U. S. SUPREME COURT.

THE RECTOR, CHURCH WARDENS AND VESTRYMEN OF THE CHURCH OF THE HOLY TRINITY,

Plaintiff in Error,

vs.

THE UNITED STATES,

Defendant in Error.

Brief for the Plaintiff in Error.

October Term, 1891.
Term No. 143.

STATEMENT.

This action comes on to be heard upon an appeal by Writ of Error, from a judgment entered in the office of the Clerk of the Circuit Court of the United States for the Southern District of New York, upon a demurrer interposed to a declaration setting forth that the defendant therein, a domestic religious corporation, had violated Chapter 164 of the Laws of the United States, approved February 26th, 1885, and the act amendatory thereof, approved February 23d, 1887, and had become subject to their penalty, in assisting, encouraging, and soliciting the Rev. E. Walpole Warren, a celebrated divine of England, in removing into the United States and becoming the Rector of "The Church of the Holy Trinity," in the City of New York.

The points relied upon to sustain the demurrer and this appeal are:

1st. If the Acts upon which the action was brought are intended to apply to the clergy, they are, to that extent, null and void, because unconstitutional.

2d. The clergy are not included within the prohibition of the Acts.

3d. The Acts were intended to embrace an entirely different class of persons.

POINTS.

I.

If the Act of Congress, under which this action was brought, prohibits any church in the United States from calling and securing a clergyman from any part of the world, to act as its pastor, rector or priest, it is, to that extent, void, because unconstitutional.

Such legislation is expressly prohibited by Amendment I. of the Constitution, viz.: "*Congress shall make no law* respecting an establishment of religion or *prohibiting the free* exercise thereof."

The word "religion" was not mentioned in the original constitution and as Congress had no power to legislate other than those expressly given to it by the constitu-

tion, such legislation only could be declared valid as came clearly with the implied intendment. After the constitution had been ratified and accepted by the several States, upon reflection it was observed that there might be room for misconstruction of its provisions, and for the purpose of giving even greater liberty to the people, at the very next meeting of Congress thereafter, several amendments were proposed, and subsequently ratified and adopted and annexed thereto, and the very first of these is the one under discussion, guaranteeing universal freedom in the worship of God, and for extending His kingdom upon earth.

The Christian religion forms a part of the very life of our nation, and is the bulwark upon which society and morality rest. To attempt by Federal legislation to cut short its spread, to minimize its influence, to deprive the people of all help that they can receive from whatever source that will aid them in their worship, that will stir them to greater zeal, that will cause them to live holier and purer lives, is in contravention of one of the very things that this amendment was designed to vouchsafe forever to the whole nation.

The present practice of our Government is a most telling and pleasing witness to the truth, that as a nation "In God we trust." Before an officer can become one of her recognized servants, his fealty is declared upon the Holy Bible. Our Courts recognize as the test of the competency of witnesses, that their sense of right and wrong, truth and falsehood, shall be gauged by the same standard. Our national coin of exchange proclaims our nation's faith in the Almighty. "Thanksgiving Day" is an annual reminder of Him in whom the nation trusts, and repeated proclamations from the President, in the times of war, have counseled prayer and supplication, that the God of our whole country would re-unite her people.

Further citation of custom, or argument upon this point, is superfluous, for it must be conceded, that the premise is already established, that as a nation, apart from all legislation, we believe in God.

That being a fact, whatever will tend to strengthen a people in the Christian faith, and help His people to live near to Him, is in entire accord with our national predisposition.

When God put it into the minds of the Board of Trustees of this New York Church that Mr. Warren, of England, whom they knew and loved so well, could be more helpful to the development and growth of Spiritual life in that Church than any other clergyman, and in the same mysterious way revealed to His servant His wish that he go to that distant people to administer to them in holy things, our political Government of the United States of America can not remain true to its own fundamental principles and past practices if it raise a single barrier to prevent or hinder the consummation of that desired relation of rector and parishioner. Congress is interfering with the spiritual growth and religious freedom of that people when it attemps to declare who shall, and who shall not, be their spiritual helper.

In the past, our Nation has been willing and desirous of trusting in, and receiving blessings from God, but (if the Act under discussion were correctly interpreted in the Court below) now it is willing to stop there, and limit such blessings to itself as a political nation, and when a community of people composing a part of that very nation attempts to follow their own and God's Will in selecting a pastor especially sanctified to assist them in their worship of Him, but who happens to abide in a foreign nation, then Congress says no; congregations and parishes and God himself must be confined to the "home

market'' for spiritual aid in this direction. It can not be that Congress intended any such absurd thing.

Again, if the Act under discussion be declared valid in its application to religion, it would increase spiritual darkness. Take, for example, a colony of naturalized American citizens in our metropolis who came from a province in Switzerland. There is no clergyman in their midst. They have a desire for one, but no divinity school in America teaches in their language. They can not send to their Fatherland for a pastor, for there would naturally be an implied, if not an actual, understanding, that if he came here he would at least have his temporal wants supplied while here, and thus the Act under discussion would be violated. Can it for a moment be held, that the Constitution or Amendment I thereof, ever was designed to countenance any such paganism? Again, for example, take the Church of Rome. Suppose the Ecclesiastical head of that church discovers in one of our States the existence of certain facts and conditions which he concludes one of his priests in Europe could most effectually meet and turn to God's honor; but the Act under discussion as interpreted by the Court below, would be a barrier to his coming, for there would be an implied understanding, or contract, at least, that the people here would renumerate him, or in other words, provide for his temporal wants. Other instances might be cited, but these are more than sufficient to demonstrate the unsoundness of the construction that has been placed upon this Act.

