

The Chinese Exclusion Act (1882) was the first important immigration restriction ever passed by Congress. The goal of the act was to eliminate new Chinese immigration into the country, but the need for cheap labor and various loopholes in the law led to some continued immigration. Congress responded with various other acts, including an act of 1892 that allowed for the expulsion of any Chinese laborers found in the nation who could not prove they were legally entitled to be in the United States. The key language of the statute provided:

Sec. 3. That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States, unless such person shall establish, by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States.

Sec. 4. That any such Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year, and thereafter removed from the United States, as hereinbefore provided.



Sec. 6. And it shall be the duty of all Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence; and any Chinese laborer within the limits of the United States, who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested . . . and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as hereinbefore provided, unless he shall establish clearly, to the satisfaction of said judge, that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act. . . .

Fong Yue Ting applied for such a certificate, which the Court denied, and his appeal ultimately reached the U.S. Supreme Court. In upholding the removal orders, the Court explained the nature of the power of Congress to regulate

immigration while also endorsing race as a criteria for determining justice in America. This case covers a number of complicated issues: the power of Congress to regulate aliens and immigrants, the relation of statutes to treaties, American policies toward the Chinese, and racial values of the period. Decided just three years before the Court's endorsement of segregation in *Plessy v. Ferguson* (1896), this case was consistent with late nineteenth-century ideas on race and equality. This case is also significant because it set out the constitutional and theoretical basis for immigration restrictions and the regulation of aliens in the United States. Such theories and rules remain relevant in the twenty-first century.

See Charles J. McClain, *In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth Century America* (1994); and Lucy E. Saylor, *Laws as Harsh as Tigers: Chinese Immigration and the Shaping of Modern Immigration Law* (1995).

Vote: 6 (Harlan I, Gray, Blatchford, Brown, Shiras, H. Jackson)

3 (Fuller, Field, Brewer)

Opinion of the Court: Gray

Dissenting opinion: Fuller

Dissenting opinion: Brewer

Dissenting opinion: Field

Justice Gray delivered the opinion of the Court:

The right of a nation to expel or deport foreigners who have not been naturalized, or taken any steps towards becoming citizens of the country, rests upon the same grounds, and is as absolute and unqualified, as the right to prohibit and prevent their entrance into the country.

This is clearly affirmed in dispatches referred to by the court in *Chae Chan Ping's* Case. In 1856, Mr. Marcy wrote: "Every society possesses the undoubted right to determine who shall compose its members, and it is exercised by all nations, both in peace and war. A memorable example of the exercise of this power in time of peace was the passage of the alien law of the United States in the year 1798." In 1869, Mr. Fish wrote: "The control of the people within its limits, and the right to expel from its territory persons who are dangerous to the peace of the state, are too clearly within the essential attributes of sovereignty to be seriously contested."

The statements of leading commentators on the law of nations are to the same effect.

The right to exclude or to expel all aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, being an inherent and inalienable right of every

sovereign and independent nation, essential to its safety, its independence, and its welfare, the question now before the court is whether the manner in which congress has exercised this right in sections 6 and 7 of the act of 1892 is consistent with the constitution.

The United States are a sovereign and independent nation, and are vested by the constitution with the entire control of international relations, and with all the powers of government necessary to maintain that control, and to make it effective. The only government of this country which other nations recognize or treat with is the government of the Union, and the only American flag known throughout the world is the flag of the United States.

The constitution of the United States speaks with no uncertain sound upon this subject. That instrument, established by the people of the United States as the fundamental law of the land, has conferred upon the president the executive power; has made him the commander in chief of the army and navy; has authorized him, by and with the consent of the senate, to make treaties. . . . The constitution has granted to congress the power to regulate commerce with foreign nations, including the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States; to establish a uniform rule of naturalization; to define and punish piracies and felonies committed on the high seas . . . and to make all laws necessary and proper for carrying into execution these powers, and all other powers vested by the constitution in the government of the United States. . . .

