UNITED STATES v. CHU CHEE et al.

(District Court, D. Oregon. May 6, 1898.)

No. 4,304.

1. RIGHTS OF CHINESE TO REMAIN IN THIS COUNTRY—CERTIFICATE AS EVIDENCE.
While, in all cases of entering the United States, and in the case of laborers within the country when the act requiring registration was passed, the official certificate is indispensable, and the sole evidence of the right to enter or remain, in all other cases the status of the person at the time the inquiry is made may be shown by any affirmative proof satisfactory to the judge, justice, or commissioner before whom he is taken.

2. SAME—CHILDREN OF LABORER ADMITTED AS STUDENTS—ACQUIRING STATUS.
Where children of a Chinese laborer are lawfully permitted to enter this country as students, and thereafter remain continually in the public and private English schools of the country, they thereby acquire the status of students, and the occupation of the father is not imputable to them.

John H. Hall, U. S. Atty., and Charles J. Schnabel, Asst. U. S. Atty.

BELLINGER, District Judge. This is a proceeding for the deportation of two Chinese boys, aged, respectively, 13 and 15 years. The father of the boys is a laundryman, residing at Eugene City, in this state, where he has followed his vocation for several years. The boys were landed in this country on May 11, 1896, at Port Townsend, in the district of Washington, as students entitled to land under the Chinese immigration laws. Upon being landed, they went at once to Eugene City, where they have since resided, engaged in "attending school continually in the public and private schools" of that city. They have made rapid progress in their studies, speak good English, and appear to be very intelligent.

The act of May 6, 1882, as amended, provides that Chinese persons other than laborers, who may be entitled to come within the United States, shall obtain the permission of and be identified as so entitled by the Chinese government or 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 in the English language, issued by such government, showing such permission, with the name and signature of the permitted person, and stating 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, place of residence, etc. This certificate is required to be viséed by the consular agent of the United States at the port of embarkation. So far as appears, there was in this case no certificate by the Chinese government, as required by this law. The only certificate now in defendants' possession is that of the American consul at Hong Kong, by which it is assumed they were enabled to embark at that port, and to effect their landing on arrival in the district of Washington.

It is contended on the part of the United States that the certificate required by the act of 1882 is the sole evidence permissible, not only to establish a right of entry into the United States, but to

establish a lawful right to remain here; and, furthermore, that the status of the father as a laborer attaches to his sons under age. Section 6 of the act referred to provides with reference to the certificate referred to that it "shall be prima facie evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district in the United States at which the person named therein shall arrive," and afterwards produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities. Section 12 of the same act provides as follows:

"That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel. And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States."

The act of May 5, 1892, continued in force for a period of 10 years the prior acts regulating the entry of Chinese persons in this country, and it provided further, among other things, "that any Chinese person or person of Chinese descent arrested under the provisions of that or the extended acts shall be adjudged to be unlawfully within the United States, unless such person shall establish, by affirmative proof, to the satisfaction of such justice, judge, or commissioner his lawful right to remain in the United States."

It will be noticed that, in all cases of landing here provided for, a certificate is indispensable as evidence of the right; and in the case of laborers within the country at the date of the passage of the act requiring registration, as evidence of the fact that they were within the country when the act was passed, they are required to procure a certificate of registration; and, when a laborer is arrested for deportation, the failure to have such a certificate, unless within some of the excuses allowed by the act, is conclusive against his right to remain and compels his deportation. Now, it is significant that while these statutes in express terms make a certificate the sole evidence permissible of the right to land, and in the case of laborers the sole evidence of the right to remain in the country, yet in all other cases of deportation it is permissible for the person arrested to establish, by affirmative proof, to the satisfaction of the justice, judge, or commissioner his lawful right to remain in the United States. These different provisions of the statute cannot be construed to mean the same thing. If it was intended that the certificates provided for are to be the sole evidence of the right to remain in the United States, it must be presumed that the statute would not have restricted their conclusive effect as evidence to the right to land, much less would it have permitted the person arrested for deportation, by a special provision, to establish by affirmative proof, to the satisfaction of the justice, judge, or commissioner, his

lawful right to remain in the United States. It is evident that these different provisions are intended to require such evidence as the circumstances of the different cases permit. For instance, the status of a Chinese person entitling him to land must be antecedent to his arrival in the country, and therefore a certificate of the government from which such person comes is required to prove such status. The status of the defendants as students must be determined with reference to the time when the inquiry is made, and, when an opportunity has been afforded to acquire such a status within the country, there is no reason why it may not be shown by any competent evidence. If the right of a Chinese person to remain within the United States is made to depend upon the production of evidence entitling him to land, such person, subsequently becoming a laborer, would be able to resist deportation successfully by showing that he was a student at the time he landed in the country, although such a result would defeat the object of the statute.

The undisputed facts in this case are that these two boys are now, and for nearly two years and since their arrival within the country have been, students in the English schools of Eugene City, and that this has been their sole vocation. Under these circumstances, they are entitled to be classed as students. The occupation of the father cannot be imputed to the children, against a status thus acquired. Such a status does not depend upon ancestry or family relation. The application to remand is denied, and the defendants are ordered discharged.

In re KORNMEHL.

(Circuit Court, S. D. New York. May 23, 1898.)

1. EXCLUSION AND RETURN OF IMMIGRANTS—DEPARTMENT RULES AND REGULATIONS.
   The treasury department may make rules and regulations to carry out the statutes and facilitate the exclusion and return of persons whose immigration congress has forbidden, but no mere rule can operate to exclude a person not excluded by the statutes.
2. SAME—FINALITY OF DECISION OF COMMISSIONERS—HABEAS CORPUS.
   A return of the commissioner of immigration, to a writ of habeas corpus that, upon arrival, relator was detained, and upon special inquiry the inspectors decided that she belonged to a class of aliens excluded by law, "in accordance with department circular," etc., indicates that the inspectors felt themselves constrained to render such decision because of some instructions from the treasury department; and hence it is not a bar to inquiry into the facts, in such proceeding.