This Court has expressed itself upon this point, in what is known as the "Mormon Cases," and in them all this rule is adopted. Religious liberty is by the Constitution guaranteed to all, but wickedness and vice and immorality are not religion simply because an individual or even sets of individuals may say and claim they are, and when judicial protection is invoked under the guise of religion;

when they are in direct conflict with "the enlightened sentiment of mankind, and inimical to the peace, good order, and morals of society," such aid will be denied. "Crime is not the less odious because sanctioned by what any particular sect may designate as religion."

Mormon Church *vs.* U. S., 136 U. S., 49.
Davis *vs.* Beason, 133 U. S., 342, 345.

In Reynolds *vs.* U. S., 98 U. S., Mr. Chief Justice Waite, in delivering the opinion of the Court, said: "In "these two sentences is found the true distinction be- "tween what properly belongs to the Church and what "to the State. That to suffer the civil magistrate to "intrude his powers into the field of opinion, and to "restrain the profession or *propagation* of principles on "supposition of their ill tendency, is a dangerous fallacy "which at once destroys all religious liberty," and it is declared "that it is time for the rightful purposes of "civil government for its officers to interfere where "principles break out into overt acts against peace and "good order."

There is no averment in the Complaint herein, or claim in fact, that the case at bar comes within the above exception that the invitation extended by the Church of the Holy Trinity to the Reverend Mr. Warren was the cause of the commission of any "overt acts against peace and good order," but, on the contrary, if the Act under discussion should be enforced, it would clearly be interfering with the province of the Church in the "*propagation*" of principles acknowledged by all to be in furtherance of "peace" and "good order" among mankind and to the honor and glory of God.

It therefore follows, that the Acts of Congress under discussion are null and void so far as they attempt to restrain the entrance of foreign clergymen into the

United States of America for the purpose of preaching God's word, and insofar as they lay any restraint or penalty upon any person or Church for being the inducing cause of their coming.

In the Court below the learned attorney for the Government in his argument saw fit to treat the act under discussion as "*a part* of the general scheme of the revenue or tariff legislation of our land."

In the light of what has been said, such contention really seems inapplicable and ridiculous. *It cannot* be possible that the question of the spread of God's word has taken on that commercial, economic and mercenary attribute, or *that ministers of His gospel shall be the subjects of imposts*, among goods, wares and merchandise; the policy adopted as to the latter is to levy moderate sums upon almost every article, and absolutely prohibit only such as are universally acknowledged to be inherently harmful, such as opium and obscene books, &c., but its policy as to the clergymen seems to be (under the interpretation of the Court below) to absolutely exclude all foreign preachers whose office it is conceded is to benefit and elevate mankind. Such an absurdity is not entitled to judicial approbation.

But, even upon that anomalous theory, a careful examination of the Act and the amendment thereto; upon which this action was brought, will clearly show that clergymen are not within the inhibition.

II.

The Clergy are not included within the prohibition of the Act.

A careful examination of the Act and the amendment thereto, upon which this action is brought, will clearly demonstrate this proposition.

A. SECTION I.

This Section reads as follows, viz.:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that from and after the passage of this act it shall be unlawful for any person, company, partnership or corporation, in any manner whatsoever, to prepay the transportation or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, o the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, *to perform labor or service of any kind* in the United States, its Territories or the District of Columbia."

It is claimed that because the act contains the above words (which we have italicized), viz.: "to perform labor or service of any kind," it was intended to apply to offices that a rector performs in administering to the spiritual needs of his congregation. To that conclusion the plaintiff in error dissents, and contends that the words are used in their popular sense, and that the duties of a preacher, rector, pastor or priest, are not within the purview of the Act.

The legislative meaning of the word "laborer" has been judicially interpreted.

In re Ho King, 14 Fed. Rep., 724.

Upon demurrer the question was raised whether a Chinese actor came within the terms of the Chinese treaty prohibiting the immigration of Chinese laborers into this country.

Deady, J., in his opinion says: "The term 'laborer'

is defined by Worcester as follows: 'one who labors; one regularly employed at some hard work; a workman; an operative; often used as one who gets a livelihood at coarse, manual labor, as distinguished from an artisan or professional man,' and the definition given by Webster is to the same effect. The term 'laborer' is used, in the Supplementary Treaty with China of November 17th, 1880, and also of the Act of May 6th, 1882, by Section 15, of which is made to include 'both skilled and unskilled laborers,' in its popular sense, and includes only persons who perform physical labor for another for wages. It does not include an actor any more than it does a merchant or teacher."

In the Matter of Lee Yip, lately decided by Mr. Chief Justice Greene, of Washington, and reported in the Seattle *Chronicle* of January 4th, 1883, the learned Judge, in speaking of the word 'laborer," as used in this treaty and Act, says: "The term that has been used in common Eng-
" lish speech, time out of mind, and in the statutes of
" English speaking people from the first Statute of labor-
" ers, 23 Edw., III., till to-day, to denote a comprehen-
" sive, varied and varying class in society, rather difficult
" accurately to define. There is nothing in the treaty to
" indicate that it is used in other than that prescriptive
" sense. That is the sense, therefore, that should be given
" it, both in the treaty and in the statute. This sense is a
" much narrower one than etymologically belongs to the
" word. Etymologically, a laborer is one who labors. He
" may labor physically or mentally, gratuitously or for
" reward, for himself or for another, freely or under con-
" trol. However he labors he is, in the broad sense, a
" laborer. But that sense is never imputed in ordinary
" speech or writing, unless there is something in the con-
" text or the circumstances to imply that it is intended.
" * * * A laborer, in the sense of this statute and this

" treaty, is one that hires himself out or is hired out to
" do physical toil. Physical toil is essential to the defi-
" nition."

Neither the treaty or the Act have in view the protection of what are called the professional or mercantile classes, or those engaged in mere mental labor, from competition with the Chinese. No grievance of this kind was ever complained of, and the language of the remedy provided plainly indicates that it was not contemplated by either of the parties to the treaty, or the Congress that passed the act. The concession in the Supplementary treaty was only made to allow the United States "to limit
" or suspend the existing right of Chinese laborers to come
" and be within its territory for the purpose of laboring
" therein and thereby competing with the labor of its citi-
" zens for the local means of livelihood."

