MIDDLESEX BANKING CO. v. SMITH.

(Circuit Court of Appeals, Fifth Circuit. June 21, 1897.)

No. 593.

1. LIMITATION OF ACTIONS—AMENDMENT TO PETITION—NEW CAUSE OF ACTION.
Where an action is begun before expiration of the period of limitation, an amendment of the petition, after the expiration of such period, whereby the plaintiff, instead of suing for his own benefit, alleges that he sues by the authority and for the use and benefit of a third party, does not change the cause of action so as to subject the suit to the bar of the statute.

2. CROSS-EXAMINATION—REPETITION OF QUESTIONS—DISCRETION OF COURT.
The refusal of the court to permit counsel on cross-examination to repeat a question which has already been asked and answered three or four times is not erroneous.

3. APPEAL AND ERROR—DECISION ON MOTION FOR NEW TRIAL.
The refusal of a federal court to grant a new trial is not assignable as error.

In Error to the Circuit Court of the United States for the Eastern District of Texas.

This was an action at law by H. H. Smith against the Middlesex Banking Company, a corporation, and H. A. Kahler, to recover a sum of money alleged to have been wrongfully retained by defendant. The plaintiff's petition alleged, in substance, the following facts: One Frank Field, being the owner of a certain lot in the city of Dallas, Tex., on the 11th of July, 1890, executed a deed of trust thereon to secure the Middlesex Banking Company in the payment of two notes aggregating about $20,000, which were due in 1895. On the 3d of February, 1891, the said Field procured a policy of insurance from the Scottish Union National Insurance Company in the sum of $2,000 upon the house situated on the mortgaged lot and the fixtures and personal property therein. On the 12th of September, 1891, Field conveyed the lot and improvements to the plaintiff, Smith, subject to the incumbrances thereon, Smith not assuming the payment of such incumbrances; and on the same day the policy of insurance aforesaid was transferred to Smith, the loss, however, remaining payable to said H. A. Kahler, trustee. On December 10, 1891, the insured property was destroyed by fire, there being two other policies thereon, for $1,000 each, also payable to Kahler, as trustee. The petition then alleged that said Middlesex Banking Company and Kahler, on December 17, 1891, agreed with plaintiff that the money that might be collected on all the insurance policies should be used for the purpose of erecting a brick building upon the lot, "provided, that the building should be of such a character and value that the same will carry $4,000 of insurance." It was further alleged that the Scottish Union National Insurance Company refused to pay its policy, and that on December 17, 1891, it was agreed between plaintiff and defendants that plaintiff should proceed at once to erect the building, and that, when the insurance was collected, it should be turned over to him; that plaintiff did erect a building in accordance with this contract, which cost $5,000 when completed, May 1, 1892, and procured insurance thereon in the sum of $4,000, the policies being payable to said Kahler as trustee. It was further alleged that a suit was brought against the Scottish Union National Insurance Company in the name of plaintiff and defendants, wherein a judgment was recovered, and that in June, 1893, the sum of $2,103.70 was collected thereon by defendants. Plaintiff alleged that he had demanded this sum from defendants, but that they had refused payment, and had converted it to their own use.

The suit was originally instituted in a state court, but was removed into the court below by the Middlesex Banking Company, it being shown that defendant H. A. Kahler, though a resident of Texas, was a mere naked trustee, having no personal interest or liability, and that the said banking company was incorporated under the laws of Connecticut. On February 4, 1896, plaintiff filed his first amended original petition, repeating the allegations hereinbefore set

forth, except as to that portion in which was set out the character of the house plaintiff agreed to build upon the lot. On this point the amended petition was as follows: "That the money that might be collected on said three policies of insurance should be used for the purpose of erecting improvements on said lot, including a brick building, provided the improvements to be completed should be insured in the sum of $4,000, with the loss payable to said Kahler, trustee, to secure said note." On February 6, 1896, plaintiff filed his second amended original petition, in which the allegations were the same as before, except that, instead of suing for himself, plaintiff alleged as follows: "Your petitioner, H. H. Smith, sues herein by authority and direction and for the use and benefit of the North Texas National Bank of Dallas, a private corporation organized under the national banking laws of the United States," etc.

