

when in fact he was a junk dealer; that a junk dealer belonged to a more hazardous class than a merchant, and could obtain from this company but \$300 insurance against death, and but \$100 against the loss of a foot, while a merchant could obtain, and this defendant in error did obtain, if he was properly insured as a merchant, \$5,000 insurance against death and \$2,500 against the loss of a foot. There was, however, evidence tending to show that the agent of the company who solicited the application was fully informed of, and well knew the character of, the business and of the occupation in which the insured was engaged when he took his application; that he desired the general agent to classify this risk; that he took the application from the insured, signed in blank, so far as the occupation was concerned, for this purpose; that he stated to the general agent of the company the character of the business and occupation of the insured, and the general agent then classified him, and wrote the word "merchant" into the application, to describe his occupation. On this application the policy was issued and the premium paid. Some portions of the charge of the court upon this state of facts are assigned as error. We shall not pause to state or review them, as the case must be retried in any event. We content ourselves with citing *Insurance Co. v. Snowden*, 58 Fed. 342, and *Insurance Co. v. Robison*, Id. 723, where the rule we deem applicable to this class of cases, and the reasons for it, are stated.

The judgment below is reversed, and the cause remanded, with directions to grant a new trial.

In re AH YOW.

(District Court, D. Washington, N. D. January 16, 1894.)

CHINESE—EXCLUSION ACTS—LABORERS.

A restaurant proprietor, who keeps a place for serving meals, and provides, prepares, and cooks raw materials to suit the tastes of his patrons, is a laborer, and is not privileged to enter the United States as a merchant.

At Law. Petition for habeas corpus in behalf of Ah Yow, a Chinese passenger detained by reason of the refusal of the collector of customs to permit him to land in the United States. Denied.

Frank Hartley Jones, for petitioner.

W. H. Brinker, U. S. Atty.

HANFORD, District Judge. The petition for a writ of habeas corpus in this case is filed in behalf of a Chinese passenger on board the steamship *Tacoma*, and sets forth that said Chinese person is proprietor of a restaurant in Seattle, to which place he is now returning from a visit to China, and that he is unlawfully detained on said vessel by the master thereof, for the reason that the collector of customs has refused to permit him to land in the United States; and, in the argument, counsel for the petitioner insists that a restaurant keeper is not a "laborer," in the sense in which that

word is used in the exclusion acts, and that a Chinese person in that business is privileged to enter the United States the same as a merchant. A restaurant keeper is a caterer, who keeps a place for serving meals, and provides, prepares, and cooks raw materials to suit the tastes of his patrons. A person in that business is not a merchant, nor does he come within the definition of any of the terms used in the statutes to describe the class of Chinese who are privileged to enter the United States; and I hold that, to the word "laborer" in these statutes, meaning must be given broad enough to include master mechanics and tradesmen, such as blacksmiths, cabinet makers, tailors, and shoemakers, who receive orders, and cut and make up materials in such forms and of such dimensions as their customers require. Those who, in following such callings, employ journeymen, and perform no manual labor themselves, still represent themselves to be, and they are, in popular estimation, blacksmiths, cabinet makers, tailors, and shoemakers,—that is to say, skilled workmen. All Chinese persons who follow such callings are barred from coming to the United States. I hold that a restaurant keeper belongs to the same class, and is likewise barred. The application for a writ of habeas corpus is therefore denied.

UNITED STATES v. CAMFIELD et al.

(Circuit Court, D. Colorado. January 25, 1894.)

No. 2,972.

1. PUBLIC LANDS—UNLAWFUL INCLOSURES.

The inclosure of public lands by a private corporation is unlawful, under the act of February 25, 1885, without regard to the intent with which it is done.

2. SAME.

An inclosure by one owning odd sections is unlawful, even though the fence is so constructed as to be entirely on his own lands, if the result is to inclose therewith the even sections belonging to the government.

Proceeding against Daniel A. Camfield and William Drury for unlawfully inclosing public lands. Heard on exceptions to the answer. Sustained.

All the odd-numbered sections in townships 7 and 8 N., range 63 W. of the sixth principal meridian, were purchased by the defendants from the Union Pacific Railway Company. The lands were incapable of successful cultivation without irrigation, as also were the adjoining lands, belonging to the United States. The defendants have undertaken to build reservoirs, to be supplied from the neighboring stream, for the irrigation of their own lands and the adjacent even-numbered sections belonging to the government. The method which the defendants pursued to inclose the lands was to place a fence on their own—the odd-numbered—sections, along the lower line thereof, and dropping down about six inches, and continuing the line of fence on the odd-numbered sections in the tier of sections next below on the upper line thereof, making a continuous fence except at intervals where the break of six inches occurs.

H. V. Johnson, U. S. Dist. Atty.

H. E. Churchill, A. C. Patton, and James W. McCreery, for defendants.