The Chinese Act above construed was as broad in its prohibitory terms as the Act sought to be enforced in the case at bar. The following are extracts, "Whereas, in
" the opinion of the Government of the United States, the
" coming of Chinese *laborers* to this country endangers the
" good order of certain localities within the territory thereof,
" * * * That from and after the expiration of ten years
" next after the passage of this Act, the coming of Chinese
" *laborers* to the United States be, and the same is hereby
" suspended; and during such suspension it shall not be
" lawful for *any Chinese laborer* to come, or, having so
" come after the expiration of said ninety days, to remain
" within the United States.

"That the master of any vessel who shall knowingly bring
" within the United States on such vessel, and land or per-
" mit to be landed *any* Chinese laborer, from any foreign
" port or place, shall be deemed guilty of a misdemeanor,
" and on conviction thereof shall be punished by a fine of
" not more than five hundred dollars for *each and every*

"Chinese laborer so brought, and may be also imprisoned
"for a term not exceeding one year."

And that there might be no misunderstanding that the word "laborer" was used in the broadest sense as popularly understood, the last Section of the Act was inserted, which read as follows, viz.:

"Section 15. That the words 'Chinese laborers,' whenever used in this Act shall be construed to mean both skilled and unskilled laborers, and Chinese employed in mining."

Hence we see that the Chinese Act was as broad in scope as to the "laborers" that were intended to be included within its prohibition as the Act of February 26th, 1885, which the plaintiff, in the action at bar, claims the defendant herein has violated. And if the words, "*each and every and any* Chinese laborers" used in the Chinese Act, which included both skilled and unskilled laborers, did not comprehend "actors," surely the Act upon which this action is brought does not contemplate "clergymen" as being within its prohibition.

"The word 'laborers' in an Act appropriating money
"to pay claims of laborers, sub-contractors, and material
"and supply men against a defunct railroad company—
"held—to mean those only who had performed manual labor
"in and about the work of building the road, and not to in-
"clude members of the Engineer Corps or the Assistant
"General Manager of the Company."

State *vs.* Rush, 55 Wis., 465.

The words "*Service of any kind*" are less broad in their meaning than the word "*labor*," and have relations to persons who work in a menial capacity. Webster defines the word "Service" as follows, viz.: "The occupation of
"a servant; the performance of labor for the benefit of

"another, or at another's command; the attendance of an "inferior, or hired helper or slave, etc., on a superior em-ployer, master or the like."

But neither the word "labor" or "service" as used in this Act, is to be applied to any others than those who pro-cure a livelihood by physical toil, as does the *laborer, mechanic and artisan,*" and they are specially enumerated in Section 4 thereof.

"Where words in a statute have acquired, through "judicial interpretation, a well-understood legislative "meaning, they will, when found in a subsequent act, be "presumed to be used in the same sense, unless a contrary "intention appears from the Act."

The Abbotsford, 98 U. S., 444.

So far as there being any manifestation of such a con-trary intention, the reverse is very clearly indicated.

The words of "any kind," if they refer also to the word of "labor," do not extend the application of the words "labor" and "service" beyond their ordinary significa-tion. When the Act was passed, railroads and mining corporations were the most active in importing the cheap pauper labor of Europe, but, in order that capitalists en-gaged in other industries might not resort to the same methods, the words "of any kind" were inserted, but there was no intention to include thereby any other than manual laborers.

B. Section 4 of the Act recites exactly who are intended to be included within the Act, viz.: "*laborer, me-chanic and artisan.*"

After declaring in Sections 2 and 3 that the contracts with those prohibited shall be null and void, and impos-ing a penalty for violation, and prescribing who might

and should prosecute for disobedience thereof, Section 4 expressly informs the master of the vessel, who are included within the prohibition, and admonishes him of the penalty to be inflicted upon him, if he allow the Act to become ineffectual. Said Section reads as follows, viz.: "That the master of any vessel who shall knowingly bring within the United States on any such vessel, and land or permit to be landed, from any foreign port or place, any alien *laborer, mechanic or artisan* who, previous to embarkation on such vessel, had entered into contract or agreement, parol or special, express or implied, to perform labor or service in the United States, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and every such alien *laborer, mechanic or artisan* so brought as aforesaid, and may also be imprisoned for a term not exceeding six months."

This is a clear and specific declaration as to whom the law makers intended to exclude from our shores. And the class of persons were here distinctly set forth, in order that the captains of the vessels might have no uncertainty in determining whom Congress designed to embrace within the purview of the Act. These words must mean something or they would not be so explicitly used and repeated. They were to be the chart and compass to the captain in his interpretation of this Act, *i. e.*, "laborers, mechanics or artisans" under contract you must not bring to this country. If Congress had intended others to have been included within the prohibition, it would have unequivocally so declared in this section.

The observations of the learned Judge who wrote the opinion herein in the Court below, it is respectfully submitted, do not meet the intendment of this Fourth section. The framers of this Act felt that the Captains of vessels could clearly know the class of persons they desired to

keep from this country, as it was openly charged that many of the captains and the ship owner's agents in foreign countries were financially interested in increasing the importation of the very persons whom it was the desire of the petitioners for the law (the labor organizations) to keep from this shore, namely, "*laborers, mechanics and artisans*" under contract before they start. These were the men at whom the labor organizations were aiming, the men who were competing with them upon less than a living basis, who come here in droves, and while here live in hovels and upon food that would not support life in American subjects because they had become so accustomed to a different kind of living, and it was to stop the masters of vessels from encouraging and knowingly participating in that kind of immigration, that this Section Four was leveled at them, and not "to mitigate any severity of the Act in its application to the masters of vessels." This section forms a very important part in the scheme of the Act, in fact, it distinctly characterizes it by specifying exactly who were intended to be included within it, viz.: "*laborers, mechanics and artisans.*" It was not designed primarily to punish or mitigate the punishment of masters, but to effectuate a purpose, viz.—to aid in excluding "*laborers, mechanics and artisans*" under contract, who were deemed hostile to American interests.

