

Fuller C. Smith, for appellant.  
James L. Martin, U. S. Atty.

WHEELER, District Judge. This appeal is from an order of deportation to China of the appellant as a laborer. He is now shown by the stock book of Quong Wah Lung & Co., of 24 Harrison avenue, Boston, to have been a share owner and partner engaged in buying and selling merchandise, since 1896, in that firm of 32 members, which had existed long before by that name. Section 2 of the act of 1893 declares that "a merchant is a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name." The principal question is whether the conducting of that business in that name includes the appellant and his name within the meaning of the statute. That it does appears to be well settled by the circuit court of appeals of the Ninth circuit in *Lee Kan v. U. S.*, 10 C. C. A. 669, 62 Fed. 914. The opinion there by then Judge, now Mr. Justice, McKenna, is exhaustive of the subject, and nothing appears to be necessary or proper here but to refer to and follow it.  
Appellant discharged.

---

UNITED STATES v. WONG QUONG WONG.

SAME v. WONG CHIN SHUEN.

(District Court, D. Vermont. June 1, 1899.)

1. CONSTITUTIONAL LAW—ALIENS—USE IN EVIDENCE OF PRIVATE PAPERS UNLAWFULLY SEIZED.

The fourth and fifth constitutional amendments, which protect persons against unreasonable searches and seizures, and against being compelled to be witnesses against themselves in criminal cases, may be invoked in behalf of aliens residing in the United States, and they protect persons, not only from the unreasonable seizure of their private papers, but from the use of such papers, when unlawfully seized, as evidence against them in cases involving a forfeiture of their property or personal rights.

2. SAME—DEPORTATION OF CHINESE—LETTERS UNLAWFULLY SEIZED.

In proceedings for the deportation of a Chinese person, where the issue is the citizenship of such person in the United States, the government cannot use as evidence against him private letters, written by him, which its officers obtained by opening envelopes and taking the letters therefrom, in violation of the constitutional provisions against unreasonable seizures.

These were appeals by defendants from orders of deportation made by a commissioner.

Fuller C. Smith, for appellants.  
James L. Martin, U. S. Atty.

WHEELER, District Judge. The appellants are brothers, of the Chinese race. Their appeals from orders of deportation stand upon the same evidence, and have been heard together, by consent. The testimony of the elder and that of their father shows, with somewhat convincing detail, that they were born in San Francisco. It is attacked by showing discrepancies of statements at different hearings, which would be formidable if the language in which they were made could be always clearly understood; but the obvious difficulties in

that respect require large allowances for many natural, and, with the best of faith, unavoidable, misunderstandings. In view of these circumstances, the discrepancies do not appear to justly overcome the direct and apparently well-understood assertion of the fact of birth in this country.

But the government produces letters, written in Chinese, said to have been handed by the appellants to an employé of the government, who passed them to customs officials, who opened, kept, and have offered them in evidence, and which, being interpreted, are said to show bad faith in the claim made by the appellants, and to go far towards overthrowing it. They are objected to as having been procured by unreasonable seizure, if the mode of acquiring them as attempted to be shown is true, and as not being shown to have come from the appellants if it is not true. The fourth amendment to the constitution of the United States declares that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"; and the fifth, among other things, that no person "shall be compelled in any criminal case to be a witness against himself."

In *Boyd v. U. S.*, 116 U. S. 616, 6 Sup. Ct. 524, goods had been forfeited under the revenue laws on evidence furnished by papers required to be produced on order of court. The question of the admissibility of such evidence, so procured, was much discussed in an elaborate opinion by Mr. Justice Bradley, in the course of which he quoted largely and approvingly from the judgment of Lord Camden in *Entick v. Carrington*, 19 Howell, St. Tr. 1029, and added, among other things:

"Breaking into a house, and opening boxes and drawers, are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony, or of his private papers, to be used as evidence to convict him of crime, or to forfeit his goods, is within the condemnation of that judgment. In this regard the fourth and fifth amendments run almost into each other. \* \* \* And any compulsory discovery, by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime, or to forfeit his property, is contrary to the principles of free government. It is abhorrent to the instincts of an Englishman. It is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom. \* \* \* And we have been unable to perceive that the seizure of a man's private books and papers, to be used in evidence against him, is substantially different from compelling him to be a witness against himself."

The judgment of forfeiture was reversed for the admission of this evidence.

In *People v. Sharp*, 107 N. Y. 427, 14 N. E. 319, a judgment of conviction of bribing an alderman was reversed because proof of what he had testified to before a senate investigating committee was admitted in evidence upon the trial.

The opening of the envelopes, and taking these letters from them, was a seizure of papers of the appellants that was unreasonable and contrary to the spirit of these amendments; and such papers, procured in that way, cannot be used in evidence against persons from whom they are procured without violating the protection afforded by the amendments to all persons in this country. It has been said that

the manner of obtaining such evidence, whether by force or fraud, does not affect its admissibility; but these constitutional safeguards would be deprived of a large part of their value if they could be invoked only for preventing the obtaining of such evidence, and not for protection against its use. The cases cited show that they cover the use of papers or testimony when it would be a carrying out of their violation.

That the government can, by executive or judicial officers, exclude or expel aliens, is not in any manner to be questioned; but aliens, while here, are entitled to the benefit of these guaranties, which are not confined to citizens, as affecting liberties and property. These appellants claim to be citizens by birth, and whether they are such or not is the only question here, and that should not be determined upon what would be in violation of their rights as citizens, even if not extending to aliens. If citizens, they cannot be lawfully deported; and the question whether they are or not should be carefully tried, with due regard to their constitutional rights. The letters seized must be excluded.

Appellants discharged.

---

LEE SING FAR v. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit. May 2, 1899.)

No. 488.

1. CHINESE EXCLUSION ACT—PERSONS BORN IN UNITED STATES.

A person born in this country of Chinese parents, who are permanently domiciled here, though aliens, is a citizen of the United States, and cannot be excluded therefrom or denied the right of entry.<sup>1</sup>

2. SAME—HABEAS CORPUS PROCEEDINGS—SUFFICIENCY OF EVIDENCE.

In habeas corpus proceedings brought by a Chinese person claiming the right to enter the United States from China, on the ground of being a citizen of this country by birth, the court is not bound to accept the testimony of the petitioner's witnesses as conclusive, though uncontradicted, and where in such a case it appeared that petitioner, a girl 20 years old, had resided in China for 17 years, and the testimony as to her identity with the person claimed to have been born here was inconclusive or improbable, the finding of the court and its referee, who heard the witnesses, will not be disturbed on appeal.

Appeal from the District Court of the United States for the Northern District of California.

S. C. Denson and A. H. Yordi, for appellant.

E. J. Banning, Asst. U. S. Atty.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

HAWLEY, District Judge. Appellant claims to be a native-born citizen of the United States. She arrived in San Francisco on June 25, 1898, on the Pacific mail steamship Peru from China, and was by

<sup>1</sup>As to citizenship of Chinese, see note to Gee Fook Sing v. U. S., 1 C. C. A. 212.