

family with him, to be fairly covered by the language of the treaty, yet the provisions of the restriction act are inconsistent and in conflict with the provision of the treaty, so construed, and the statute, being later than the treaty, annuls or repeals it. The result is, the petitioner must be remanded. But if a wife, in the situation of the petitioner, does not take the *status* of her husband, and if the restriction act, as amended in 1884, is applicable to her case, then she has an individual, personal right to enter the United States, as not being a Chinese laborer, without regard to her husband; but, in that case, the certificate prescribed by section 6 is the only evidence upon which she can enter. The certificate she has not got, and the result is the same. I think the former the proper view.

It is greatly to be regretted that every question fairly arising upon the rights of the Chinese under the treaties with China and the restriction acts cannot be taken to the supreme court for an authoritative determination. These questions are of the highest international importance, and ought not to be finally adjudged by the local courts of original jurisdiction. It is earnestly hoped by us that congress will provide for writs of error or appeals in this class of cases.

CASE OF THE LIMITED TAG.

In re KEW OCK, on *Habeas Corpus*

(Circuit Court, D. California. September 22, 1884.)

CHINESE IMMIGRATION — CUSTOM-HOUSE "TAG" — CERTIFICATE — CHINESE LABORER.

The only evidence of the right of a Chinese laborer who left the United States after the passage of the act of 1882 to re-enter this country is the certificate provided in the act; and the fact that he had a "tag" entitling him to such a certificate, but that the collector took up such "tag" and failed to give him a certificate therefor, will not entitle him to re-enter.

On Habeas Corpus.

T. D. Riordan and *L. I. Mowry*, for petitioner.

S. G. Hilborn and *Carroll Cook*, for the United States.

Before FIELD, Justice, and SAWYER, HOFFMAN, and SABIN, JJ.

FIELD, Justice. The petitioner in this case is also a Chinese laborer, who was a resident of the United States on the seventeenth of November, 1880, and until the twenty-first of June, 1883, when he departed for China. Previous to his departure he applied to the collector of the port of San Francisco for a certificate under the restriction act, to enable him to return to the United States, stating that he wished to leave on the City of Tokio. After the usual examination and registry, he received from the collector the white tag generally

given in such cases, entitling him to a certificate stating that he was to leave on the steamer named, which sailed the thirty-first of May, 1883. Subsequently, but prior to the leaving of the steamer, he concluded to delay his departure until the next steamer, which left on the fifteenth of June. On that day he went on board this last steamer, and demanded of the collector present a certificate in exchange for his tag. The collector refused the certificate, as the tag called for one stating that he was to leave on the City of Tokio, and not on the one then about to depart. He also took from the petitioner the tag given to him. The petitioner accordingly left on the steamer City of New York without any certificate, and now claims a right to re-enter the United States by virtue of his old tag, and the certificate to which that entitled him, and invokes the order of the court for his relief.

The court cannot help the petitioner. As the tag received only called for a certificate stating that he was to leave on the steamer City of Tokio, he could not, by virtue of it, claim a certificate stating that he was to leave by another steamer. He should have returned the tag to the collector, and asked for one giving him a right to a new certificate, stating his intention to leave by a different steamer. Not having done so, and having left without any certificate, he is in the same position he would have been had he departed without any attempt to obtain one.

The law of 1884 makes the certificate to the Chinese laborer "*the only evidence permissible to establish his right of re-entry,*" and the court cannot, therefore, listen to any tale of his supposed grievances. As stated in the *Case of the Unused Tag, ante, 701*, the remedy, if he have any, must come from the officers in Washington who have control over the collector. The court has no jurisdiction to supervise his action towards the petitioner, and direct the specific performance of any neglected duty to him.

Writ discharged, and petitioner remanded.

SAWYER, J. In this case, in my judgment, the rights of the petitioner must be determined by the restriction act of 1882, which was in force at the time of his departure. But whether governed by the original act, or the act as amended in 1884, the result is the same; for, under either, the certificate provided for in the act is the only evidence permissible to establish his right of re-entry, and he had neither certificate. There is no dispensing power conferred upon the courts. See my views on this point expressed in the *Case of Ah Kee, ante, 701*, just decided, and also the views of Mr. Justice FIELD upon the point in the same case.

I concur in the order remanding him.

CASE OF FORMER RESIDENCE BY A CHINESE LABORER.

In re CHEEN HEONG, on Habeas Corpus.

(Circuit Court, D. California. September 29, 1884.)

CHINESE IMMIGRATION—ACTS OF 1882 AND 1884—CHINESE LABORERS—CERTIFICATE—FORMER RESIDENCE IN UNITED STATES.

A Chinese laborer resided in the United States from November 17, 1880, until June, 1881, when he departed for Honolulu, in the Hawaiian kingdom, where he remained until September, 1884, when he sought to re-enter the United States. *Held*, that the acts of 1882 and 1884 did not exempt him from the necessity of presenting the certificate required by those acts, and that without it he could not be allowed to re-enter.

SAWYER, SABIN, and HOFFMAN, JJ., dissenting.

On Habeas Corpus.

T. D. Riordan and L. I. Mowry, for petitioner.

S. G. Hilborn and Carroll Cook, for the United States.

Before FIELD, Justice, SAWYER, SABIN, and HOFFMAN, JJ.

FIELD, Justice. The facts of this case differ from those in the *Case of the Chinese Laborer with an Unused Tag, ante*, 701, recently decided, in this particular: that the laborer there left the United States, after the passage of the act of 1882, without a certificate enabling him to return, relying upon a tag entitling him to such a certificate, but which he had not obtained, while the laborer here left before the passage of the restriction act, and of course before any certificate was required. It appears, from the agreed statement of facts, that the petitioner is a laborer of the Chinese race, and a subject of the emperor of China; that he resided within the United States on the seventeenth of November, 1880, and continued his residence until June, 1881, when he departed for Honolulu, in the Hawaiian Kingdom, where he remained until September of the present year, (1884,) and then returned to the port of San Francisco, and, of course, without any certificate under the act of 1882, or that of 1884, as none could be issued to him while out of the country; and he now seeks to land by virtue of his residence here on the seventeenth of November, 1880, contending that the acts of 1882 and 1884 except Chinese laborers in like situation from the necessity of presenting any certificate, inasmuch as it would be impossible to obtain one.

My associate, the circuit judge, sustains the contention of the petitioner, and in a written opinion has presented his construction of the act with his usual elaboration and learning. The district judge of this district and the district judge of the district of Nevada concur with him. It is, therefore, with much diffidence that I venture to express my dissent from their conclusions. The restriction act of 1882 in its first section declares that, after 90 days from its passage, and for the period of 10 years from its date, the coming