

a reversal of the judgment, unless it clearly appears that such instruction has in fact done no harm. *Railroad Co. v. Patillo* (Ga.) 24 S. E. 958; *Mammerberg v. Railway Co.*, 62 Mo. App. 563; *Railway Co. v. Artusey* (Tex. Civ. App.) 31 S. W. 319; *Telegraph Co. v. Drake* (Tex. Civ. App.) 29 S. W. 919; *Railway Co. v. Rossing* (Tex. Civ. App.) 26 S. W. 243; *Watts v. Railroad Co.* (W. Va.) 19 S. E. 521; *Comaskey v. Railroad Co.* (N. D.) 55 N. W. 732; *Campbell v. Alston* (Tex. Civ. App.) 23 S. W. 33; *Culberson v. Railway Co.*, 50 Mo. App. 556; *Cousins v. Railway Co.*, 96 Mich. 386, 56 N. W. 14. In some cases injuries are sustained which are of such a nature as will, in themselves, warrant an inference that they will permanently affect the injured person's health, or lessen his or her capacity to labor; but in the present case we cannot say that the injuries inflicted by the surgical operation were of such a character that the jury were at liberty to infer therefrom that the health of the plaintiff would be permanently affected, or that her capacity to labor would be thereby impaired. It is just as reasonable to suppose, in the absence of any evidence on the subject, that she sustained no loss in either of these respects. The result is that the instruction last referred to was erroneous, and, as it may have had the effect of increasing the damages, the judgment of the circuit court must be reversed, and the cause remanded for a new trial. It is so ordered.

In re MOSES.

(Circuit Court, S. D. New York. December 11, 1897.)

1. ALIENS—EXCLUSION—REVIEW OF DECISION OF IMMIGRATION OFFICERS.

Under the immigration law (28 Stat. 390, c. 301), providing that the decision of the immigration officers against the admission of an alien to the United States shall be final unless reversed on appeal by the secretary of the treasury, such decision is not reviewable by the courts, where it is shown that the person excluded is an alien, and that the decision was made in the way required by the statute.

2. SAME—FAMILY OF IMMIGRANT—DECLARATION OF INTENTION.

An immigrant does not cease to be an alien merely by declaring his intention of becoming a citizen of the United States, so as to relieve his wife and minor children from the operation of the law governing the admission of aliens.

Petition of Marcus Moses for Writ of Habeas Corpus.

Petitioner came to this country from Roumania, of which country he was a native, and on March 23, 1897, declared his intention of becoming a citizen of the United States. Since his arrival he has resided in the city of New York. On November 23, 1897, Yette Moses, wife of the petitioner, and five of their children under ten years of age, arrived at this port by the steamship *Obdam*, and demanded to be permitted to land. On inspection made in accordance with the immigration laws of the United States, they did not appear to the inspecting officers to be clearly, beyond doubt, entitled to admission, and were thereupon detained for a special inquiry, as provided by section 5 of the act of March 3, 1893. Thereupon a special inquiry was held, as provided by the statute, and the officials conducting the same did not make the favorable decisions required by law to entitle them to admission, but held that two of the children were suffering from a loathsome contagious disease, and that the mother and the other three children were persons likely

to become a public charge. Thereupon all were excluded from admission into the United States, and are now detained at the barge office immigrant station pending their return to the country whence they came.

J. Brownson Ker, for the motion.
Lorenzo Ullo, opposed.

LACOMBE, Circuit Judge (after stating the facts). The act of August 18, 1894, c. 301 (28 Stat. 390), provides that:

"In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or custom officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the secretary of the treasury."

If, therefore, the petitioner's wife and children are "aliens," this court cannot inquire into the correctness of the decision of the immigration officers. *Lem Moon Sing v. U. S.*, 158 U. S. 540, 15 Sup. Ct. 967. In other words, the only jurisdictional facts which it is necessary for the respondent to establish in a proceeding of this character are—First, that the person seeking admission is an alien; and, second, that the immigration officers made their decision in the way in which the statute requires. It is no longer necessary for the respondent to offer proof in this court that such person is an immigrant, as was the case before the passage of the act of 1894, *supra*, and while the earlier acts only were in force. The decisions of this court cited on the brief (*In re Martorelli*, 63 Fed. 437; *In re Maiola*, 67 Fed. 114) were rendered under the earlier acts, and are no longer applicable.