In its answer, defendant, among other defenses, set up that the change of capacity in which the plaintiff sued, as shown by the amendment of the second amended original petition, was the beginning of a new suit, and that more than two years had elapsed since the accrual of the cause of action in favor of the said North Texas National Bank, and that the action was, therefore, barred by the statute of limitation of two years. A trial was had at the January term, 1897, which resulted in a verdict for the plaintiff, and the court entered judgment accordingly. Thereafter a motion for new trial was made and denied, and defendant then sued out this writ of error. The first assignment of error was to the refusal of the court to give a requested instruction to the effect that the cause of action was barred by limitation, and that a verdict should be returned for defendant.

The second assignment of error was as follows: "The court erred in giving in charge to the jury the following special instructions at the request of plaintiff: 'Plaintiff requests the following charges, which I give: "The jury are instructed that the evidence shows that the proceeds of the insurance policy in question in this case were paid to H. A. Kahler by his attorneys on February 1, 1893. The evidence further shows that the North Texas National Bank consented at the time that the money should be so paid to and received by Mr. Kahler, but the jury are also instructed that this does not show that the bank waived its right to be paid the money by Mr. Kahler. The policy of insurance was payable to Mr. Kahler, trustee. It was his right and duty to receive the money in any event, no matter to whom the money really belonged, and it then became Mr. Kahler's duty to pay the money to the rightful owner; and, if the money belonged to plaintiff, it was his duty to pay it to plaintiff, notwithstanding the fact that the plaintiff or the bank may have consented that the money be paid to Mr. Kahler by the attorneys who collected it; and the mere fact that such consent may have been given will not of itself defeat the plaintiff's right to recover it if, under the testimony, plaintiff would otherwise be entitled to recover." ' And in this connection the court also erred in making the following statement to the jury as a part of his general charge, to wit: 'Gentlemen of the Jury: It seems to the court, and I have no hesitation in saying to you, that Mr. Dabney and his partner had no alternative than to pay the money to Mr. Kahler; and, if Mr. Kahler had gotten ugly about it, he could have compelled them to turn it over to him right quick. They were his counsel. This was an insurance policy held by him for his company, and the counsel, when they got the money, they had no right to hold it. It was their client's money. The North Texas National Bank had no right to object to the first disposition of the fund. But you will distinguish in this case the difference between the North Texas National Bank agreeing or permitting Mr. Dabney and Edmonson to give over the money to their client in the first instance, and of the other question of making an agreement or contract by which they proposed to relinquish all claims thereto. That is a different question. That is for the jury to say. I don't dispose of the question, but merely call your attention to the difference of the two questions,'—which action of the court in giving said charges was at the time excepted to by defendant, as shown by bill of exceptions No. 2."

The third assignment of error was in the following language: "The court erred upon the trial of this case by interfering with defendant's counsel in their cross-examination of H. H. Smith, plaintiff in the case, in this, to wit: 'The said Smith, being upon the witness stand, testified in his own behalf,—testified that he had made a contract with H. A. Kahler, manager of the Middlesex

Banking Company, as alleged in plaintiff's petition; that is, he stated it was agreed that the money that might be collected on the insurance policies should be used for the purpose of erecting improvements upon the lot in controversy, including a brick building, provided the improvements to be completed should be insured in the sum of $4,000.' And upon cross-examination, said witness, being asked the question if he did not, on the former trial of this case, testify that the contract was that the improvements to be made on said lot should be of such a character and value that the same would carry $4,000 insurance, to which question he answered that he did not know what his exact language was as to this point on the former trial of the case, but that he considered it amounted to the same thing, thereupon defendants' counsel asked witness to state as nearly as he could the exact language of the contract, but the witness answered the question substantially in the same way, saying he did not remember the language used by him on a former trial, but that he considered that to say the building to be insured for $4,000, and to say that the building should be of such a character and value as would carry $4,000, was substantially the same thing. After this question had been repeated to the witness three or four times, and answered substantially in the same way by him, the court stopped defendants' counsel, and put an end to the cross-examination of said witness upon that point, and at the same time stated in the presence and hearing of the jury that he would not permit a repetition of the question, as counsel would have an opportunity to argue the difference between the two forms of expression to the jury, but stated that the court agreed with the witness that it amounted to the same thing whether the language used was that the house would be insured for $4,000, or that it would be a house of such a character and value as to carry $4,000 insurance; and the court afterwards erred in stating, among other things, in his general charge to the jury as follows: 'Gentlemen of the jury: About this language used by Mr. Smith, on one occasion or another, that it must be a building that would insure for $4,000, or would carry $4,000, the court apprehends that you will understand that was all the same language. It would be puerile for the contract to mean that the building might be insured for $4,000 for five minutes or a day, through friendship or fraud, and thereby comply with the meaning of the contract; and, if you find that a contract existed, you will find that it was a contract for a building that would not only insure for $4,000, but that would carry the insurance at the time, under the rules of the insurance companies under ordinary circumstances. As Mr. Smith testified, according to his understanding, it was all the same thing. It is true that the pettifogger might contend that it was insured for $4,000 for one day; therefore they had complied with the contract. There has been no such contention. There can be none by any reasonable man.' Defendant's evidence tended to show that no such contract was made on the trial of this case. Harry A. Kahler and H. H. Smith were the only witnesses who testified to the language of the conversation between Smith and Kahler in which the contract sued on was alleged to have been made."

