

CITIZENS MAY TAKE APPEAL

Decision of Judge Wheeler of Vermont Is Overthrown by the Opinion of De Haven

EXCLUSION ACT LIMITED

American Born Chinese Must Not Be Treated Differently From Whites of Same Birth

In the matter of the petition of Chin Bok Bong for a writ of habeas corpus, United States District Judge de Haven handed down an opinion yesterday concurring in the opinion of the United States Circuit Court of Appeals to the effect that a Chinese person claiming to be a native of the United States and subject to its jurisdiction cannot be stopped from appealing to the Federal courts on habeas corpus against the ruling of the Department of Commerce and Labor that said Chinese person was not born in the United States.

In his decision Judge de Haven says: "The question of the jurisdiction of the court in a proceeding like that to inquire whether a person of Chinese descent was in fact born in the United States and by reason of such birth entitled to return to the United States as a temporary absence therefrom received careful consideration by Judge Morrow in the case of Ho Kim Yum vs. the Fish and Game Commission reached there that there is such jurisdiction."

The decision quotes the language of the United States Circuit Court of Appeals, Ninth Circuit, in the case of Gee Fook Sing vs. the United States as follows:

"We have considered all the questions of law and fact which we find involved, and our conclusions are that inasmuch as the fourteenth article of the amendments to the constitution of the United States declares that all persons born in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside, the laws excluding immigrants who are Chinese laborers are inapplicable to a person born in this country and subject to the jurisdiction of its Government, even though his parents were not citizens when he was born, and that under the laws providing for the naturalization of aliens, that any person alleging himself to be a citizen of the United States and desiring to return to his country from a foreign land and that he is prevented from doing so by the process of law and who on that ground applies to any United States court for a writ of habeas corpus is entitled to have a hearing and a judicial determination of the facts so alleged, and that no act of Congress can be understood or construed as a bar to such hearing and judicial determination."

In no opinion the cases above cited were correctly decided and the demurrer to the petition will be overruled and the motion to dismiss denied.

The petitioner will be taken before United States Court Commissioner Heacock for the purpose of determining whether his claim to be a citizen is or is not true.

United States District Judge Wheeler of Vermont, last October, handed down a decision that a Chinese person alleging himself a native American was debarred from appealing to the Federal courts on habeas corpus.

COURT GIVES MISS WILLS RELIEF SHE PRAYS FOR

Judge Sloss Annals Ties Unting Her to Man Who Was Insane

The marriage of Jean Lillian Willis to George E. Olsen, which took place at Oakland in October, 1901, was annulled yesterday by Judge Sloss on complaints of Miss Willis. The testimony showed that Olsen, for a long time prior to the marriage, had been insane, and concealed the fact from Miss Willis when she consented to become his wife.

Interlocutory decrees of divorce were granted to Krakriehs Wichrowski from Jessie Wichrowski for desertion, Cecil M. Troy from Charles P. Troy for neglect, and Clara M. Wolf from Julius J. Wolf for intemperance.

Alden S. Darrow, freight agent of the Colorado Midland Railway, who was recently adjudged guilty of contempt by Judge Trout because of his failure to pay alimony to Florence Darrow pending the trial of her suit for divorce, was purged of contempt yesterday by Judge Trout and the divorce action was dismissed. The Darrow have settled their differences.

Suits for divorce were filed by Flora Commins against Louis Commins, for cruelty; Wilhelmina C. Mills against Edward Mills, for intemperance, neglect and cruelty; Kitty Parker against Charles F. Parker, for cruelty; Ellen Gillespie against G. D. Gillespie, for conviction of felony; and Belle Cranra against James A. Cranra, for cruelty.

Issues License for New Bank

The State Board of Bank Commissioners issued a license yesterday for the establishment of the San Mateo County Savings Bank at Redwood City. The new institution, which is capitalized at \$50,000, will open its doors for business February 1. Alfred J. Marcus has been elected president of the bank, G. H. Rice vice president and L. P. Behrens secretary-treasurer and cashier.

