

pra. In re Li Foon, 80 Fed. 881; Lem Moon Sing v. U. S., 158 U. S. 538, 15 Sup. Ct. 967.

The relator asserts the unconstitutionality of the provisions of section 3 of the act of May 5, 1892, supra, which required a Chinese person who was arrested under the act to establish by affirmative proof his lawful right to remain in the United States, and of the provisions of section 2 of the act of November 3, 1893 (28 Stat. 7), which required a Chinaman to establish certain facts by the testimony of two credible witnesses, other than Chinese, upon an application for entrance into the United States on the ground that he was formerly a merchant in this country. It appears from the return to the writ of certiorari that all the witnesses for the relator were Chinese, but that the commissioner excluded nothing, and decided, upon the entire conflicting testimony, that the defendant was a Chinese laborer. The question of the constitutionality of section 2 of the act of 1893 does not, therefore, arise upon this record. The question of the constitutionality of provisions akin to those in section 3 of the act of May 5, 1892, in regard to requirements of proof, was settled in Fong Yue Ting v. U. S., 149 U. S. 698, 729, 13 Sup. Ct. 1016. The opinions of the supreme court in Wan Shing v. U. S., 140 U. S. 424, 11 Sup. Ct. 729, and in Wong Wing v. U. S., 163 U. S. 228, 16 Sup. Ct. 977, are also suggestive upon the extent of the power of congress to make provisions merely for the deportation of aliens who are deemed to be unlawfully in the country. The order of the circuit court is affirmed.

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UNITED STATES v. BORGFELDT et al.

(Circuit Court of Appeals, Second Circuit. January 25, 1898.)

No. 27.

**CUSTOMS DUTIES—CLASSIFICATION—"BROWNIE ALBUMS."**

"Brownie Albums," or decalcomanie books, containing lithographic prints so prepared that they may be transferred to articles by what is known as the "decalcomanie process," were dutiable, under paragraph 436 of the act of 1890, as toys not otherwise provided for, and not, under paragraph 308 of the act of 1894, as lithographic prints.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was an application by George Borgfeldt & Co. for a review of a decision of the board of general appraisers reversing the action of the collector in classifying for duty certain imported goods. The court below affirmed the decision of the board, and the United States have appealed. The opinion filed below by TOWNSEND, District Judge, was, in full, as follows:

"The articles in question are 'Brownie Albums,' or decalcomanie books, containing lithographic prints so prepared that they may be transferred to articles by what is known as the 'decalcomanie process.' They were assessed, under paragraph 308 of the act of 1894, as lithographic prints. The importer protested, claiming that they were dutiable under various other provisions of said act, and, under paragraph 436 of the act of 1890, as toys. The board of general appraisers found that the articles were toys, and sustained the protest of the importer.

Paragraph 436 applies only to toys not otherwise provided for. Paragraph 308 contains no such provision. It is clear that these articles are toys, and the only question is whether they are otherwise provided for as lithographic prints. I am inclined to think, inasmuch as these articles differ from the ordinary lithographic prints, in being produced in book form, with a printed title page and directions for use, in being impressed on unglazed paper, and covered with a white-lead surface, so that they may be transferred to articles, in order thereby to furnish amusement for children, that they have been advanced from lithographic prints to a toy known as 'Brownie Album,' the object of which is not to serve as a lithographic print, but as a toy to be used in the way indicated by the printed directions. The board having found, therefore, upon satisfactory evidence, that the articles were toys, I think its finding should not be disturbed. The decision of the board of general appraisers is therefore affirmed."

Henry C. Platt, for the United States.

Albert Comstock, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We concur in the conclusions expressed by Judge TOWNSEND in his opinion rendered in deciding this cause in the court below, and his decision and that of the board of general appraisers are therefore affirmed.

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UNITED STATES v. FAWCETT.

(Circuit Court, S. D. New York. April 26, 1897.)

1. CUSTOMS ADMINISTRATIVE ACT—DECLARATION BY CONSIGNEE.

Section 1 of the customs administrative act (1 Supp. Rev. St. p. 748), providing that all imported merchandise shall be deemed the property of the consignee, was intended to prevent frauds upon the government arising from collusive transfers, and confers no right upon a mere consignee to make a declaration as "owner" under section 5, but he must make the declaration as consignee, and in the declaration must state truly the name of the owner.

2. SAME—FALSE DECLARATION—INDICTMENT.

In an indictment under section 6 of the customs administrative act, relating to knowingly making any false statement in a declaration for entry, an averment that the defendant "willfully declared that he was the owner of the goods, whereas in fact he was not the owner, as he then and there well knew," is sufficient upon demurrer.

3. SAME—INTENT TO DEFRAUD.

An intent to defraud the United States is not an essential ingredient of the offense constituted by section 6 of the customs administrative act.

4. SAME—FILING DECLARATION.

No offense is complete under section 6 until the false declaration there referred to is filed or offered to be filed with the collector when making or attempting to make entry of the goods.

5. SAME—FALSE DECLARATION—FRAUDS IN GENERAL.

Section 6, specifically providing the punishment for false statements in declarations for entries, and providing a heavier punishment than is imposed by section 9 for frauds in general, must be held to apply exclusively to such false statements, and an indictment for that particular offense cannot proceed under section 9.

Wallace Macfarlane, U. S. Atty., and Max J. Kohler, Asst. U. S. Atty. W. Wickham Smith and Abram J. Rose, for defendant.

BROWN, District Judge. On the 12th of January, 1897, the defendant was indicted in the circuit court of this district upon the