The fourth assignment of error was that the court erred in overruling the motion for a new trial.

Hill, Dabney & Edmonson, for plaintiff in error.

William J. Moroney and Joseph M. Dickson, for defendant in error.

Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

PER CURIAM. The second amended original petition filed by the plaintiff in the court below does not make new parties, nor introduce any new cause of action. Construed most unfavorably to the pleader, and as compared with the original petition, it can only be held to have more clearly defined and described the cause of action upon which the plaintiff originally sued, and continued to sue. It follows that the charge to the jury requested by the defendant in the court

below on the trial of the case with reference to the statute of limitation was properly refused.

From the statement of the evidence as contained in the bills of exception, we do not find any error in the special instruction given to the jury at the request of the plaintiff, or in that portion of the court's charge recited in the bill of exceptions. The refusal of the trial judge to permit counsel for defendant in the court below on cross-examination of the witness to repeat a question which had already been asked and answered three or four times, is certainly not erroneous, but rather has the appearance of having been eminently proper and commendable.

We again announce that the refusal of the trial court to grant a new trial is not assignable as error. From a careful examination of the whole record in this case, we are not satisfied that there was any reversible error in the rulings of the trial judge on the trial. The judgment of the circuit court is affirmed.

UNITED STATES v. GUE LIM.

(District Court, D. Washington, N. D. October 28, 1897.)

EXCLUSION OF CHINESE — WIFE OF MERCHANT — CERTIFICATE OF RIGHT TO ENTER.

The wife of a Chinese merchant residing in this country, not belonging to the laboring class, is not a person excluded by the laws, and upon arrival here is entitled to enter and take up her residence with her husband, without producing the certificate prescribed by 1 Supp. Rev. St. (2d Ed.) p. 459, § 6. In re Li Foon, 80 Fed. 881, disapproved.

Wm. H. Brinker, U. S. Atty.
George S. Bush, for defendant.

HANFORD, District Judge. The defendant is the wife of a Chinese merchant lawfully domiciled and doing business as a merchant in this state. Upon her arrival a few months ago, the collector of customs at the port of her arrival, upon proof, which he considered sufficient, that she is not a laborer, nor a person excluded by the laws of the United States from coming to this country, and that she is the lawful wife of a Chinese merchant, permitted her to land, and take up her residence with her husband; but her right to enter was not evidenced by the certificate prescribed by the sixth section of the act of July 5, 1884 (1 Supp. Rev. St. [2d Ed.] p. 459), which reads as follows:

"Sec. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family and tribal name in full, title or official rank, if

any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States. If the person so applying for a certificate shall be a merchant said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid. * * *"

The present proceeding was initiated by a complaint sworn to by an officer whose duty is to see to the enforcement of the statutes excluding Chinese laborers, alleging that the defendant is a Chinese laborer, not registered, and not having possession of a certificate of registration, as required by the act of May 5, 1892 (2 Supp. Rev. St. p. 13). Upon said complaint a warrant was issued, and the defendant has been brought before the court for the purpose of obtaining an order for her deportation.