In exercising the great power which the people of the United States, by establishing a written constitution as the supreme and paramount law, have vested in this court, of determining, whenever the question is properly brought before it, whether the acts of the legislature or of the executive are consistent with the constitution, it behooves the court to be careful that it does not undertake to pass upon political questions, the final decision of which has been committed by the constitution to the other departments of the government.



The power to exclude or to expel aliens, being a power affecting international relations, is vested in the political departments of the government, and is to be regulated by treaty or by act of congress, and to be executed by the executive authority according to the regulations so established, except so far the judicial department has been authorized by treaty or by statute, or is required by the paramount law of the constitution, to intervene. . . .

The power of congress, therefore, to expel, like the power to exclude, aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers; or congress may call in the aid of the judiciary to ascertain any contested facts on which an alien's right to be in the country has been made by congress to depend. Congress, having the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of the members of that class within the country, and to take all proper means to carry out the system which it provides.



[After reviewing various treaties with China and various statutes on immigrant, Justice Gray continued.]

In our jurisprudence it is well settled that the provisions of an act of congress, passed in the exercise of its constitutional authority, on this, as on any other, subject, if clear and explicit, must be upheld by the courts, even in contravention of express stipulations in an earlier treaty. As was said by this court in *Chae Chan Ping's Case*, following previous decisions: "The treaties were of no greater legal obligation than the act of congress. By the constitution, laws made in pursuance thereof, and treaties made under authority of the United States, are both declared to be the supreme law of the land, and no paramount authority is given to one over the other. A treaty, it is true, is in its nature a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of congress. In either case the last expression of the sovereign will must control." "So far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country it is subject to such acts as congress may pass for its enforcement, modification, or repeal."



The act of May 5, 1892, c. 60, is entitled "An act to prohibit the coming of Chinese persons into the United States;" and provides, in section 1, that "all laws now in force, prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent, are hereby continued in force for a period of ten years from the passage of this act."



Sections 2-4 concern Chinese "not lawfully entitled to be or remain in the United States," and provide that, after trial before a justice, judge, or commissioner, a "Chinese person, or person of Chinese descent, convicted and adjudged to be not lawfully entitled to be or remain in the United States," shall be imprisoned at hard labor for not more than a year, and be afterwards removed to China, or other country of which he appears to be a citizen or subject.

The subsequent sections relate to Chinese laborers "entitled to remain in the United States" under previous laws. Sections 6 and 7 are the only sections which have any bearing on the cases before us, and the only ones, therefore, the construction or effect of which need now be considered.

The manifest objects of these sections are to provide a system of registration and identification of such Chinese laborers, to require them to obtain certificates of residence, and, if they do not do so within a year, to have them deported from the United States. Section 6, in the first place, provides that "it shall be the duty of all Chinese laborers, within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence." This provision, by making it the duty of the Chinese laborer to apply to the collector of internal revenue

of the district for a certificate, necessarily implies a correlative duty of the collector to grant him a certificate, upon due proof of the requisite facts. What this proof shall be is not defined in the statute, but is committed to the supervision of the secretary of the treasury by section 7, which directs him to make such rules and regulations as may be necessary for the efficient execution of the act, to prescribe the necessary forms, and to make such provisions that certificates may be procured in localities convenient to the applicants, and without charge to them; and the secretary of the treasury has, by such rules and regulations, provided that the fact of residence shall be proved by "at least one credible witness of good character," or, in case of necessity, by other proof. The statute and the regulations, in order to make sure that every such Chinese laborer may have a certificate, in the nature of a passport, with which he may go into any part of the United States, and that the United States may preserve a record of all such certificates issued, direct that a duplicate of each certificate shall be recorded in the office of the collector who granted it, and may be issued to the laborer upon proof of loss or destruction of his original certificate. There can be no doubt of the validity of these provisions and regulations, unless they are invalidated by the other provisions of section 6.