"In the construction of a statute, every part of it must "be viewed in connection with the whole, so as to make all "the parts harmonize, if practicable, and to give a sensible "and intelligible effect to each; nor should it be pre-"sumed that the Legislature meant that any part of the "Statute should be without meaning."

Ogden *vs.* Strong, 2 Paine, 584.

"It is a rule of construction that a whole Statute may "be examined with the view of arriving at the true inten-

"tion of each part. The spirit as well as the letter of a "statute must be respected, and when the whole context "of the law demonstrates a particular intent in the Legis- "lature to effect a certain object, some degree of implica- "tion may be called in to aid that intent."

Gas Company *vs.* Wheeling, 8 W. Va., 320.

C. The fifth Section of the Act.

It is true in the latter part of this Section there is a proviso—that "professional actors, artists, lecturers and singers" are not to be included within its provisions, but that does not weaken the contention of the plaintiff in error, it strengthens it.

The office of a proviso is three-fold, viz.: "to except "something from the enacting clause, or *to qualify or re- "strain its generality, or to exclude some possible ground "of misinterpretation of it as extending to cases not in- "tended by the legislature to be brought within its per- "view.*"

Minus *vs* U. S., 15 Peters, 445.

These four classes of persons, viz.: "professional actors, artists, lecturers and singers," are essentially intellectual persons, and it is a well-known fact that, in these days, contracts are constantly entered into between this class of foreign persons and American managers for a display of their several powers through the various States of our nation, to the gratification and elevation of our people. Salvini and Irving, Munkacsy and Jerome, Edward Arnold and Joseph Parker, Patti and Gerster, are familiar and delightful representatives thereof; and, too, no doubt, managers like Mr. Abbey, who have many hundreds of thousands of dollars at stake in some of their contracts with these foreign intellectual geniuses, wished to be perfectly sure that the Act would not sometime be

surprisingly and absurdly applied to them, and their "star" not allowed to land on the eve of a great undertaking, they called the attention of the committee to it, and as the proposed legislation was never designed by the petitioners therefor to apply to any but "laborers, mechanics and artisans," the proviso was immediately accepted and inserted, and at the same time to give force and effect to the intention that intellectual and professional persons were not contemplated to be within the purview of the act, and "to exclude any possible ground of misinterpretation thereof."

And although "ministers" are not expressly named in the proviso, they come so clearly within the purport thereof as ennoblers and elevators of the human race intellectually and professionally, that the act should not be held to apply to them.

D.—The Amendatory Act approved February 23rd, 1887.

This act lays upon the Secretary of the Treasury the duty of executing its provisions, and gives him power to prescribe rules and regulations in regard to immigration, and to unite with the State board, whose duty it shall be to examine into the condition of the passengers arriving at the ports within such State in any ship or vessel, to go on board of and through such ship or vessel, and if a person within the prohibition is found, he shall not be permitted to land. That the persons included within the prohibition upon arrival shall be sent back to the nations to which they belong and whence they came. The Secretary of the Treasury may designate the "State Board of Charities" of any State in which such board shall exist by law * * whose duty it shall be to execute the provisions of this section. * * * The secretary shall prescribe regulations for the return of the aforesaid per-

sons to the countries whence they came. * * * The expense of such return of the aforesaid persons not permitted to land shall be borne by the owners of the vessel in which they came. And any vessel refusing to pay such expenses shall not thereafter be permitted to land or clear from any port of the United States. And such expenses shall be a lien upon said vessel."

Congress, when it authorized the Secretary of the Treasury to appoint the "State Board of Charities" to enforce this Act, assumed that only the most poor and ignorant from foreign shores would need the supervising protection of the "Charity Commissioners," and not the clergy of Great Britain or the Continent. And when provision was made for the return of the unfortunate persons, who came within the prohibition, at the expense of the owners of the ship upon which they came, it was the same kind of immigrant whom Congress anticipated would have no money to pay for his return passage, and not the divines of foreign lands. If Congress expected the "Board of Charity" to question all the cabin passengers in regard to the object that induced them to come to the United States, the inquirer would receive many suitable answers for his impertinence, and our Government would soon appear ridiculous, and become odious in the eyes of the enlightened nations of the world.

E.—The Title of the Act.

The title of the Act reads as follows, viz.: "An Act to "prohibit the importation and migration of foreigners "and aliens under contract or agreement to perform "labor in the United States, its territories and the Dis- "trict of Columbia."

The title shows that the act was to apply only to those who were under contract to perform "labor."

The title of a statute may be resorted to, to elucidate what is obscure in the provisionary act.

Wilson *vs.* Spaulding, 19 Fed. Rep., 304.

"When the mind labors to discover the design of the "legislator, it seizes everything from which aid can be "derived, and, in such case, the title claims a degree of "notice, and will have its due share of consideration."

U. S. *vs.* Fisher, 2 Cranch, 358.

From the examination of the act upon which this action is brought, the conclusion is irresistible that the clergy do not come within its prohibition, and the plaintiff in error has not violated the same, and become liable to its provisions.

III.

The Act includes only those who are under contract to perform manual labor or service, and was designed to discourage the importation of "pauper labor."

"In construing an Act of Congress, the courts may "with propriety recur to the history of the times when "the act was passed; this is frequently necessary."

U. S. *vs.* Union Pacific R.R. Co., 91 U. S., 79.

We shall not allude to the debates of individual members, but submit a portion of the report of the Chairman of the House Committee to which the bill was first sent.