As the defendant does not belong to the laboring class, she is not required to be registered, and her arrival in this country was not in time to have entitled her to be registered as provided in the last-mentioned act. The question in the case is whether she was entitled to be admitted upon her arrival, without producing the certificate required of Chinese persons privileged to enter, by the sixth section of the act of 1884, above quoted. In a case similar to this, which came before Judge Deady, at Portland, in 1890, that eminent judge considered the question in all its phases, and held that the wife and minor child of a Chinese merchant lawfully dwelling in the United States were not of the laboring class, and therefore not excluded from entering; and held section 6 of the act of 1884 to be not applicable to such a case, for the reason that it is impracticable for such persons to comply with the requirements of that section, and the effect of the statute, if applicable to such cases, must necessarily be to exclude them, and deprive them of rights guarantied by the treaty of 1880. In re Chung Toy Ho, 42 Fed. 398. I find support for this decision in the opinion of Judge Sawyer in the Case of Ah Moy, 21 Fed. 785, wherein he shows that the Chinese exclusion acts were intended to apply to laborers as a class, and that the wife of a Chinese person has the same status as her husband, and belongs to the class to which he belongs, whether she is in fact a laborer or not. Also in the decision of the supreme court in the case of Lau Ow Bew v. U. S., 144 U. S. 47–64, 12 Sup. Ct. 517, 520, wherein it was held that a Chinese merchant having an established mercantile business in the United States, and maintaining therein a commercial domicile, upon returning from a temporary absence, was entitled to enter and remain in this country without producing the certificate required by section 6 of the act of 1884. Chief Justice Fuller, in the opinion of the court, says:

"The amendatory act of July 5, 1884, enlarged the terms of the certificate, and provided that it should be the sole evidence permissible on the part of the person producing the same to establish a right of entry into the United States. This rule of evidence was evidently prescribed by the amendment as a means of effectually preventing the violation or evasion of the prohibition against the coming of Chinese laborers. It was designed as a safeguard to prevent the unlawful entry of such laborers under the pretense that they be-

longed to the merchant class, or to some other of the admitted classes. But the phraseology of the section, in requiring that the certificate of identification should state not only the holder's family and tribal name in full, his title or official rank, if any, his age, height, and all physical peculiarities, but also his former and present occupation or profession, when and where and how long pursued, and his place of residence, and, if a merchant, the nature, character, and estimated value of the business carried on by him prior to and at the time of his application for such certificate, involves the exaction of the unreasonable and absurd condition of a foreign government certifying to the United States facts in regard to the place of abode and the business of persons residing in this country, which the foreign government cannot be assumed to know, and the means of information in regard to which exist here, unless it be construed to mean that congress intended that the certificates should be produced only by Chinese residing in China or some other foreign country, and about to come for the first time into the United States for travel or business or to take up their residence. * * * By general international law, foreigners who have become domiciled in a country other than their own acquire rights and must discharge duties in many respects the same as possessed by and imposed upon the citizens of that country, and no restriction on the footing upon which such persons stand by reason of their domicile of choice, or commercial domicile, is to be presumed; while by our treaty with China, Chinese merchants domiciled in the United States have, and are entitled to exercise, the right of free egress and ingress, and all other rights, privileges, and immunities enjoyed in this country by the citizens or subjects of the 'most favored nations.' There can be no doubt, as was said by Mr. Justice Harlan, speaking for the court, in Chew Heong v. U. S., 112 U. S. 536–549, 5 Sup. Ct. 255, 259, that, 'since the purpose avowed in the act was to faithfully execute the treaty, any interpretation of its provisions would be rejected which imputed to congress an intention to disregard the plighted faith of the government; and, consequently, the court ought, if possible, to adopt that construction which recognized and saved rights secured by the treaty.' Tested by this rule, it is impossible to hold that this section was intended to prohibit or prevent Chinese merchants having a commercial domicile here from leaving the country for temporary purposes, and then returning to and re-entering it; and yet such would be its effect if construed as contended for on behalf of appellee."

In reason, it seems to me that this statute could not have been intended by congress to apply to cases like the one now being considered. Its nonapplicability is shown by the fact that compliance with its requirements on the part of persons in the situation of this defendant is impossible; and it is unreasonable to presume that congress intended to exact of persons whose right to dwell in this country has been secured by treaty stipulations performance of impossible conditions, or to deprive them of the right to come into this country for nonperformance of such conditions. If it was intended to abrogate the treaty, congress would have so declared in explicit terms.