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Coffee Does Things to the Liver

When yours is hit hard enough, quit and save the remaining stock of health. It may be small, but it will grow steadily larger if good, well-made

Postum Coffee

Is used in place of the ordinary coffee.

YOUNG CROOKS ARE PUNISHED

Jacob Silverman Sentenced to Serve Fifteen Years in Folsom on Robbery Charge

WISELY PLEADS GUILTY

J. E. Crothers, Clever Criminal, Will Spend the Next Seven Years in Same Institution

Judge Lawlor passed sentence on three prisoners yesterday.

Jacob Silverman was sentenced to serve fifteen years in Folsom on a charge of robbery. He pleaded guilty. The offense was committed in the Olympic dance hall at 519 Pacific street on the night of October 8. W. W. Eggleston, a miner, had been drinking in the dance hall and went to a rear room. He was followed by Silverman, who placed a loaded revolver against his abdomen and ordered him to throw up his hands. Eggleston complied, but one of his hands happened to drop and Silverman, shoving the muzzle of the revolver into Eggleston's mouth, threatened to blow his head off. Silverman then relieved Eggleston of his gold watch and chain and ran from the dance hall, but was pursued and captured. Silverman is a young man and the Judge in passing sentence upon him said that he belonged to a class of young men who were responsible for the many desperate robberies that are committed in this city. He declared there was need of strong example and that their comparative youth should not be permitted to interfere with the infliction of adequate punishment for the perpetration of crimes of such gravity and alarming frequency.

J. E. Crothers was sentenced to serve seven years in Folsom on a charge of forgery. He forged the name of Mack & Co., wholesale druggists, on an order for twenty cases of whisky, which he obtained from a firm on Drumm street and sold to Kennedy & O'Keefe, grocers, Eddy and Pierce streets, for \$150. He had been arrested several times for similar swindles and there is another charge of forgery pending against him. He is 25 years of age and is regarded as one of the cleverest young criminals in the city. Since being confined in the County Jail he has written to Judge Lawlor in contrite terms, expressing an intention to reform if given another chance.

Joseph King, the convict preacher, was sentenced to serve twenty years in Folsom penitentiary for burglary in the first degree. The sentence will run concurrently with one imposed upon King previously. King, Thomas Barker and Henry Hamilton maintained a "robbers' roost" at 835 Howard street, where they kept the products of burglary in different lodging-houses. Hamilton and Barker are both serving terms of sixteen years. King and Barker have taken appeals to the Supreme Court.

WOLF SEEKS RESTORATION TO POLICE DEPARTMENT

Applies for Writ of Review of the Commissioners' Acts on Ground That They Were Prejudiced

Former Sergeant of Police Reuben A. Wolf, who was dismissed from the police force for accepting money from saloon-keepers, took his case into court yesterday in the hope of securing restoration. He filed a petition for a writ of review of the proceedings before the Board of Police Commissioners which resulted in his dismissal. Judge Kerrigan assigned the case to Judge Seawell, who issued an order directing the Commissioners to appear before him January 22, at 10 a. m., to show cause why Wolf's petition should not be granted.

Wolf bases his petition on several grounds. He claims first that the proceedings of the board were illegal because no charges against him had been preferred with the Civil Service Board and because the last named board did not authorize the Police Board to enter into any investigation, as the charter requires; second, that the Police Commissioners were not qualified to try him because they had become prejudiced by reason of their frequent consultations with Chief Wittman in regard to the charges against him, and third, that he was not given a fair hearing because Commissioner Drinkwater had conferred with George B. Simpson, the saloon-keeper whose money he was accused of taking.

Election by New Yorkers. The New Yorkers, a society composed of natives of New York State, held their fifth annual meeting at the Occidental Hotel Wednesday evening. The following new officers were elected: President, E. B. Read; vice presidents, J. V. Coleman and C. D. Benedict; secretary, H. P. Bush; treasurer, P. Fisher.

During the evening Colonel Bush was the recipient of a beautiful silver set, presented to him by the retiring president of the society, Colonel C. Mason Kinne, on behalf of the organization in recognition of the secretary's five years' faithful service.