This section proceeds to enact that any Chinese laborer within the limits of the United States, who shall neglect, fail, or refuse to apply for a certificate of residence within the year, or who shall afterwards be found within the jurisdiction of the United States without such a certificate, "shall be deemed and adjudged to be unlawfully within the United States." The meaning of this clause, as shown by those which follow, is not that this fact shall thereupon be held to be conclusively established against him, but only that the want of a certificate shall be prima facie evidence that he is not entitled to remain in the United States; for the section goes on to direct that he "may be arrested by any customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge;" and that it shall thereupon be the duty of the judge to order that the laborer "be deported from the United States" to China, (or to any other country which he is a citizen or subject of, and which does not demand any tax as a condition of his removal to it,) "unless he shall establish clearly, to the satisfaction of said judge, that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and if, upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost. Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained, and judgment suspended a reasonable time, to enable him to procure a duplicate from the *728 officer granting it; and in such cases the cost of said arrest and trial shall be in the discretion of the court."

For the reasons stated in the earlier part of this opinion, congress, under the power to exclude or expel aliens, might have directed any Chinese laborer found in the United States without a certificate of residence to be removed out of the country by executive officers, without judicial trial or examination, just as it might have authorized such officers absolutely to prevent his entrance into the country. But congress has not undertaken to do this.

~*~*~

The provision which puts the burden of proof upon him of rebutting the presumption arising from his having no certificate, as well as the requirement of proof "by at least one

credible white witness that he was a resident of the United States at the time of the passage of this act," is within the acknowledged power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence, in the courts of its own government. The competency of all witnesses, without regard to their color, to testify in the courts of the United States, rests on acts of congress, which congress may, at its discretion, modify or repeal. Rev. St. §§ 858, 1977. The reason for requiring a Chinese alien, claiming the privilege of remaining in the United States, to prove the fact of his residence here at the time of the passage of the act "by at least one credible white witness," may have been the experience of congress, as mentioned by Mr. Justice Field in *Chae Chan Ping's Case*, that the enforcement of former acts, under which the testimony of Chinese persons was admitted to prove similar facts, "was attended with great embarrassment, from the suspicious nature, in many instances, of the testimony offered to establish the residence of the parties, arising from the loose notions entertained by the witnesses of the obligation of an oath." And this requirement, not allowing such a fact to be proved solely by the testimony of aliens in a like situation, or of the same race, is quite analogous to the provision, which has existed for 77 years in the naturalization laws, by which aliens applying for naturalization must prove their residence within the limits and under the jurisdiction of the United States, for five years next preceding, "by the oath or affirmation of citizens of the United States."

~*~*~*~

The question whether, and upon what conditions, these aliens shall be permitted to remain within the United States being one to be determined by the political departments of the government, the judicial department cannot properly express an opinion upon the wisdom, the policy, or the justice of the measures enacted by congress in the exercise of the powers confided to it by the constitution over this subject.

~*~*~*~

[The] petitioner had, within the year, applied to a collector of internal revenue for a certificate of residence, and had been refused it, because he produced, and could produce, none but Chinese witnesses, to prove the residence necessary to entitle him to a certificate. Being found without a certificate of residence, he was arrested by the marshal, and taken before the United States district judge, and established to the satisfaction of the judge that, because of the collector's refusal to give him a certificate of residence, he was without one by an unavoidable cause; and also proved, by a Chinese witness only, that he was a resident of the United States at the time of the passage of the act of 1892. Thereupon the judge ordered him to be remanded to the custody of the marshal, and to be deported from the United States, as provided in that act.

~*~*~*~

Upon careful consideration of the subject, the only conclusion which appears to us to be consistent with the principles of international law, with the constitution and laws of the United States, and with the previous decisions of this court, is that in each of these cases the judgment of the circuit court dismissing the writ of habeas corpus is right, and must be affirmed.