I would not have felt called upon to write an opinion in this case if it were not for the fact that recently Judge Lacombe, in the Li Foon Case, 80 Fed. 881, has given effect to this statute as a barrier to the admission into the United States of an infant child of a Chinese merchant lawfully residing therein, and upon the authority of his decision the officers of the government insist that the defendant in this case must be separated from her husband, and returned to China. In his opinion the learned judge seems to have been led to his conclusion by consideration of what he supposed to be the weight of authority, and yet he ignores entirely the decision by Judge Deady in the Chung Toy Ho Case and the decision of the supreme court in the Lau Ow Bew

Case. He says the only authority cited in support of the right of a child of a Chinese merchant residing here to come into the United States is the Chung Shee Case, 71 Fed. 277, but "apparently in that case the betrothed bride held a certificate." As a matter of fact, the Chung Shee Case, as reported in 71 Fed., is not an authority on that point at all. The decision in that case by Judge Wellborn was to the effect that the right of the woman to come into the United States, and remain, had been finally adjudicated by Judge Bellinger, and that the judgment in her favor, rendered at Portland, Or., was final and conclusive, and he therefore declined to consider the question as to the right of a wife or child of a Chinese merchant in this country to come into the United States without producing the certificate required by the act of 1884. Further, in his opinion, Judge Lacombe says:

"The clear weight of authority is against petitioner's contention (In re Ah Quan, 21 Fed. 182; In re Chinese Wife, Id. 786; In re Wo Tai Li, 48 Fed. 668), and there is nothing in the language of the statute warranting any such construction. As was held by the supreme court in Wan Shing v. U. S., 140 U. S. 424, 11 Sup. Ct. 729."

In the Ah Quan Case, 21 Fed. 182, Judge Sawyer and Judge Hoffman gave an interpretation of the statutes harmonious with the conclusions of the supreme court in the Lau Ow Bew Case; that is to say, they held the requirements as to certificates required of Chinese laborers returning to the United States to be not applicable to cases of Chinese laborers entitled to return after temporary absences from the United States, whose departure had been prior to any time when return certificates could have been issued pursuant to the statutes; nor to cases of merchants or Chinese persons other than laborers, who were en route to enter the United States prior to July 5, 1884. The reason given for excusing such persons from compliance with the letter of the statute, as I gather from the opinion, is that conditions impossible of performance are not to be presumed to have been intended by congress. The report of the decision contains no statement of facts in the case which Judges Sawyer and Hoffman were called upon to consider, but it is apparent from the opinion that they did not consider the case of a wife or minor child of a Chinese merchant, having an established business and domiciled in the United States previous to the coming of such wife or minor child.

In the Chinese Wife Case, 21 Fed. 785, the woman in the case was the wife of a Chinese laborer, and belonged to the class of persons which the statutes prohibit from entering the United States, and Judge Sawyer placed his decision against the right which she claimed on that ground. The opinion by Mr. Justice Field, however, in that case, does hold that a Chinese wife must be regarded as a distinct person, and that, to be entitled to admission, she must furnish a certificate, as required either by section 4 or by section 6 of the act of 1884; and his opinion is an authority supporting Judge Lacombe's decision, entitled to due respect. The only comment upon it which I deem proper to make is that it was rendered prior to the decision of the supreme court in the case of Chew Heong v. U. S., 112 U. S. 536–580, 5 Sup. Ct. 255, in which the court held that the fourth section of the act of May 6, 1882, as amended by the act of July 5, 1884, prescribing the cer-

tificate which shall be produced by a Chinese laborer as the only evidence permissible to establish his right to re-enter into the United States, is not applicable to Chinese laborers who, residing in this country at the date of the treaty, on November 17, 1880, departed by sea before May 6, 1882, and remained out of the United States until after July 5, 1884, reversing the judgment of the circuit court of the United States for the district of California, given in accordance with the opinion of Mr. Justice Field, and contrary to the opinion of Judge Sawyer.

In the Wo Tai Li Case, Judge Hoffman held that the wife of a Chinese actor was not entitled to admission without producing the required certificate, but there is nothing in the report of the case to show that her husband was domiciled in this country, or that Judge Hoffman considered the question as to the right of Chinese persons not laborers, having a domicile in the United States, to bring their wives and minor children to dwell with them.

