

reviewed, and, if he has not followed the directions and observed the conditions of the constitution and laws of the United States, pertinent to such matters, can be set aside as void. The highest as well as the most obscure official must respect the requirements of the constitution and the laws made thereunder. The acts of the executive are subject to review by the courts by means of the writ of habeas corpus. It is not now necessary to cite authorities on this question, nor to recall incidents in English history, showing that this writ will issue, no matter how obscure the prisoner, nor how great the power of the official who detains him. We find that the requisitions issued by the governor of the state of Washington did not comply with the law, and that the governor of the state of Maryland was not furnished with a copy of either an indictment or affidavit, made as required by section 5278 of the Revised Statutes of the United States, and consequently we hold that the warrant of removal is void.

The judgment of the circuit court will be reversed, and the petitioner will be discharged from arrest.

Ex parte DINSMORE.

(Circuit Court of Appeals, Fourth Circuit. October 2, 1894.)

No. 77.

Appeal from the Circuit Court of the United States for the District of Maryland.

Application of Frank A. Dinsmore for discharge under writ of habeas corpus. Writ denied, and petitioner appeals.

William Pinkney Whyte, for appellant.

John P. Poe, for appellee.

Before GOFF and SIMONTON, Circuit Judges, and HUGHES, District Judge.

GOFF, Circuit Judge. This case is similar to the Case of Hart (decided at the present term) 63 Fed. 249. The requisitions, and the papers accompanying them, are, in substance, the same. The information filed in the superior court of the state of Washington for Pierce county, attached to the requisition issued in the Case of Hart, was against Hart and this petitioner. In fact the transactions are the same, and the proceedings to secure the arrest and removal of the parties are based on the same character of papers. The demand made by the governor of the state of Washington recites that he acts upon the copy of an information (which appears in full in the Hart Case), and the governor of the state of Maryland issued his warrant for removal based upon said copy. We do not deem it necessary to set forth the papers found in the record in full, nor to repeat the reasons assigned in said Hart Case for holding the warrants defective and void. We refer to that case for the facts and the conclusions we reached. For the reasons there set forth, the judgment of the circuit court will be reversed, and the petitioner will be discharged from arrest.

UNITED STATES v. CHUNG FUNG SUN et al.

(District Court, N. D. New York. October 3, 1894.)

CHINAMEN—DEPORTATION.

Act U. S. May 5, 1892, as amended November 3, 1893, provides that a Chinaman must establish by affirmative proof to the satisfaction of the

commissioner his lawful right to remain in the United States. *Held*, that the finding of a commissioner that a Chinaman is not lawfully in the United States will not be disturbed on appeal, unless clearly against the weight of evidence.

A judgment was rendered by a United States commissioner for the deportation of Chung Fung Sun and Chin Kong Pock to the empire of China, and they appeal. Affirmed.

W. W. Cantwell, for appellants.

W. A. Poucher, U. S. Atty., for respondent.

COXE, District Judge. Under the rigorous provisions of the act of May 5, 1892, as amended November 3, 1893, the burden was on the appellants to establish "by affirmative proof to the satisfaction of the commissioner," their "lawful right to remain in the United States." (27 Stat. 25, § 3 Laws 1893, c. 14, p. 7). The term "merchant" is defined to mean "a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant." Laws 1893, c. 14, p. 8, § 2.

The contention in the case of Chung Fung Sun is that he was born in California twenty years ago; that his father when he was five or six years old returned to China with his wife and child, remained there a year and a half and then came back to this country leaving his wife and the appellant in China where his wife has lived ever since and where the appellant lived until the present year. This is sworn to by the alleged father, but the inherent improbability of the story must be apparent to all. On the other hand there is presumptive evidence that the appellant, and five other Chinamen, came here from Canada, having been smuggled at night across the border at an unfrequented spot near Plattsburgh, N. Y. There is also proof of the appellant's admissions that he never had been in the United States before and that the theory of his having a father in this country was an afterthought invented to fit the exigencies of the situation. To state the matter as strongly as possible for the appellant the case presented a doubtful question of fact, which was clearly within the province of the commissioner to determine. His finding upon disputed testimony should not be disturbed on appeal.

In the case of Chin Kong Pock an effort was made to prove that he was a returning merchant. Two witnesses, of Russian extraction, testify to having seen the appellant prior to the summer of 1893, selling soap, washboards, etc., at No. 13 Pell street, New York City. This is supplemented by the testimony of a Chinaman to the effect that appellant is a member of the firm of Qwong Mow Wo Company and has been for five years. It further appears that fifteen persons are interested in the business at 13 Pell street, the stock being worth about \$10,000. Two criticisms are made of this testimony. First, that it is insufficient in law, and, second, that it is untrue in fact. There is evidence of the appellant's admissions

that he was a farmer in China, that he had never been here before and that he was smuggled across the Canadian border from Montreal. In view of this testimony and the circumstantial evidence tending to substantiate it the commissioner saw fit to reject the theory that the appellant was a Chinese merchant. He did not believe the appellant's testimony. It was a question of fact and the finding of the commissioner was not so clearly against the weight of evidence as to justify the court in disturbing it on appeal. There is, to say the least, doubt whether the testimony on behalf of the appellant, if true, brings him within the statutory definition of "merchant." Did he buy and sell merchandise? Was the business conducted in his name? It is unnecessary to answer these questions, but the mere statement of them suggests the defect in the appellant's proof. The judgments must be affirmed.

In re HOWARD.

(Circuit Court, S. D. New York. October 19, 1894.)

1. IMMIGRATION—CONTRACT LABORER—"PERSONAL OR DOMESTIC SERVANT"—WHAT CONSTITUTES—UNDERCOACHMAN.

An "undercoachman," whose duties are, partly, to assist in keeping stables, horses, and carriages in good order, but principally to drive the horses when his employer or any of his family go out in carriages, and to accompany on horseback the younger members of the family when they go out on horseback, and who boards with his employer's coachman, and sleeps in a room over the coach house, is a "personal or domestic servant," within the meaning of St. 1885, c. 164, prohibiting the immigration of aliens under contracts for labor, and providing that the provisions of the act shall not apply to "persons employed strictly as personal or domestic servants."

2. SAME—PROHIBITED PERSON—DECISION OF SECRETARY OF THE TREASURY—WHEN CONCLUSIVE.

Under St. 1888, c. 1210 (amending St. 1885, c. 164, as amended by St. 1887, c. 220), which authorizes the secretary of the treasury, "in case he shall be satisfied" that an immigrant "has" landed contrary to the prohibition of St. 1885, c. 164, as amended, to cause him, within a year after landing, to be taken into custody and deported, the determination of the secretary of the treasury as to whether or not the immigrant is a prohibited person is conclusive, and will not be reviewed by the courts.

Petition by John James Howard for a writ of habeas corpus to obtain his release from custody into which he was taken by order of the secretary of the treasury, to be returned to England, from which country it was claimed he came in violation of the contract-labor law. Writ dismissed, and petitioner remanded.

Wallace Macfarlane and Wm. H. Cochrane, U. S. Atty., for commissioners.

Benj. F. Tracey and Frank Platt, for relator.

LACOMBE, Circuit Judge. The federal statute of 1885 (chapter 164) and the amendments thereto (chapter 220 of 1887 and chapter 1210 of 1888), with some additional provisions contained in chapter 551 of 1891, make up what is generally referred to as the "Contract-Labor Law." That law undertakes to protect per-