The bill, as originally introduced, did not contain the provisos now contained in Section 5, after allowing any

foreign citizen temporarily residing in the United States to bring with him his secretary and domestics, &c.

Some amendments were subsequently offered to the bill and some were referred to the Committee on Labor, which submitted a report recommending the adoption of the second and third provisions of the present act as to skilled workmen, and professional actors, &c., and then added:

"This recommendation is founded upon the investiga-
" tions of the committee, and the conclusion to which the
" committee have come, based upon such investigation,
" that the evils complained of and sought to be remedied
" by the bill actually, and to an alarming extent, exist.
" The bill in no measure seeks to restrict free immigra-
" tion. *Such a proposition would be, and justly so,*
" *odious to the American people.* * * * It
" seeks to restrain and prohibit the immigration or impor-
" tation of laborers who would have never seen our shores
" but for the inducements and allurements of men whose
" only object is to obtain labor at the lowest possible rate,
" regardless of the social and material well-being of our
" own citizens and regardless of the evil consequences
" which result to American laborers from such immigra-
" tion. This class of immigrants care nothing about our
" institutions, and in many instances never even heard of
" them; they are men whose passage is paid by the im-
" porters; they come here under contract to labor for a
" certain number of years; they are ignorant of our social
" conditions, and that they may remain so they are
" isolated and prevented from coming into contact with
" Americans. They are generally from the lowest social
" stratum, and live upon the coarsest food and in hovels
" of a character before unknown to American workmen.
" They, as a rule, do not become citizens, and are cer-
" tainly not a desirable acquisition to the body politic.
" The inevitable tendency of their presence among us is

" to degrade American labor, and to reduce it to the level " of the imported pauper labor " (Page 5359, Congressional Record, 48th Congress).

" This bill was the result of careful research and close " observation, coming as it does from those who have " endured the stern privations inflicted by this iniquitous " system, who understand thoroughly what they are ask- " ing for, having a conscientious regard for those in the " densely populated marts of the world, and emanating " from a body of representative men from the trades and " labor walks of life, who have been affected by the im- " ported labor of Europe, and petitioned for in a repre- " sentative capacity by over 800,000 daily toilers " (p. 5358).

When the bill was referred to the Senate Committee on Education and Labor in the latter part of the session, the committee reported the bill back to the Senate favorably and recommended its passage in the following report, viz. :

" The general facts and considerations which induce the " committee to recommend the passage of this bill are set " forth in the report of the Committee of the House. The " committee report the bill back without amendment, " although there are certain features thereof which might " well be changed or modified, in the hope that the bill " may not fail of passage during the present session. " Especially would the committee have otherwise recom- " mended amendments, substituting for the expression " 'labor and service' whenever it occurs in the body of " bill, the words 'manual labor' or 'manual service,' as " sufficiently broad to accomplish the purposes of the bill, " and that such amendments would remove objections " which a sharp and perhaps unfriendly criticism may " urge to the proposed legislation. The committee, how- " ever, believing that the bill in its present form will be con-

"strued as *including only those* whose labor or services is "manual in character, and being very desirous that the "bill become a law before the adjournment, have reported "*the bill without change*" (p. 6059).

This should set at rest every doubt as to what Congress intended.

Let us recur to the history of the times when this act was passed.

"During the three years from 1881 to 1884, a little over "80,000 Italians were landed on our shores, and of this "number nearly 70,000 were males, and during the same "period out of an Hungarian immigration of 27,000 over "20,000 were males, thus demonstrating a forced and "assisted immigration. If these people come here of their "own volition, with the intent of making their homes "here, it is reasonable to suppose that they would bring "their wives and families with them" (p. 5350).

Mr. P. J. McGuire, General Secretary of the Brotherhood of Carpenters and Joiners, testified before the Senate Committee on Labor in 1883, as follows:

"Within the last few years it has come to pass that a "large body of the cheaper class of foreign laborers, "people unused to our habits of living in this country, "are brought over here under contracts made in their own "countries through the influence of the United States "Consuls, with the avowed object of aiding the iron and "coal corporations to reduce the wages of their em-"ployers" (p. 5356).

The testimony of Mr. Barkley, of Pennsylvania, before the same Committee, with regard to these Hungarians, was as follows;

"The class imported to the coke manufacturers are the

"lowest beings that have ever been in the State of Penn-
"sylvania, subsisting upon what the American laborer
"could not eat. * * * Not one has ever been known
"to become an American citizen, but all return to Hungary
"within a limited time (about four years), with what
"money they can save, living in this miserable filth and
"squalor" (p. 5350).

The above was verified by other gentlemen before said Committee.

All the above was testimony taken before the Senate Committee, and these, among a great many other facts, were presented to the Committee of both houses of Congress.

The reasons for this act, and the history of the times when it was passed and approved, were judicially determined upon demurrer, in the U. S. Circuit Court of Michigan, in the case of U. S. *vs.* Craig, 28 Fed. Rep., 798.

BROWN, J., in his opinion, says:

"The motives and history of the act are matters of com-
"mon knowledge. It had become the practice for large
"capitalists in this country to contract with their agents
"abroad for the shipments of great numbers of an igno-
"rant and servile class of foreign laborers, under con-
"tracts, by which the employer agreed, upon the one
"hand, to prepay their passage, while upon the other
"hand, the laborers agreed to work, after their arrival,
"for a certain time, at a low rate of wages. The effect
"of this was to break down the labor market, and to
"reduce other laborers engaged in like occupations to the
"level of the assisted immigrant. The evil finally became
"so flagrant that an appeal was made to Congress for
"relief by the passage of the act in question, the design
"of which was to raise the standard of foreign immi-

"grants, and to discountenance the migration of those "who had not sufficient means in their own hands or "those of their friends to pay their passage."

