

It is thought that nothing in the case of *U. S. v. Yong Yew*, 83 Fed. 832, is in conflict with these views. In that case the defendant by trickery and evasion secured entry into the United States as a merchant when in fact he was a laborer. He worked in a laundry continuously from the time of landing until he was arrested. As already stated the court is of the opinion that the plain purpose of the law cannot be evaded by such manifest artifice. The law should be construed to prevent fraud on the one hand and injustice on the other.

In order that there may be no misunderstanding the proposition decided by the court is restated as follows: A Chinese person, not a laborer, who has come here with a certificate properly signed and viséd and, after examination, has been permitted to enter the United States and has engaged in business here as a merchant for 17 months, cannot, in the absence of fraud, be deported, upon the ground that the certificate is incomplete and defective in matters of nomenclature and description. The order of the commissioner is reversed and the cause is remanded with instructions to discharge the defendant.

UNITED STATES v. LEE PON et al.

(District Court, D. Vermont. June 8, 1899.)

ALIENS—DEPORTATION OF CHINESE—EVIDENCE OF CITIZENSHIP.

In proceedings for the deportation of Chinese persons whose right to remain in this country rests solely on a claim that they were born in the United States, the testimony of their alleged father, shown by other Chinese witnesses to be inconsistent with previous statements made by him, which statements he denies having made, is not alone sufficient to establish such claim to citizenship.¹

These were appeals by the defendants from orders of a commissioner ordering their deportation.

Rufus E. Brown, for appellants.
James L. Martin, U. S. Atty.

WHEELER, District Judge. The appellants are said to be brothers, of the Chinese race, and their appeals from orders of deportation have been heard together. Lee Chick testifies that they are his only sons, born in Sacramento, Cal. If this is true, they have as much right to be here as any person can have; if not true, they have none. He is corroborated by one witness, who may, however, be mistaken. The case depends mainly upon the testimony of Lee Chick. Several witnesses of his race have testified circumstantially to his calling a young man of Germantown, Pa., at several times, his only son. He denies the conversations, and says that young man is a deceased brother's son, with whose history and whereabouts he seems well acquainted to within a short time. This person would be likely

¹ As to citizenship of Chinese, see note to *Gee Fook Sing v. U. S.*, 1 C. C. A. 212.

to have material knowledge. Government agents testify that they cannot find him, and he is not produced. The absolute denial of these conversations precludes any allowance for misunderstandings. They justly impeach Lee Chick, according to the credit of several witnesses to them. Other testimony more remote has been given, bearing more or less in various ways upon the claims made. Care has been taken, on account of the importance of the cases to the appellants as well as to the government, to give full opportunity for producing evidence, and adequate consideration of what has been produced. Upon the whole the appellants may have been born in the United States, but that they were is not satisfactorily proved; therefore, being of this alien race, by the laws of this country and treaties with theirs they do not appear to be lawfully entitled to remain in the United States. The decisions of the commissioner must, according to this view of the case, be affirmed. Deportation ordered. Orders stayed 10 days.

Motion for Rehearing.

June 28, 1899.

The additional evidence sought to be introduced, as it is made to appear, would not sufficiently meet the weakening of the testimony of Lee Chick by the government witnesses, and corroborate his testimony as to the birth of the appellants in the United States, to change the result. That they are his sons would more clearly appear, but that they were born in the United States would not. The motion must therefore be denied.

Motion denied.

UNITED STATES v. CHIN FEE.

(District Court, D. Vermont. May 11, 1899.)

1. PROCEEDINGS FOR DEPORTATION OF CHINESE — EFFECT OF DECISION OF IMMIGRATION OFFICERS.

The provision of the appropriation act of August 18, 1894 (28 Stat. 390), making the decision of the immigration or customs officers adverse to the right of a Chinese person to enter the United States final, unless reversed on appeal by the secretary of the treasury, conferred no new powers on such officers, and their powers under the existing laws as to Chinese persons not laborers are limited to determining the sufficiency of the certificate of such a person to entitle him to entry. The provision relates solely to proceedings on applications to enter, and does not render the decision in such proceedings denying an applicant the right of entry conclusive against his right to remain in the United States after he has entered, when challenged by proceedings for his deportation.

2. SAME.

The decision of a customs officer that a Chinese person is not entitled to enter the United States, made after such person has already entered, and without any application for entry, is not such an adjudication as is made conclusive by the statute.

3. SAME.

A Chinese physician, not a laborer, who resided in this country for several years, registered as permitted by the statute, and afterwards went to China temporarily, intending to return, is entitled to remain in the United States after his entry.