ing brought before some justice, judge, or commissioner of the United States and found to be one not lawfully entitled to be or remain in the United States.' So that, if it were to be claimed by the United States that Jung Ah Lung, if at any time he should be found here, was found unlawfully here, he could not be removed to the country from whence he came, unless he were brought before some justice, judge, or commissioner of a court of the United States, and were judicially found to be a person not lawfully entitled to be or remain here. This being so, the question of his title to be here can certainly be adjudicated by the proper court of the United States, upon the question of his being allowed to land." U. S. v. Jung Ah Lung, 124 U. S. 621, 8 Sup. Ct. 663.

Just such an adjudication as that here described was had in the case of the defendant at Portland, Or., upon the writ of habeas corpus already mentioned. Defendant's "title to be here" was then "adjudicated by the proper court of the United States," and "upon the question of her being allowed to land." The government, however, insists that the Oregon judgment was obtained through fraud, and is, therefore, open to collateral attack, and cites to this point, among other cases, U. S. v. Throckmorton, 98 U. S. 61–67. I cannot so find or hold. If fraud was practiced upon the court, it consisted wholly in the introduction of false testimony, and it is well settled that this is no ground for vacating a judgment. Such was the express holding of the court in U. S. v. Throckmorton, supra. Mr. Justice Miller, delivering the opinion of the court, says:

"Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party, and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side,—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing. See, Wells, Res Adj. § 499; Pearce v. Olney, 20 Conn. 544; Wierich v. De Zoya, 2 Gilman, 385; Kent v. Ricards, 3 Md. Ch. 396; Smith v. Lowry, 1 Johns. Ch. 320; De Louis v. Meek, 2 G. Greene, 55. In all these cases, and many others which have been examined, relief has been granted on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court. On the other hand, the doctrine is equally well settled that the court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed. Mr. Wells, in his very useful work on Res Adjudicata, says (section 499): 'Fraud vitiates everything, and a judgment equally with a contract,—that is, a judgment obtained directly by fraud, and not merely a judgment founded on a fraudulent instrument; for, in general, the court will not go again into the merits of an action for the purpose of detecting and annulling the fraud. * * * The maxim that fraud vitiates every proceeding must be taken, like other general maxims, to apply to cases where proof of fraud is admissible. But where the same matter has been actually tried, or so in issue that it might have been tried, it is not again admissible. The party is estopped to set up such fraud, because the judgment is the highest evidence, and cannot be contradicted. * * *' We think these decisions establish the doctrine on which we decide the present case, namely: That the acts for which a court of equity will, on account of fraud, set aside or annul a judgment or decree between the same parties, rendered by a court of competent jurisdiction,

have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered. That the mischief of retrying every case in which the judgment or decree, rendered on false testimony given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater by reason of the endless nature of the strife than any compensation arising from doing justice in individual cases."

Recognizing and applying the principle enunciated in the foregoing extracts from U. S. v. Throckmorton, supra, I cannot do otherwise than hold that no such fraud has been shown in the present case as invalidates the judgment of the Oregon court. Whether that court was misled by false testimony, or erred in its conclusions of law, are questions not here open to inquiry. It is to be presumed, in favor of its judgment, that the evidence required by law as to the right of the defendant to come into the United States was adduced upon the hearing. That judgment cannot be collaterally assailed in this proceeding, and must be held to establish the lawfulness of the defendant's residence in the United States. This ruling renders it unnecessary to decide the other points submitted in defendant's brief.

The judgment and order of the commissioner will be reversed, and the defendant discharged.

UNITED STATES v. WONG HONG.

(District Court, S. D. California. December 2, 1895.)

1. CHINESE EXCLUSION ACT.
   Under Act Oct. 1, 1888, a Chinaman who left the United States in 1893, being at the time a laborer, cannot return.

2. CONSTRUCTION OF STIPULATION—CHINESE MERCHANT.
   A stipulation in a proceeding for the deportation of a Chinaman, that "up to the 1st of August, 1893, the defendant was a merchant," does not by implication admit that he was a merchant after that date.

George J. Denis, U. S. Atty.
Marble & Phibbs, for defendant.

WELLBORN, District Judge. The defendant is charged with being a Chinese laborer, unlawfully within the United States. Upon the trial, the following stipulation was entered into by the parties:

"That prior to and up to the 9th day of November, 1893, the defendant had resided continuously in the state of California, for a period of not less than 16 years, and did reside in the state of California on said 9th day of November, 1893, on which day he departed for China, from the port of San Francisco, in this state, and that he did not return to the United States until the 27th day of May, 1895, on which day he arrived at the port of San Francisco, coming from China. That for a period of 7 years preceding, and up to the 1st of August, 1893, said defendant was a merchant, as defined by the act of congress of the United States, passed November 3, 1893, being chapter 14 of volume 28 of the United States Statutes at Large, which act is amendatory of the act of congress, passed May 5, 1892, and that during said period of time he was not a laborer. That on said 1st day of Au-