Booked for Burglary. David Gaffney was booked at the City Prison yesterday on a charge of burglary. He is accused of having broken into the grocery of Julius Levin, Bay City Market, on Christmas day and stealing four cases of whisky, two cases of eggs and two hams. He was caught by one of the partners, but broke away from him and escaped. The stolen property was recovered by the detectives. Levin told them that his store had been systematically robbed for the last two years. Gaffney was employed in the market.

Accused of Being a Defaulter. Natale Andreotti, financial secretary of the Fishermen's Mutual Aid Society, was arrested yesterday on a warrant charging him with felony embezzlement. The complaining witness is Joseph Calcagaris, president of the society, who alleges that Andreotti is short in his accounts to the extent of \$296. A demand for an accounting was made upon him on December 21, but he has failed to make the shortage good. The complaint was sworn to before Police Judge Fritz.

JUDGE MOGAN REUNITES ONE DISSEVERED COUPLE

Matters of a Marital Nature Are Easily Adjusted Between Young Couple. Grandmother Convicted of Cruelty

One family, badly disjointed because the husband was a roisterer by night, was reunited by Judge Mogan yesterday in the Police Court. The husband is a young fellow, Charles Parker by name, well appearing and industrious. One year and a half ago he took for a wife a very pretty girl, who bore him one child. Thereafter he fell in the way of temptation and his wife had him arrested on the misdemeanor charge of failing to support a minor child.

There were other legal proceedings which she had contemplated. She wanted to get a divorce for one thing and a horde of eager attorneys advised her that such procedure would be for her benefit. When Judge Mogan got his Roentgen ray of justice fully operating on the case, he called the young couple up close to the bench and advised them: "You two young people had better go into my chambers," he said, "and talk this matter over. Evidently two lives may be sundered that should be joined if you drift apart." Bailiff Jerome J. Hekey led the couple to the Judge's chambers and within ten minutes they came out holding each other's hand. They told the court that all differences had been settled. The young husband promised that hereafter he would not look upon the wife when it was red and glittering in the cup and his wife was willing to take one more chance with him. Parker is employed at the Union Iron Works and bore excellent references from his employers.

Victoria Fersent, the grandmother who sat a baby on a hot stove in her home at 710 Grafton avenue, was convicted yesterday by Judge Cabanis on the charge of cruelty to a minor child. In addition to herself she had as a witness for the defense a Korean named A. Takin, who claims to be a minister of the gospel. He has been living in the Grafton avenue home for several months. On the day the baby was burned he testified that he laid his hand on the stove and that it was not exceptionally warm. The defendant also gave testimony of similar character.

Takin said he went to his room after testing the stove and was startled by a series of screams from the baby. He rushed down to the kitchen and found Mrs. Fersent holding the child. He saw the burns on its body and administered whatever remedies he could find in the house.

Judge Cabanis was unsparing in his words of censure on the heartless woman who put a baby on a hot stove for punishment. During the course of his lecture the mother of the baby, who is the daughter of the defendant, started a "rough house" in the courtroom by abusing M. J. White, secretary of the Society for the Prevention of Cruelty to Children. Somewhat narrowly she escaped a commitment for contempt of court. Her mother was ordered into custody and to-day Judge Cabanis will impose as severe a sentence on her as is compatible with the circumstances. Six months is the maximum punishment and there are no mitigating circumstances.

Twenty-seven Greeks, wise in the knowledge that the mountains look on Marathon and Marathon looks on the sea, but totally unversed in a law prohibiting gambling in the city and county of San Francisco, were gathered in by Sergeant Ward and four other police officers Wednesday night on the charge of playing a percentage game. The game was being conducted in a saloon at 785 Folsom street, the table was more than \$3000, and all of the prisoners had wads of greenbacks in their clothes.

The prisoners appeared before Judge Fritz yesterday. Prosecutor Ike Harris was clearly up against it. There was no proof that this game of the Greeks was a percentage one, and in the absence of this it was necessary to dismiss the defendants. Harris went back to Homer and hummed hexameters from the Iliad to the court in support of his contention that the game was an unlawful one, but Homer and the statutes of the State of California are divergent. Nobody was willing to testify that the Greeks were taking any more percentage than they have always done throughout history, so they were allowed to go free and take their places with slot machines and other immunes.

