

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

of law, he is not excused in his failure to register. Crime, and the penalties which follow it, can never excuse the performance of a duty enjoined by law. The deportation of the defendant in accordance with the provisions of the act of May 5, 1892, as amended, is ordered.

UNITED STATES v. JONES.

(District Court, D. Nevada. September 3, 1895.)

No. 820.

1. GRAND JURORS—EXCUSING BY COURT OF OWN MOTION.

Complaint cannot be made of the excusing of grand jurors by the court of its own motion, where those substituted were not disqualified, especially where counsel, though present, made no objection to the action of the court.

2. SAME—GROUNDS OF OBJECTION.

Federal courts, of their own motion or that of counsel, may enforce other objections than prescribed by state statutes, to grand jurors.

3. INDICTMENT—ABATEMENT.

An indictment will not be abated on a charge that a witness gave the grand jury hearsay evidence; that he referred to books of which, though in his possession, he was not the legal custodian; and that he gave his opinion to them as an expert,—especially where the charge is merely on information and belief.

4. INDICTMENT—JOINDER OF OFFENSES.

Under Rev. St. § 1024, providing that where there are several charges against a person for the same act, or for two or more acts connected together, or for two or more acts of the same class of crimes, which may be properly joined, the whole may be joined in one indictment in separate counts, an indictment may contain a count under section 5456 referring to the felonious taking away by any one of anything belonging to the United States, from any place, and a count under section 5460, referring to the felonious taking and embezzlement of the metals at the United States mint by a person to whose charge they were committed; and it is immaterial that one might be classed as larceny, and the other as embezzlement, or that the punishment is different.

5. SAME—DESCRIPTION OF PROPERTY.

An indictment for larceny or embezzlement sufficiently describes the property as "gold metal * * * of the value of \$23,000."

John T. Jones was indicted under Rev. St. §§ 5456, 5460. Heard on motion to quash indictment, plea in abatement, and demurrer.

On the 23d day of August, 1895, a "true bill" of indictment was found by a grand jury against defendant, containing two separate counts, the first charging that the defendant, on the 15th day of June, 1893, and before the finding of this indictment, "did unlawfully and feloniously take, steal, and carry away from the United States mint at Carson City, state and district of Nevada, personal property, to wit, gold metal, which said personal property belonged to the United States of America, and which said personal property was of the value of \$23,000; the said unlawful and felonious taking and carrying away being with the intent, then and there, to steal the said property, and defraud the United States of America thereof," etc. Rev. St. U. S. § 5456. The second charging "that said John T. Jones, on the 30th of June, 1892, and continuously thereafter until the 9th day of April, 1895, was a person employed by the government of the United States of America in and about the United States mint at Carson City, state of Nevada, to wit, the said John T. Jones was at the said dates, and during all of said time, employed as the assistant melter and refiner, and was the assistant melter and