

UNITED STATES v. SMITH.

(District Court, D. Minnesota, Sixth Division. October 1, 1895.)

CRIMINAL LAW—MAILING THREATENING LETTER—ACT CONG. SEPT. 26, 1888.

A postal card, sent by a creditor to his debtor, demanding payment of a note, and adding: "You have been fighting time all along. * * * I will garnishee and foreclose. But I do so dislike to do this if you will only be half white,"—is of such a threatening and defamatory character as to render the same nonmailable, within the purview of the act of congress of September 26, 1888 (Supp. Rev. St. p. 621).

This was an indictment against A. J. Smith under the act of congress of September 26, 1888, for depositing in the mail a defamatory and threatening postal card. Defendant demurred to the indictment.

E. C. Stringer, U. S. Dist. Atty.
David T. Calhoun, for defendant.

NELSON, District Judge. This is an indictment framed under the act of September 26, 1888, found in Supp. Rev. St. U. S. p. 621. The defendant is charged with depositing in the mail a postal card upon which terms and language of a defamatory and threatening character were written, calculated, by the terms, manner, and style of display, and obviously intended, to reflect injuriously upon the character and conduct of one A. B. Darling. The postal card is in the words following:

"Nov. 16-93.

"A. B. Darling, Herman, Minnesota—Gentlemen: You must do something on your note. I wish you to pay the int. and one hundred dollars of the principal. You have been fighting time all along, and now at the end you remit nothing. If I do not hear from you, I must be around. I will garnishee and foreclose. But I do so dislike to do this if you will only be half white. Rep.,

"Andrew J. Smith, Citizens' Bank of Sauk Centre, Sauk Centre, Minn."

If the defendant had merely requested payment of a part of the debt, and stated that, if not complied with, he would take legal steps by garnishee process or foreclosure to secure it, there would be some doubt about the language used being of such a threatening character as to render the postal card nonmailable, and within the purview of the law. But the latter part of the postal card contains an expression which manifestly was intended to reflect injuriously upon the character of Mr. Darling, when taken in connection with the preceding language used. No other construction can be put upon the following paragraph: "But I do so dislike to do this [garnishee and foreclose] if you will only be half white." The writer thus indicates that the person addressed was dishonest, and his reputation not spotless. Such imputation upon his character, expressed upon a postal card deposited in the mail, is a reflection prohibited by law. Demurrer overruled.

UNITED STATES v. AH POING.

(District Court, D. Oregon. September 24, 1895.)

No. 4,002.

CHINESE EXCLUSION ACT—REGISTRATION—IMPRISONMENT FOR CRIME.

Imprisonment upon arrest and conviction for crime is not a sufficient excuse for failure to register within the time limited by Acts Cong. May 5, 1892 (27 Stat. 25), and November 3, 1893, providing for the deportation of Chinese laborers who fail to register themselves within the periods provided by said acts, unless prevented by accident, sickness, or other unavoidable cause.

Daniel R. Murphy, U. S. Atty., and Charles J. Schnabel, Asst. U. S. Atty.

J. H. Dolph, for defendant.

BELLINGER, District Judge. This is a proceeding to deport the defendant, a Chinese laborer, who has failed to register as required by law. The facts in the case are agreed upon, and are as follows: Defendant was lawfully a resident of the city of Portland on May 5, 1892, the date of the passage of the act requiring Chinese laborers to register within one year. In December, 1892, he was arrested on a charge of felony, and confined in jail. On January 7, 1893, he was convicted, and sentenced to imprisonment in the penitentiary of the state for a period of three years, and was committed to such prison, where he remained until the commencement of this proceeding. The act of May 5, 1892 (27 Stat. 25), provides for the deportation of any Chinese laborer found in the United States at the expiration of one year from the passage of the act without the certificate of residence provided for therein, unless it is shown that such laborer was prevented from obtaining such certificate by reason of accident, sickness, or other unavoidable cause, and that he was a resident of the United States at the time of the passage of the act. On November 3, 1893, congress amended this act so as to extend the time for registration for a period of six months. Does the imprisonment of the defendant on a conviction for felony excuse his failure to register? It is contended that a condition which unavoidably prevents registration is unavoidable cause within the meaning of the registration act; but if the condition is not unavoidable, the excuse does not exist. It is a fundamental rule that a party will not be permitted to take any advantage of his own wrongful act, and upon the same principle a party will not be permitted to plead to his own advantage a disqualification which is the necessary result of a crime committed by him. The duty of registering was imposed upon the defendant before his arrest, and the opportunity to register was open to him at that time. True, the time had not yet expired within which he was required to register, and it is not against him that he had not theretofore registered; but, while every moment of the prescribed time was open to him for that purpose, if he chose to throw a part of it away by his voluntary act, necessarily having that effect, and committed in violation