Surely, in the light of these facts, it is not difficult to determine whom Congress intended to prohibit from coming here, and that the clergy were never intended to be within the purview of the act.

IV.

A Broad and Liberal Construction should be given to this Act.

"A thing which is within the intention of the makers "of a statute is as much within the statute as if it were "within the letter; and a thing which is within the letter "of the statute is not within the statute, unless it be "within the meaning of the makers."

Oates *vs.* National Bank, 100 U. S., 244.

"The duty of the Court, being satisfied of the inten-"tion of the Legislature, clearly expressed in a constitu-"tional enactment, is to give effect to that intention, and "not to defeat it by adhering too rigidly to the mere let-"ter of the statute or to technical rules of construction. "* * * We ought, rather, adopting the language of "Lord Hale, to be 'curious and subtle to invent reasons "and means' to carry out the clear intent of the law-"making power when thus expressed."

Id.

"All laws should receive a sensible construction. Gen-"eral terms should be so limited in their application as

"not to lead to injustice, oppression or an absurd conse-
"quence. It will always, therefore, be presumed that
"the Legislature intended exceptions to its language
"which would avoid results of this character. The rea-
"son of the law in such cases should prevail over the let-
"ter."

U. S. *vs.* Kirby, 7 Wall., 486.

"Where there is such an ambiguity in a penal statute
"as to leave reasonable doubts of 'its meaning,' it is the
"duty of a Court not to inflict the penalty."

Enterprise, 1 Paine, 33; 6 Cranch, 174.

In 95 New York, page 558, Judge Earl, in his opinion of the case of The People *ex rel.* The 23d Street R.R. Co., App'l't, *vs.* The Comm'rs of Taxes of the City of New York, Resp'ts, says: "Concerning the interpreta-
"tion and construction of Statutes, it is the object of all
"interpretation and construction of statutes to ascertain
"the intention of the law makers, and this is generally
"accomplished by a literal reading of the words used.
"But there are many cases where the words do not
"express that intention perfectly, but exceed it, or fall
"short of it, and then it is allowable to adopt what
"writers upon the civil law sometimes call a rational
"interpretation, and to collect the intention from the
"rational or probable conjecture only. It is also a rule,
"sometimes laid down by text writers that, whenever it
"happens that the sense of the law, how clear soever it
"may appear in the words, would lead to false conse-
"quences and unjust decision, the palpable injustice
"which would follow from the literal sense compels an
"effort to discover some kind of interpretation, not what
"the law literally says, but what it means. Lieber, in

"his legal and political Hermeneutics (p. 11), very aptly "defines interpretation as the act of finding out the true "sense of any form of words—that is, the sense which "their author intends to convey—and enabling others to "derive from them the same idea which the author inten- "ded to convey. And he defines construction as the "drawing of conclusions respecting subjects that lie "beyond the direct expression of the text, conclusions "which are in spirit, though not in the letter of the text. "A construction of the statute, which leads to an absurd "purpose, is not to be attributed to the law makers."

In 99th N. Y., page 49, Miller, J., says, in the case of "People *ex rel.* Wood *vs.* Lacombe: "In the interpreta- "tion of statutes, the great principle which is to control "is the intention of the Legislature in passing the same, "which intention is to be ascertained from the cause or "necessity of making the statute, as well as other cir- "cumstances. A strict and literal interpretation is not "always adhered to, and when the case is brought within "the meaning of the statute, it is within the statute, "although by a technical interpretation it is not within "the letter—it is the spirit and purpose of a statute "which are to be regarded as its interpretation, and if "these find fair expression in the statute, it should be so "construed as to carry out the legislative intent, even "although such construction is contrary to the literal "meaning of some provisions of the statute. A reason- "able construction should be adopted in all cases where "there is a doubt or uncertainty in regard to the inten- "tions of the law-makers. When it is apparent that a "strict construction of a statute would defeat the main "purpose and object of the statute * * * * * such "interpretation should not be upheld, as it would be "absurd to say that the law-makers designed to secure a

" result which would be antagonistic to their plain, clear
" intentions."

The paltry penalty sought to be recovered herein fades into insignificance and contempt when we recall the obnoxious and revolting principle that the affirmance of this judgment would establish.

A nation, with a boasted civilization unsurpassed in the world, closing her ports to the admission of the educated and cultured scholars of foreign lands? A people, whose God is their hope, refusing to permit one of her churches to invite and induce an inspired theologian of our parent country, or of any European nation, to act as its Rector? No! Such a conclusion would be an anomaly. The constitution, the Acts themselves, the history of the times, the public welfare, and national pride and dignity forbid such an interpretation.

V.

The judgment should be reversed and judgment absolute ordered for the plaintiff in error, with costs.

SEAMAN MILLER,
Counsel for Plaintiff in Error,
120 Broadway,
New York City.

Supreme Court of the United States.

OCTOBER TERM, 1891.

THE RECTOR, CHURCH WARDENS, AND VESTRYMEN of the Church of the Holy Trinity, plaintiffs in error,
vs.
THE UNITED STATES.
} No. 143.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

This suit is brought for the recovery of the penalty of $1,000 prescribed by section 3 of the act of February 26, 1885, entitled "An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia" (23 Stat., 332). (See also Appendix of this brief.) "for every violation of the provisions of section 1" of the act, which is in the following words: That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the im-

portation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

The petition avers that the plaintiff in error, a body corporate of the State of New York, entered into a contract with E. Walpole Warren, residing in England, under and by the terms of which he was to migrate to the city of New York and enter into the service of the defendant and perform labor and services as a preacher, rector, pastor, or priest, at a compensation to be determined upon his entering on the performance of said service, and that the said Warren did thereafter migrate to the United States and enter into the service of the defendant under said contract.

The petition also charges that the defendant assisted, encouraged, and solicited the importation or migration of the said Warren under said contract or agreement to perform service as a preacher (pp. 3, 4).

