is not mere hearsay, or rumor, but something upon which you can place your judgment; and it is the duty of the district attorney to submit it to you, and of the members of the grand jury to hear it. If there is anything of that kind to be submitted to you, I trust it will be so submitted in your sessions, either during the balance of the day, or when you return next week. That is all I wish to say to you.

In re MARTORELLI.

(Circuit Court, S. D. New York. October 13, 1894.)

ALIEN IMMIGRANTS—EXCLUSION ACTS.

The acts regulating immigration, existing when Act March 3, 1891, was passed, refer to aliens who are imported into or who migrate to this country, and do not exclude a person already resident here, though not naturalized, who temporarily departs, with the intention to return.

Application for discharge of Sebastiano Martorelli, detained, as a contract laborer, for deportation.

Ullo, Ruebsamen & Cochran, for commissioners.
John Palmieri, for relator.

LACOMBE, Circuit Judge. The facts are these: Sebastiano, an alien, came from Italy to this country in 1887, with the intention of making it his home. He remained here five years, working as a laborer in the city of Philadelphia. During this period he declared his intention to become a citizen, and took out his first papers. At the time of his immigration he had a wife and child, whom he left in Italy, intending to send for them when he had saved enough money to support them here. In 1892, having laid up some money and bought some household furniture, he sent for his wife to come; but, as she was too ill to do so, he went to Italy to bring her, leaving his furniture in charge of a friend here. His wife grew worse, and he remained with her in Italy for about two years, in consequence of which he was obliged to spend the money he had laid by in the preceding years. On the 10th of this month, therefore, he returned to this country, having borrowed in Italy the money to pay his passage, in order to resume his work here, and thus secure the money necessary to defray the expense of bringing his wife and child to this country, which he still intends, as he did when he arrived here in 1887, to make his permanent home. These facts being undisputed, and no question raised as to his being an idiot, convict, etc., the relator has affirmatively and satisfactorily shown that on October 10, 1894, he did not belong to any one of the classes of aliens excluded from admission into the United States in accordance with the acts regulating immigration, which existed and were in force when the act of March 3, 1891, was passed. These acts refer to aliens who are imported into or who migrate to this country, not to persons already resident here, who temporarily depart and return. Sebastiano was an alien immigrant when he came here, in 1887. He was not one when, after his temporary absence, he returned, in October, 1894. In re Panzara, 51 Fed. 275. Relator is discharged.

WAUKESHA HYGEIA MINERAL SPRINGS CO. v. HYGEIA SPARKLING DISTILLED WATER CO.

(Circuit Court of Appeals, Seventh Circuit. October 1, 1894.)

No. 116.

1. TRADE-MARKS—RIGHTS DEFINED BY CONTRACT.
Where two parties have been using similar trade-marks, a contract between them whereby one party is to use one form of the trade-mark in connection with certain words, and the other is to use another form of it in connection with other words, followed by the use of such trade-marks for several years in accordance with the terms of the contract, establishes the rights of the parties, and is binding upon their assigns and successors in business.

2. SAME—CONTRACT—RECORD IN PATENT OFFICE.
Such contract is not recordable in the patent office, since it is not a transfer of a right to use a trade-mark.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Suit for injunction by the Hygeia Sparkling Distilled Water Company against the Waukesha Hygeia Mineral Springs Company. Complainant obtained a decree. Defendant appeals.

The appellee, Hygeia Sparkling Distilled Water Company, filed its bill in equity for an injunction restraining the appellant, Waukesha Hygeia Mineral Springs Company, from using the word "Hygeia" as a trade-mark or name for drinking waters, except in the way specified in a contract entered into August 20, 1886, between the appellee and the appellant's predecessors. The appellant answered, and filed a cross bill; the answer denying the equities of the bill, asserting right in appellant to use the word "Hygeia" broadly as a trade-mark, and claiming that the alleged contract with its predecessor is not binding upon the appellant, for want of record or notice, and is not enforceable in equity for various reasons; the cross bill alleging that the appellant is entitled to exclusive use of the word as a trade-mark, and praying that the appellee be enjoined. The decree is for a perpetual injunction in favor of the appellee in accordance with the allegations and prayer of the original bill. The appellee is a manufacturer of distilled water, to which the trade-name of "Hygeia" had been applied for some time prior to 1886. The appellant is the owner of a spring at Waukesha, Wis. (acquired by it in 1891, under title derived from the Smiths, who made the contract of 1886), to which the name of "Hygeia" had been applied, and its waters were marked with the name "Hygeia" as part of the designation, prior to 1886. The spring was owned and its business conducted by James H. and Charles T. Smith, in and prior to 1886; and to avoid controversy with reference to a trade-name, under threats of prosecution by the appellee, a contract was entered into between the appellee, as first party, and the Smiths, as second parties, August 20, 1886, which recited that the first party was engaged in the manufacture of distilled waters, and "used as the essential feature of its trade-mark the word 'Hygeia' and a figure of the goddess of Hygeia," there shown; that the second parties were owners of a natural mineral spring at Waukesha, called the " 'Hygeia Natural Mineral Spring,' and have used as the essential feature of their trade-mark in the sale of the waters of said spring the words 'Waukesha Hygeia Mineral Spring,' together with a figure of the goddess of Hygeia," which is also shown in the contract; and that they desire to avoid conflict and infringement in the use by both of their respective trade-marks," and to that end have entered into contract. Thereupon, "in consideration of the premises, and of five hundred dollars" paid by the first party to the second parties, the following provisions are made: "First. And the party of the first part shall have, and is hereby recognized as having, the exclusive right both to use the word 'Hygeia' and the figure of which the first above is