Judge Cabanis wrestled with a battery case yesterday. S. Riccomi runs a fruit stand at 4063 Eighteenth street. One of his neighbors is George Pollock and both of them are fathers of children. The youngsters became involved in trouble and the elders took up the quarrel. As a result Riccomi landed a large, fast punch on his neighbor's nose. Judge Cabanis philosophized over the question in this fashion: "Most all of the difficulties that come before me among men are the result of quarrels over women, children or dogs. In the case of women it is hopeless to try to adjust matters. As regards dogs the question is altogether too delicate for discussion except in specific cases, but with children I would suggest that some of the excess energy wasted in battery cases be applied to the young ones."

Under the Judge's advice, the two neighbors shook hands and promised hereafter to settle the differences between their children by a more peaceful method than fighting among themselves.

Vera Costello resented the attentions which Mabel Wells was bestowing on the only man she had ever loved. When she met Mabel at the eerie hour of 5 o'clock yesterday morning on Kearny street, between Jackson and Washington, she put her protest into the form of skewering her hated rival with a batpin. Yesterday Miss Costello was before Judge Mogan to answer to the charge of assault with a deadly weapon.

Policeman Nelson, whose eagle eye catches an impression of whatever is doing along his beat, came to the rescue in time to save Miss Wells from serious injury. He was prepared to tell the court all he knew of the occurrence, but at the request of the defendant's attorney the case was set over until January 19.

Charles Wines, a railroad man from Oakland, who made the grievous mistake of changing his name to Williams on trial before Judge Fritz yesterday on the charge of throwing red pepper into the eyes of a boy on Mission street. There was no desire to prosecute the defendant. The complaining witness admitted that he had been bothering Wines in company with a crowd of other boys. He said he was not injured by the pepper and was very glad to drop the prosecution. Judge Fritz was flooded with letters from prominent Oakland persons testifying to Wines' good character and he was dismissed with a reprimand.

Maude Lawrence, charged with the forgery of the name of J. W. Layman to a check for \$100, was on hearing before Judge Cabanis yesterday. Her defense is that the check was genuine and the contention was heavily assisted by the testimony of Theodore Kytka, the handwriting expert, who said that Layman's signature to the paper in question was undoubtedly genuine.

Prosecutor Hanley asked Kytka if he had examined the alleged spurious signature under a microscope. "I wouldn't disgrace a microscope in that way," said Kytka. "There is no necessity for such an examination. The signature on this disputed check could not have been written except by the same man who signed the checks which are admitted to be genuine."

Miss Lawrence bore her usual confident air and does not seem to be much worried over the outcome of the case. In view of the testimony it looks as though trouble would never trouble her on this particular charge.

Caroline Butter conducts a little notion store out on Ninth avenue, between M and N streets. She was before Judge Fritz yesterday on the charge of selling liquor without a license. A recently appointed policeman named Burg invaded the notion store Tuesday morning in civilian clothes and asked the old lady for a drink. She refused to sell it to him, but offered to give him a nip, because the fog was chill and she really believed he needed it. Then he laid down some money in payment and afterward arrested her for selling liquor without a license. Judge Fritz listened to her simple story and dismissed her without a word of censure. It was plain she had not attempted to violate the law and it was only her charity that had drawn her into the trouble. In Chicago and elsewhere policemen that try to lure people to commit crimes have received severe reprimands from Judges.

William H. Atkins was held by Judge Mogan yesterday without bail on the charge of murder. He shot and killed Muldoon McDonald on Christmas day. McDonald was a negro prizefighter, somewhat amusing in the ring, but decidedly uninteresting outside of it. His passing will not be vigorously regretted by the colored colony, among whom he was rated as a "bully" and a "chief." Atkins killed the fighter on Christmas day because he had stolen \$155 from a poker game in which he had no interest. The defendant pursued and shot the robber. Self-defense will be the plea.