The petitioner relies upon an exception contained in the statute which excludes persons suffering from a loathsome or contagious disease, or persons likely to become a public charge, in these words:

"But this section shall not be held to exclude persons living in the United States from sending for a relative or friend, who is not of the excluded classes," etc.

But under the act of 1894 the decision of the immigration officers that a person seeking admission is of the excluded class is not reviewable in the courts.

It is further contended that petitioner is not an alien, and that, therefore, his wife and children are not aliens. Undoubtedly the citizenship of his wife and children is the same as his own; but upon the record it does not appear that the petitioner is, as he contends, a citizen of the United States. He began as an alien,—a subject of the king of Roumania. He did not change his condition nor his allegiance by merely coming to this country nor by residing here. Nor has his declaration of intention altered the situation. He does not by that document renounce his allegiance, but merely declares that it is his intention so to do at some later day; and so long as his foreign allegiance continues he remains an alien. *Lanz v. Randall*, 4 Dill. 425, Fed. Cas. No. 8,080; *Maloy v. Duden*, 25 Fed. 673; *City of Minneapolis v. Reum*, 6 C. C. A. 31, 56 Fed. 576.

The writ is dismissed.

UNITED STATES v. WILLIAMS.

(District Court, N. D. California. December 8, 1897.)

No. 3,453.

1. ALIENS—DEPORTATION OF CHINESE—EVIDENCE OF RESIDENCE.

The provision of the act of May 5, 1892, § 6, as amended by Act Nov. 3, 1893 (28 Stat. 7), that any Chinese laborer found within the jurisdiction of the United States without the certificate of residence required by that act shall be ordered deported unless he shall establish "by at least one credible witness, other than Chinese," that he was a resident on May 5, 1892, leaves no room for construction, and gives the judge before whom such person is brought no discretion to accept any other testimony than that prescribed.

2. SAME.

The power of congress to prescribe such rule of evidence in proceedings for the deportation of Chinese aliens is included within its general authority to exclude aliens, or to prescribe the conditions upon which they may remain in the United States.

3. SAME—PROCEEDINGS—ALLEGATIONS IN COMPLAINT.

Where a complaint is filed for the deportation of a Chinese laborer under 28 Stat. 7, on the ground that he is without the certificate of residence required by that act, an allegation therein that such laborer was a resident of the United States on May 5, 1892, is surplusage, and cannot take the place of the evidence of such fact required to be furnished by the defendant.

Proceeding for the deportation of George Williams, a Chinese laborer.

Bert Schlesinger, Asst. U. S. Atty.

Thomas D. Riordan, for defendant.

DE HAVEN, District Judge. The complaint in this proceeding charges that the defendant, George Williams, was on and before the 5th day of May, 1892, a Chinese laborer, within the limits of the United States, and entitled to remain therein only upon the terms prescribed by the act of congress entitled "An act to prohibit the coming of Chinese persons into the United States," approved May 5, 1892 (27 Stat. 25), and the act of November 3, 1893 (28 Stat. 7), amendatory thereof; and that he had at all times since the first-mentioned date remained, and now is, within the limits of the United States, without having procured the certificate of residence required by the provisions of the said act of May 5, 1892, and the act of November 3, 1893, amendatory thereof. The testimony of the defendant himself was to the effect that he came to the United States about the year 1877, and has since that time regarded the city of New York as his home. On May 5, 1892, he was a steward on board an American ship, and at all times between November 3, 1893, and May 5, 1894, was also a steward on board of an American vessel sailing on the high seas, and without the actual territorial limits of the United States.

By the act of November 3, 1893 (28 Stat. 7), section 6 of the act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May 5, 1892, was amended so as to read:

"And it shall be the duty of all Chinese laborers within the limits of the United States who were entitled to remain in the United States before the passage of the act to which this is an amendment to apply to the collector of internal revenue of their respective districts within six months after the