not marked with the words, "This Baking Powder Contains Alum," a quantity of baking powder, and shipped the same to the prisoner, in Minnesota, who was their agent for the purpose of selling it. The prisoner, as such agent at St. Paul, in the state of Minnesota, sold this original package in the same condition in which he received it. There was no charge that this baking powder was poisonous, or in any way dangerous, or that its use was in any way deleterious to the public health. For this sale the prisoner was committed to the county jail by the municipal court of the city of St. Paul, because it was a violation of section 1 of chapter 7 of the General Laws of Minnesota for 1889, as amended by chapter 119 of the General Laws of Minnesota for 1891, which declares it to be a misdemeanor to sell baking powder containing alum in Minnesota, unless the package containing it is labeled, "This Baking Powder Contains Alum," and imposes a penalty by fine or imprisonment for such misdemeanor. Article 1 of section 8 of the constitution of the United States provides that "the congress shall have power to regulate commerce among the several states." This power to regulate commerce was by this provision of the constitution granted by the people and the states to and vested in the congress exclusively, and no state, by virtue of any power reserved to the states, can lawfully infringe upon this grant. Any act of a state which interferes with interstate commerce in a well-known and sound article of commerce is unconstitutional and void. *Railroad Co. v. Husen*, 95 U. S. 465, 471-473; *Bowman v. Railway Co.*, 125 U. S. 474, 475, 479-481, 484, 485, 488, 489, 497, 507, 508, 8 Sup. Ct. Rep. 689, 1062; *Henderson v. Mayor*, 92 U. S. 271, 272; *Foster v. Commissioners*, 7 Minn. 140, (Gil. 84); *Hall v. De Cuir*, 95 U. S. 485. There is no question that a state, in the exercise of the police power reserved to it, may pass sanitary laws, and laws for the protection of life, liberty, or property within its borders, and, for the purpose of self-protection, may pass reasonable quarantine and inspection laws, but it cannot, under the cover of the exercise of its police powers, substantially prohibit or burden interstate commerce. Thus it may prohibit the importation into the state,