

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

counsel, and the court found, among other things, as appears from the recitals contained in its judgment, that the said Gut Lun is a Chinese person, and a subject of the empire of China, and was found unlawfully within the jurisdiction of the United States of America, in the city of Tucson, territory of Arizona; and that she was "guilty of having entered the United States of America from the empire of China in violation of the act of congress in such cases made and provided, and that she, the said Gut Lun, is unlawfully within the United States of America"; and thereupon judgment was given to the effect that she be deported to the empire of China.

1. It is claimed by the petitioner that the finding of the district court of Arizona to the effect that petitioner was "guilty of having unlawfully entered the United States" was not within the issues involved in the proceeding before that court, and that its judgment is, for that reason, void. This contention is, in effect, nothing more than a claim that there is a variance between this finding of the court and the facts alleged in the complaint. If it should be conceded that such a variance exists, still that fact would not affect the jurisdiction of the court to render the particular judgment under which the petitioner is held. The judgment rendered by the district court of Arizona was one which the law authorized it to pronounce in that proceeding, upon its general finding that this petitioner was found unlawfully within the jurisdiction of that court.

2. Nor did the special referee in the proceeding now before this court err in refusing to permit the petitioner to introduce in evidence a certificate of residence, such as is required by section 6 of the act of congress of May 5, 1892, and the act of congress amendatory thereof, approved November 3, 1893. This certificate purported to have been issued to her by the collector of internal revenue for the First district of California, prior to the commencement of the proceeding which resulted in the judgment of deportation under which she is now held. This offered evidence undoubtedly tended to show that the petitioner has fully complied with the acts of congress above referred to, but in its judgment above referred to the district court of the territory of Arizona determined the fact to be otherwise than as is shown by such certificate, and this court is not authorized to retry that question. In *re* Tsu Tse Mee, 81 Fed. 702. The judgment of the district court of the territory of Arizona being valid, it cannot be reversed or set aside in this collateral proceeding by proof showing a different state of facts from that upon which that court based its judgment. The proposition that the judgment of a court having jurisdiction over the controversy and the parties to it cannot be impeached for error, either of law or fact, except in a direct proceeding for that purpose, is so well settled that it may be considered one of the maxims of the law. *Cooper v. Reynolds*, 10 Wall. 308. Exceptions overruled, writ discharged, and petitioner remanded to the custody whence she was taken, to be deported to China in accordance with the judgment of the district court of the territory of Arizona. So it is ordered.

UNITED STATES v. CHUNG KI FOON.

(District Court, N. D. California. October 27, 1897.)

No. 3,419.

1. CHINESE LABORERS—CERTIFICATE OF RESIDENCE—RESTAURANT AND LODGING-HOUSE KEEPER.

The words "Chinese laborers," in the act of November 3, 1893 (28 Stat. 7, § 1), amending the act of May 5, 1892 (27 Stat. 25, § 6), and relating to certificates of residence, include a Chinaman engaged in the business of keeping a restaurant and lodging house, and all Chinese persons, dependent upon their labor for self-support, whether actually employed as laborers or not.

2. SAME.

The status of a Chinese "laborer" under the acts relating to deportation was not changed by his arrest upon a criminal charge, and his subsequent enforced idleness in jail.

This was a proceeding for the deportation of one Chung Ki Foon, alleged to be a Chinese laborer.

Bert Schlesinger, Asst. U. S. Atty.

George K. French, for defendant.

DE HAVEN, District Judge. This is a proceeding brought by the United States for the deportation of a Chinese laborer. As I construe the agreed statement of facts, the defendant was born in, and is a subject of, the empire of China. He arrived at the city of Portland, Or., in 1876, and engaged in the general merchandise business, in which he continued until some time in the year 1892, when he came to San Francisco, and, after remaining in that city for three months, went to Bakersfield, Cal., and opened a restaurant and lodging house as the proprietor thereof. The date when he commenced to conduct the business of restaurant and lodging-house keeper does not appear, but, from whatever date, he continued in such business until November, 1892, when he was arrested upon a charge of having committed the crime of robbery, and confined in the county jail of Kern county. He remained in this jail until January 25, 1894, and then, having been convicted of the crime with which he was charged, he was placed in the state prison at San Quentin, and served therein under such judgment of conviction for the term of five years. The defendant is without the certificate of residence required of Chinese laborers by section 6 of the act of congress of May 5, 1892 (27 Stat. 25); and the act amendatory thereof, dated November 3, 1893 (28 Stat. 7, § 1). Upon these facts, United States Commissioner Heacock, to whom the matter was referred, found that the defendant was not lawfully entitled to remain in the United States, and recommended his deportation to China. The defendant has filed exceptions to the report of the commissioner, and contends that upon the foregoing facts a judgment for his deportation from the United States would not be warranted by law. In passing upon the question thus presented, I do not deem it necessary to determine whether defendant was a merchant on May 5, 1892, as it clearly appears from the agreed statement of facts that he had ceased to be a merchant before his arrival in California, in 1892, and thereafter was the keeper of a restaurant and