A gentleman from Georgia named Ed Brown was ordered into custody by Judge Fritz yesterday afternoon because the Judge thought he was not telling the truth in regard to certain occurrences he witnessed in connection with a charge against George Curry for making an assault with a deadly weapon on Gus Lindenstadt. Both Curry and Brown are street car men and the latter was trying so hard to shield the defendant that Judge Fritz became properly indignant.

"There is entirely too much lying going on in the Police Courts," said the Judge, "and I shall do whatever I can to stop it." Late in the evening he had a conference with District Attorney Byington and a charge of perjury was preferred against Brown, with his bail set at \$2000.

Dispatches from Paris are to the effect that the European powers are seeking an opportunity to intervene in the threatened war between Russia and Japan, so possibly there will be no war after all. This does not prevent your buying a gas range from the S. F. Gas and Electric Co., 415 Post street.

WASHINGTON, Jan. 14.—Representative Robinson introduced a bill to-day providing for the admission of Oklahoma and the Indian Territory into the Union as the State of Oklahoma.

DOCTOR FRITZ IS INNOCENT

Commissioner Heacock Rules That the Letter About the Second Wife Was Not so Bad

DEFENDANT TO REMARRY

Accused Man Becomes Reconciled to Former Spouse and She Takes Children to Court

Dr. J. A. Fritz, whose troubles through the divorce suit brought by his second wife have occupied considerable space in the newspapers recently, appeared yesterday morning before United States Court Commissioner Heacock for trial on a charge of having mailed an obscene letter addressed to George Marshall, uncle of the second Mrs. Fritz.

Marshall Fritz appeared his first wife and his four children, and as they sat in a row they occupied one side of the small courtroom. Fritz was confident, the divorced Mrs. Fritz was smiling and happy and the little Fritzes snickered and giggled at untimely intervals. His attorney, Bert Schlesinger, confidentially informed a few friends that Dr. Fritz and his former wife had become reconciled, and that they were about to be remarried as soon as he should obtain a divorce from the woman to whom he referred in the letter to Marshall as "Sandhill Jennie."

The defense admitted having mailed and written the letter, but denied that it was obscene in the legal sense of the term as laid down by United States District Judge de Haven in a recent opinion. In the indelicate epistle Dr. Fritz recited what purported to be the history of his relations with his second wife in the most vulgar Anglo-Saxon phrase, but Judge Heacock decided that it did not come within the prohibition of the statute and dismissed the case.

Passes Fictitious Check.

Mrs. Naomi Morgan, who has a lodging-house at 402 Mason street, secured a warrant from Police Judge Cabanis yesterday for the arrest of W. E. Gates on a charge of passing a fictitious check. She said that Gates had paid her \$5 room rent and had given her a check on the Germania Savings Bank signed "E. J. Berry" for \$20, receiving \$15 change. When the check was presented at the bank it was found that no one of the name of E. J. Berry had an account there.

Seek to Prevent Cruelty.

W. T. Harmon was fined \$5 by Judge Cabanis yesterday for driving a horse unfit for use. The case of William Churchman, another driver accused of cruelty to his horse, was continued by Judge Cabanis until Saturday. Officers Unger and McCurry of the Humane Society killed a glandered horse at the docks yesterday. The animal was to be sent to Petaluma to be used for chicken feed.

Gets No Damages.

Alec Fries had his hand injured by a saw in the factory of the American Lead Pencil Company about two years ago and immediately brought a suit for damages against his employers. The lower court decided that the company should compensate the young man for his losses, but the Supreme Court reverses that judgment. The case was sent back to the Superior Court yesterday for a new trial.

Convicted of Assault on Rob.

Joseph Davis was convicted by a jury in Judge Dunne's court yesterday on a charge of assault to commit robbery. He will be sentenced on January 23. On the morning of October 4 he led Henry Gohringer into a doorway on Mission street, near Third, and was going through his pockets, when Policeman Tillman made his appearance and placed him under arrest.

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Racing

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Races commence at 2:15 p. m. sharp. For special trains stopping at the track take S. F. Ferry, foot of Market street, at 12:30, 1:00, 1:30 or 2 o'clock. No smoking in last two cars, which are reserved for ladies and their escorts.

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