This is a habeas corpus, brought to inquire into the cause of detention of relator, an alien, who has recently come to this country to join her husband, who has been here several years. Relator is accompanied by a child under five years of age.

Maurice H. Gotlieb, for the motion.
Lorenzo Ullo, opposed.

LACOMBE, Circuit Judge. The return of the immigration commissioner shows that, upon arrival and after inspection, relator was

detained for a special inquiry in conformity to the provisions of law; that such inquiry was had; and that at least three of the inspectors "found and decided that the said Regina Kornmehl was an alien, intending to land in the United States, and was a person likely to become a public charge, and, as such, was of a class of aliens excluded by law, *in accordance with department circular No. 172, dated October 19, 1897.*" Had this return stopped short of the italicized portion, it would have been in the usual form, and in strict conformity to the statute. The concluding clause, however, would seem to indicate that the inspectors rendered their decision, not because examination of the facts led their minds to such conclusion, but because they felt themselves constrained to render such decision because of some instructions from the treasury department. The suspicion excited by the phraseology of the return is confirmed upon reference to the circular referred to. It calls attention to the prevalence of favus, a loathsome, contagious disease, and instructs the immigration officers to make careful examinations in order to detect it, and to return immediately to the country whence they came all persons affected with such disease. Such instructions are in accordance with the provisions of the statutes regulating immigration. Then follows this clause:

"If any minor alien, suffering with said loathsome disease is accompanied by its parents, one parent should be returned with such alien as its natural guardian or protector."

This instruction seems to be wholly unwarranted by any provision of the statutes. At least, such examination of them as this court has been able to give fails to disclose any phraseology which can be construed as leaving the exclusion of immigrants to the mere arbitrary discretion of the secretary of the treasury or of the commissioner general of immigration. Rules and regulations may be made to carry out the statutes and facilitate the exclusion and return of persons belonging to the classes whose immigration congress has forbidden; but no mere rule of the department can operate to exclude persons not belonging to one or other of the classes named in the statutes. Congress has not forbidden the immigration of "parents of minor aliens, when such minor aliens are affected with a loathsome, contagious disease." The immigration authorities therefore cannot lawfully exclude such parents for such cause; nor should they be excluded under the pretense that they are liable to become a public charge, when the board of special inquiry is not of the opinion that there is any such liability. The alien is entitled to the honest decision of the inspecting officers, wholly untrammeled by any instructions not authorized by the statutes. The return in this case indicates that there has been no such decision in this case. Therefore the finality which the statute accords to a proper decision of the inspection officers is not a bar to inquiry here into the facts. The matter is referred to the clerk of the court, with instructions to give relator an opportunity to show, if she can, that she is not within any of the classes of immigrants whom congress has excluded, and to report the evidence to the court.

NEEDLES et al. v. SMITH et al

(Circuit Court of Appeals, Fifth Circuit. April 26, 1898.)

No. 667.

1. ATTORNEY'S LIEN—SECURITIES PLEDGED TO SECURE LOAN—PRIORITY.
Attorneys employed by a railroad reorganization committee to advise and assist them in the conduct of the business intrusted to them have a lien for their services on the securities deposited with the committee by the parties to the reorganization agreement, superior to the claim of one to whom such securities are afterwards pledged to secure a loan.

2. SAME—REORGANIZATION SCHEME—PURCHASE OF BONDS AND CONTRACT TO PAY VENDOR'S ATTORNEYS.
A railroad reorganization committee obtained a large block of bonds, and, as part of the consideration therefor, agreed to pay the owner's attorneys for their services in opposing the plan of reorganization. These bonds and the other securities deposited with the committee were then deposited as collateral security for a loan previously negotiated with a party to the reorganization agreement. The reorganization scheme failed, and the amount of the distribution to such bonds and securities was not sufficient to pay the claims of the attorneys and the pledgee. *Held*, that the claim of the attorneys was prior to that of the pledgee.

Appeal from the Circuit Court of the United States for the Northern District of Georgia.

H. B. Tompkins, for appellants.

Alex. C. King, Jack J. Spalding, John T. Glenn, Hoke Smith, John M. Slaton, and Benj. Z. Phillips, for appellees.

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

McCORMICK, Circuit Judge. Pending proceedings for the foreclosure of the mortgages on the property of the Marietta & North Georgia Railway Company, certain holders of the bonds of that company and of the constituent companies out of which it was formed entered into an agreement by which they constituted certain persons a reorganization committee, with ample powers specified in the agreement, and deposited in their hands the securities held by the parties to the reorganization agreement. Among the powers of the reorganization committee was that to employ counsel. The committee employed Hoke Smith and John T. Glenn to represent them as counsel. After this employment of counsel, the committee negotiated a loan with the Penn Mutual Life Insurance Company, of Philadelphia, to secure which loan they pledged the securities which had been deposited with them by the parties to the reorganization agreement. Subsequently to the negotiation of this loan, the Penn Mutual Life Insurance Company, of Philadelphia, became a party with the reorganization committee and others to another agreement looking to a reorganization of the railroad properties involved in the foreclosure proceedings. This last agreement purported to be made by named parties of the first, second, third, fourth, and fifth parts. Newman Erb was one of the parties of the second part. He was also one of the parties of the fifth part, and in the fifth part was associated with John W. Hamer. As one of the parties of the second