The defendant demurred to the petition (p. 5).

After argument the court overruled the demurrer and gave judgment against defendant "according to the prayer of the complaint, with costs to be taxed" (p. 8). The judgment of the court is supported by an able and well-reasoned opinion (pp. 5–8).

ARGUMENT.

It may be postulated as a rule of construction, sometimes called the golden rule, that we are to adhere to the ordinary meaning of the words of a statute and to the grammatical construction "unless that is at variance with the intention of the legislature, *to be collected from the statute itself*, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further" (*Becke* v. *Smith*, 2 M. & W., p. 195, per Parke B.).

But perhaps the rule has never been so felicitously stated as by Chief-Justice Marshall in *Sturges v. Crowninshield* (4 Wheaton, 122, 202, 203). He says:

> Before discussing this argument it may not be improper to premise that, although the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. *It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of an instrument expressly provide shall be exempted from its operation.* Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. *But if, in any case, the plain meaning of a provision not contradicted by any other provision in the same instrument is to be disregarded because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application.*" [Italics our own.]

Section 1 of the act makes it an offense to assist or encourage the migration of an alien into the United States under a contract or agreement with such alien to "perform labor *or service of any kind*" in the United States.

It is unnecessary to discuss whether the word "*labor*," as used in the act, is to be taken in a restricted or an

extended sense, because there would seem to be no doubt that the words "*service of any kind*" are broad enough to cover this case. More sweeping language could hardly have been used, and section 5 of the act shows that it was the intention of Congress to use this language in its plain ordinary sense. That section provides that the act shall not be construed so as to prevent an alien temporarily residing in the United States from engaging, under contract or otherwise, persons not residents or citizens of the United States "*to act as private secretaries*, servants, or domestics for such foreigner, etc." The same section further declares that the provisions of the act shall not apply to "*professional actors, artists, lecturers, or singers*, etc."

Applying now to these exceptions from the operation of the act the rule of interpretation, as stated by Chief-Justice Marshall, "that the exception of a particular thing from general words proves that, in the opinion of the law-giver, *the thing excepted would be within the general clause had the exception not been made*" (*Brown* v. *Maryland*, 12 Wh., 438), it seems too plain for argument that the case stated in the petition falls directly within the act.

If it was necessary to except "private secretaries," "professional actors," "artists," "lecturers," and "singers," upon what principle can it be contended that a foreign priest or preacher, in favor of which class there is no exception in the act, may be imported under a contract for service in this country?

Savigny says that every law establishing an exception *implies the existence of a rule without which the exception would be meaningless, and indirectly confirms that rule.* Thus,

he says, when the law Julia *de adulteriis* declared women condemned under that law incapable of testifying in court *it recognized an existing capacity to testify in all other women* (*Traité de Droit Romain traduit de l'Allemand, par M. Ch. Guenoux*, Vol. 1, p. 229).

The statute now in question proves to be its own best interpreter and establishes to a demonstration that it was the purpose of Congress that the sweep of the general words "*service of any kind*" should not be clogged by judicial interpretation. "Where the meaning of a statute is plain it is the duty of the courts to enforce it according to its obvious terms. *In such a case there is no necessity* for construction" (*Thornley* v. *United States*, 113 U. S., 310, 313), or, as was sententiously said in another case, "There should be no construction where there is nothing to construe" (*Lewis, Trustee*, v. *United States*, 92 U. S., 618, 621).

In *Alexander* v. *Mayor, etc., of Alexandria* (5 Cr., 1, 9), this court said by Chief-Justice Marshall:

> *If in a subsequent clause of the same act provisions are introduced which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing those phrases.*

This meets and overthrows any argument that there is some doubt or ambiguity in the words "*labor or service of any kind*" in section 1, because any such doubt is removed by the character of the exceptions in section 5.

There being no room for doubt as to the meaning of the statute in the particular now in question, there is no reason for going outside the law to interpret it, unless it be admissible to resort to extraneous evidence for the purpose of *creating a doubt.*

But, as Chief-Justice Marshall said in a passage above quoted,

> It would be dangerous in the extreme to infer from extrinsic circumstances *that a case for which the words of an instrument expressly provide shall be exempted from its operation.*

In every such case the language used must have its natural effect unless to give it such effect would lead to an absurdity or injustice "*so monstrous that all mankind would, without hesitation, unite in rejecting the application.*"

It is needless to add that the interpretation of the statute adopted by the learned circuit judge leads to no monstrous absurdity or injustice.

It is undoubtedly true that statutes, in common with writings of all kinds, may, when perplexed by doubtful language, be read in the light of the circumstances in which they were made; not, however, for the purpose of putting into them what was not there before, but simply of interpreting what is already there. (*Siemens* v. *Sellers*, 123 U. S., 285; *Platt* v. *Union Pacific R. R. Co.*, 99 U. S., 64; *Smyth* v. *Fisk*, 23 Wall., 380.) In such cases we look into the history of the statute just as we would look into a dictionary to find the meaning of some foreign word or expression used in a statute.

Some words have various senses, and we frequently can not determine the particular sense in which they are used without putting ourselves in the place of the person who uses them, and viewing the transaction from his standpoint. Hence it has been said that in such cases we read ambiguous language by the light of the circumstances in which it was used *as by the light of a lamp.*

The idea advanced on the other side, that the title of the act under discussion may be resorted to for the purpose of narrowing the sense of unambiguous words in the text of the act, is novel, and is sufficiently noticed in the opinion of the learned circuit judge.

It will not do to say that the exception in section 5 of "*professional actors, artists, lecturers, or singers,*" was inserted not because necessary, but out of superabundant caution and to quiet the fears of certain individuals. Congress would either have made the enumeration of exceptions complete, or, what is more likely, would have given the proper qualification to the words "*labor or service of any kind,*" if the theory of the other side were correct. This theory, however, is inadequate, because it does not profess to account for the exception of "*private secretaries*" in the same section. What particular pressure on Congress produced that exception, the fertile imagination of the learned counsel opposite has not informed us. This one exception unexplained of itself makes the theory of the other side necessarily untenable.

