In re GOTTFRIED.

(District Court, E. D. Pennsylvania. August 23, 1898.)

ALIENS—PROCEEDINGS UNDER IMMIGRATION LAWS—ORDER OF DEPORTATION.

An order of deportation under the immigration law is not conclusive, so as to preclude inquiry by a court into its validity on habeas corpus proceedings, where the petitioner was denied the right of appeal given him by the law; and he cannot be deprived of such right on the ground that the case has been heard by the appellate court, where it was taken there on an appeal by a dissenting member of the board of inquiry from a decision in petitioner's favor, and was heard in his absence and without his knowledge.

This was an application for a writ of habeas corpus in behalf of Mayer Gottfried, restrained of his liberty under an order of deportation issued by the authorities of the immigration bureau.

Chas. Hoffman, for relator.
James M. Beck, for respondent.

BUTLER, District Judge. The finality of the order of deportation is settled by the case of Lem Moon Sing v. U. S., 158 U. S. 538 [15 Sup. Ct. 967], unless the provisions of the statute on which it is founded, have been disregarded. The court there determined that the inspector's decision is conclusive as respects all questions of fact involved, whether they relate to the jurisdiction, or other matter. The petitioner complains however that the statute was disregarded in that he was denied an appeal; and this complaint is well founded. The denial was based on the fact that the case had been taken to the appellate tribunal by one of the board of inquiry.

It appears that the board, which consisted of four members, rendered a decision in the petitioner's favor whereupon one of the members, who had dissented, appealed to the bureau at Washington, where the case was heard in the petitioner's absence, and without his knowledge, and the decision there reversed and the order of deportation made and issued, on the representations, as the record states. of this individual. If the petitioner had been given notice and an opportunity to defend, the situation would be materially different. As it is, his right to be heard by the bureau has been disregarded. That the decision of the board should have been reversed on the representations of a dissenting member, and the order issued without notice to the petitioner, is, to say the least, astonishing. The petitioner will be remanded, temporarily, and the final disposition of the habeas corpus case postponed until there has been time afforded to allow the appeal and dispose of it as the statute provides for.

And afterwards, August 29, 1898, the court, being informed by the district attorney that the petitioner was awarded a rehearing by the board of inspectors, and was by its order permitted to land, discharges him from custody under the writ.

UNITED STATES v. KORNMEHL.

(District Court, D. New Jersey. August 4, 1898.)

ALIENS—FRAUDULENT NATURALIZATION—CANCELLATION OF PAPERS.

Naturalization papers will be canceled as improvidently issued where it is made to appear to the court that the affidavit and the testimony on which the papers were issued were false, and that the applicant was not in fact eligible to citizenship.

Rule to show cause why naturalization papers should not be set aside and canceled.

J. Kearney Rice, U. S. Atty., and Dr. Lozenzo Ullo, for the immigration bureau, port of New York.

Robert Carey, for defendant.

KIRKPATRICK, District Judge. Marcus G. Kornmehl, on the 21st day of June, 1898, applied to this court for naturalization, and claimed the right to become a citizen of the United States at that time, upon the ground that he had come to the United States when he was under the age of 18 years, and that he had continued to reside therein ever since. The applicant made affidavit to the necessary averments, and the same were also sworn to by a witness produced by him for the purpose. Almost immediately after the certificate of naturalization had been granted, counsel on behalf of the immigration commissioners appeared before the court, and obtained a rule to show cause why they should not be revoked, as having been improvidently issued. The matter was referred to a United States commissioner to take testimony, and, upon his report being made to the court, it appears that on the 3d day of June last, in legal proceedings had in the circuit court of the United States for the Second circuit, the said Marcus G. Kornmehl had sworn, with much corroborative detail of circumstance, that at the time of his arrival in the United States he was of the age of 24 years. This allegation, made under the solemnity of an oath, naturally excites a doubt as to the truth of the applicant's statement made in this court, which doubt the testimony of the witnesses produced by him before the commissioner fails to dispel. When I consider the consistency of the details of his account of himself as given in the courts of New York, and the inconsistencies contained in that which he gives in this court of the interest moving him at each time to speak the truth; when I take into account the improbabilities of the stories told by the witnesses whom the applicant called before the commissioner, and their frequent contradictions of the applicant and of themselves,—I am forced to the conclusion that the fact is not, as stated to this court, that at the time of his arrival in the United States the applicant was under the age of 18 years.

The court was deceived, and the letters of naturalization were improvidently issued. They are still within the control of the court, and an order should be entered revoking them, and directing that they be returned to the clerk of the court for cancellation.