The Wan Shing Case, 140 U. S. 424, 11 Sup. Ct. 729, is not an authority in point. The case is distinguished by the fact than Wan Shing did not, at the time of his proposed return to the United States, have an established business or domicile in the United States. Emphasis is given to these important facts in the opinion of Chief Justice Fuller in the Lau Ow Bew Case.

Recurring to the decision by Judge Lacombe in the Li Foon Case, he states that apparently the betrothed bride referred to in the Chung Shee Case held a certificate, as if that fact might be considered the basis for the decision in favor of her right to enter. It appears, however, by the report of Judge Bellinger's decision, that the only certificate which was considered in the case was a certificate identifying the husband, and setting forth that the petitioner was his wife, and that such certificate was intended to evidence her right to land by virtue of such relation, which certificate was prepared at Portland, Or., and forwarded to China. Certainly, this was not the certificate contemplated or required by section 6 of the act of 1884. In re Lum Lin Ying, 59 Fed. 682. I consider that it may be fairly claimed that the weight of authority is not as supposed by Judge Lacombe, but the contrary.

Looking now to the reasons for and against the rule contended for by the officers of the government, I agree with Judge Deady that the admission of Chinese merchants with their families is not to be regarded as a mischief which the Chinese restriction and exclusion acts were intended to remedy. This is a commercial nation. The maintenance and extension of American commerce with the Oriental countries must redound to the benefit of the American people as a whole. Chinese merchants in this country are doing an important part in fostering this important interest, and no benefit whatever can accrue to the people of this country by depriving them of liberty to dwell within our borders, with their families, under the protection of our laws. The argument that Chinese laborers will come to the United States in great numbers under pretense of being members of families of merchants already living here, does not have very great force. The law has been administered as interpreted by

Judge Deady since the date of his decision in the Chung Toy Ho Case in 1890, and the evils supposed to follow such a decision have not come to pass. But, against all argument opposed to liberality towards Chinese of the merchant class, it must be said that it is the duty of the court to declare the law as congress has made it, and harmonious with the established rules for the construction and interpretation of statutes. By this test I am constrained to hold that the defendant is entitled to be discharged.

In re GUT LUN.

(District Court, N. D. California. November 1, 1897.)

No. 11,348.

1. DEPORTATION OF CHINESE—VALIDITY OF JUDGMENT—SUPERFLUOUS FINDING
A complaint for the deportation of a Chinese laborer alleged merely that she had been and remained in the United States without procuring the certificate of residence required by the acts of May 5, 1892, and November 3, 1893. On the trial the court found that defendant was unlawfully within the jurisdiction of the United States, and, further, that she had entered the United States in violation of law, and gave judgment of deportation. *Held*, that the general finding that defendant was unlawfully in the United States was sufficient to support the judgment, though the further finding of an unlawful entry was not within the issues made by the pleading.

2. SAME—COLLATERAL ATTACK—HABEAS CORPUS.
A judgment of deportation of a Chinese person by a court having jurisdiction of the controversy and the parties cannot be impeached on habeas corpus by proof of a different state of facts from that on which the judgment was based; and where the court found that the Chinese person unlawfully remained in the United States without procuring the certificate of residence required by the acts of May 5, 1892, and November 3, 1893, such a certificate cannot be received in evidence in the habeas corpus proceeding.

This was a petition by Gut Lun, a Chinese person, for a writ of habeas corpus to release her from confinement under a judgment of deportation.

Lyman I. Mowry and J. C. Judkins, for petitioner.
Bert Schlesinger, Asst. U. S. Atty.

DE HAVEN, District Judge. The petitioner, Gut Lun, is restrained of her liberty for the purpose of deportation by virtue of a judgment of the district court of the First judicial district of the territory of Arizona. The record shows that the complaint in the proceeding in which that judgment was rendered charged that the petitioner here is a Chinese laborer, and had, since May 5, 1892, "been and remained, and now is, within the limits of the United States, and is at present within the limits of the city of Tucson, county of Pima, territory and district of Arizona, without procuring the certificate of residence as required by the provisions of the act of congress entitled 'An act to prohibit the coming of Chinese persons into the United States,' approved May 5, 1892, and the act of congress amendatory thereof, approved November 3, 1893. Upon the trial in that proceeding the petitioner appeared in person and by