The argument of the plaintiff in error, based on section 4 of the act, is sufficiently noticed in the opinion of the learned circuit judge, and, therefore, I will not stop to consider it.

It is, furthermore, to be noted that Congress amended the act in question by an act approved October 19, 1888 (25 Stat., 566, 567), and if the decision of Judge Wallace in this case, filed on May 23, 1888 (p. 8), did such violence to the intention of Congress, it is remarkable that Congress did not make the meaning of the law clearer by

an amendment in this particular while it was amending the law in other particulars.

THE CONSTITUTIONAL QUESTION.

It is contended that to construe the act so as to make it penal for any church in the United States to call and secure a clergyman from any foreign part of the world to act as its pastor, rector, or priest would be to make the law override the first amendment of the Constitution, which provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The argument is that the operation of the law, as interpreted by the court below, with regard to the employment of foreign clergymen to come to this country to exercise their priestly office, amounts to a prohibition of the free exercise of religion.

It will be observed that Congress has not passed any law prohibiting clergymen of any kind from coming to this country, unsolicited, any more than it has prohibited the immigration of persons generally. The only prohibition laid by the act is upon the employment by our people of foreigners to come over here "to perform labor or service of any kind."

That Congress has power to pass laws regulating the subject of immigration under its general authority over commerce is perfectly clear.

There is no pretense that the law is aimed at the exercise of religion; but it happens, oddly enough, that a great church in this country has found it advisable to send to

a foreign country for "a pastor, especially sanctified," to teach and preach the way of salvation.

The law has not said that this gentleman shall not come into this country, but it has said that he shall not come under the inducement of a contract "to perform labor or service of any kind," and because *he has selected the prohibited way of coming*, Trinity Church wants to brush the statute aside as an interference with the free exercise of religion. It seems to us, with all respect, that it would be just as reasonable to say that if Mr. Warren had purposely taken passage in an infected ship and been kept in quarantine for a considerable time after his arrival here the law requiring his detention would be an interference with the free exercise of religion.

If Congress should change its policy and tax church property in this District like other property, and the effect of such a tax should be to break up some religious organizations or compel them to close and sell their churches, would such a law be objectionable from the standpoint of the Constitution?

It is well settled that a State can not tax *the operations* of an agent employed by the United States to accomplish a lawful object, but the property of such agent may be taxed, although the effect may be to impair his ability to serve the Government. Still the tax is none the less legal, because this effect is not the *necessary effect of the tax*, which leaves the agent free to discharge his duties to the Government. (*Railroad Company* v. *Peniston*, 18 Wall., 5, 36, 37, and cases there cited.) Again, while a State tax on the instrumentalities of commerce, such as the

rolling stock of railways and ships, may seriously incommode interstate and foreign commerce, it is not a regulation of commerce.

If, then, an agent of the United States is prevented from rendering efficient service by a State tax on his property, applicable to everybody, why is not such law an attack *on the Supremacy of the United States*, if the statute now in question is a religious restriction?

The truth is, that no law can be said to restrict religion that has not that *direct object*. To hold laws void because of their indirect effect on the exercise of religion might be attended by very serious consequences.

If, therefore, Congress should pass a law prohibiting immigration to this country, with a view to residence, the law would not be void as an interference with religion because it might, forsooth, keep away a clergyman who might, now and then, desire to make his home and follow his calling in this country.

It is respectfully submitted that there is no ground for disturbing the judgment.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

CHAP. 164.—AN ACT to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

SEC. 2. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any personal company, partnership, or corporation, and any foreigner or foreigners, alien or aliens, to perform labor or service or having reference to the performance of labor or service by any person in the United States, its Territories, or the District of Columbia, previous to the migration or importation of the person or persons whose labor or service is contracted for into the United States, shall be utterly void and of no effect.

SEC. 3. That for every violation of any of the provisions of section one of this act the person, partnership, company, or corporation violating the same, by knowingly assisting, encouraging, or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States, its Territories, or the District of Columbia, to perform labor or service of any kind under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States, or by any person who shall first bring his action therefor, including any such alien or foreigner who may be a party to any such contract or agreement, as debts of like amount are now recovered in the circuit courts of the United States, the proceeds to be paid into the Treasury of the United States; and separate suits may be

brought for each alien or foreigner being a party to such contract or agreement aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit at the expense of the United States.

SEC. 4. That the master of any vessel who shall knowingly bring within the United States on any such vessel, and land, or permit to be landed, from any foreign port or place, any alien laborer, mechanic, or artisan who, previous to embarkation on such vessel, had entered into contract or agreement, parol or special, express or implied, to perform labor or service in the United States, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and every such alien laborer, mechanic or artisan so brought as aforesaid, and may also be imprisoned for a term not exceeding six months.

SEC. 5. That nothing in this act shall be so construed as to prevent any citizen or subject of any foreign country temporarily residing in the United States, either in private or official capacity, from engaging, under contract or otherwise, persons not residents or citizens of the United States to act as private secretaries, servants, or domestics for such foreigner temporarily residing in the United States as aforesaid; nor shall this act be so construed as to prevent any person, or persons, partnership, or corporation from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the United States in or upon any new industry not at present established in the United States: *Provided*, That skilled labor for that purpose can not be otherwise obtained; nor shall the provisions of this act apply to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants: *Provided*, That nothing in this act shall be construed as prohibiting any individual from assisting any member of his family, or any relative or personal friend, to migrate from any foreign country to the United States, for the purpose of settlement here.

SEC. 6. That all laws or parts of laws conflicting herewith be, and the same are hereby, repealed.

Approved, February 26, 1885.

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