

"What injustice could be more marked than, by legislative enactment to recognize the existence of a right by treaty to come within the limits of the United States, and at the same time to prescribe, as the only evidence permissible to establish it, the possession of a collector's certificate that could not possibly have been obtained by the person to whom the right belongs? Or to prevent the re-entry of a person into the United States upon the ground that he did not, upon his arrival from a foreign port, produce a certain certificate, under the hand and seal of a collector, and upon forms prescribed by the secretary of the treasury, which neither that nor any other officer was authorized or permitted to give prior to the departure of such person from this country? Or what incongruity is more evident than to impose upon a collector the duty of going on board of a vessel about to sail from his district for a foreign port, and making and recording a list of its passengers of a particular race, showing their individual, family, and tribal names in full, their age, occupation, last place of residence, and physical marks and peculiarities, when such vessel had sailed long before the law passed which imposed that duty on the collector? These questions suggest the consequences that must result if it is held that congress intended to abrogate the treaty with China by imposing conditions upon the enjoyment of rights secured by it which are impossible of performance."

The failure of the act of 1884 to cure the defects in the act of 1882 resulted in both the legislative and executive departments of the government taking up the subject, with the view of providing an effective measure of exclusion against the continual influx of Chinese immigrants. A new treaty was negotiated by the state department, and congress immediately passed the act of September 13, 1888 (25 Stat. 476), to carry the treaty into effect. The treaty was, however, finally rejected by the Chinese government, and as a consequence that portion of the act dependent upon the ratification of the treaty failed to become a law. Thereupon congress very promptly passed an act to supplement the act of 1882. It was approved October 1, 1888 (25 Stat. 504, c. 1064), and provided that it should be unlawful for any Chinese laborer who had at any time before been, or who was then or might thereafter be, a resident of the United States, and who had departed or should thereafter depart therefrom, and had not returned before the passage of the act, to return to or remain in the United States, and that no certificate of identity provided for in the fourth and fifth sections of the act of 1882 should thereafter be issued, and every certificate theretofore issued in pursuance of said section was declared void and of no effect, and the Chinese laborer claiming admission by virtue thereof should not be permitted to enter the United States. This act closed the door effectually against Chinese laborers coming into the United States upon any claim of prior residence, whether supported by return certificates or proof of residence in the United States between November 17, 1880, and August 5, 1882.

In the case of *Chae Chan Ping v. U. S.*, 130 U. S. 581, 9 Sup. Ct. 623, the validity of this act was assailed as being in effect an expulsion from the country of Chinese laborers in violation of existing treaties between the United States and the government of China, and of rights vested in them under the laws of congress. Judge Field, speaking for the supreme court, reviews the history of Chinese immigration into the United States, and the treaties and legislation upon the subject, and holds that the act of October 1, 1888, revoking all return certificates, and excluding Chinese laborers from the United States, was a constitutional exercise of legislative power,

and, so far as it conflicted with existing treaties between the United States and China, it operated to that extent to abrogate them as part of the municipal law of the United States.

In the case of *Wan Shing v. U. S.*, 140 U. S. 424, 11 Sup. Ct. 729, the petitioner, in an application for a writ of habeas corpus, alleged that he was restrained of his liberty on board the steamship *Arabic* in the port of San Francisco; the master of the vessel claiming that the petitioner was not entitled to land under the provisions of the act of congress of May 6, 1882, and the act amendatory thereof. The petitioner alleged that he was a resident of the United States on the 17th of November, 1880, and departed therefrom prior to the 6th day of June, 1882, and that at all the times mentioned he was a merchant doing business in San Francisco, having only temporarily left the United States on April 19, 1882. His claim was that he belonged to the privileged class. The supreme court affirmed a judgment of the circuit court remanding the petitioner, holding that his right to land rested upon his establishing the fact that he was not a laborer within the provisions of the act of October 1, 1888, and that could only have been shown by a certificate of identity issued under the authority of the Chinese government. The court upon this point said:

"The result of the legislation respecting the Chinese would seem to be this: that no laborers of that race shall hereafter be permitted to enter the United States, or even to return after having departed from the country, though they may have previously resided therein, and have left with a view of returning; and that all other persons of that race, except those connected with the diplomatic service, must produce a certificate from the authorities of the Chinese government, or of such other foreign government as they may at the time be subjects of, showing that they are not laborers, and have the permission of that government to enter the United States, which certificate is to be viséd by a representative of the government of the United States."

The effect of these decisions was to determine that the privilege of Chinese laborers to come to or remain in the United States was a subject within legislative control, to be regulated, suspended, or entirely abrogated, as congress should declare, and that the law of the *Chew Heong Case*, supra, was no longer authority in construing the exclusion acts.

We come, now, to the consideration of the statute under which the defendants were arrested as being unlawfully in the United States. The title and terms of exclusion of the act approved May 5, 1892, indicate that the scope and purpose of the act are to permit only such persons to enter or remain in the United States who are expressly designated as being entitled to the privilege. The title of the act is, "An act to prohibit the coming of Chinese persons into the United States." The first section, in extending the laws then in force for a period of 10 years, prohibits and regulates the coming into this country of "Chinese persons and persons of Chinese descent"; and the third section provides that any "Chinese person or person of Chinese descent" arrested under the provisions of the act shall be adjudged to be unlawfully within the United States, unless such person shall establish, by affirmative proof, to the satisfaction of the parties, judge, or commissioner, his lawful right to remain in

the United States. Section 6 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 the act, and who were entitled to remain in the United States, to apply to the collectors of internal revenue of the respective districts for a certificate of residence. The charge in the information of the United States attorney upon which the defendants were arrested is that they are Chinese laborers found within the United States without a certificate of residence, as provided by the act of congress to which reference has just been made.

The right of the defendants to enter the United States appears to have been determined by the collector of customs at Port Townsend upon a certificate issued by the United States consul at Hong Kong as to their identity, and upon the statement contained in the certificate that:

"They are going to the United States in response to a call, as alleged, of their father, a resident of Eugene, Oregon, for the purpose of acquiring an English education."

The right of the defendants to remain in the United States is based upon oral testimony that:

"Immediately upon being landed said defendants proceeded at once to the city of Eugene, the home of their father, and that ever since said time they have been attending public and private schools in that city, and have acquired the English language, and made rapid progress in their studies."

The purpose of the consular certificate, as evidence before the court in this case, was apparently as tending to establish the fact that defendants were students, and belonged to the privileged class, and were entitled to come into the United States by the act of May 6, 1882, as amended by the act of July 5, 1884; but it is clear that the certificate is not in conformity with that section, and does not tend to establish the fact in question. It does not contain the permission of the Chinese government, nor are the defendants identified by that government as being entitled to come to the United States. It is wholly a document issued by the United States consul at Hong Kong, without authority of law, and without any value as evidence of the right of the defendants to come into or remain within the United States; and, being landed upon such insufficient evidence, they were unlawfully within the United States. *U. S. v. Moc Chew*, 7 U. S. App. 534, 4 C. C. A. 482, and 54 Fed. 490; *Wan Shing v. U. S.*, 140 U. S. 424, 11 Sup. Ct. 729.

But it is contended on the part of the defendants that the status of Chinese aliens domiciled in the United States must be determined according to their status at the time of arrest, and not at the time of entry, and that, upon being arrested, it was competent for them to show by affirmative proof that they were students engaged in acquiring an education in our schools, and, being so engaged, they were not members of the prohibited class, and not subject to deportation. When, however, that domicile has been acquired contrary to and in violation of the laws of the United States, and when, as here, it is only through an unlawful entry into the United States that the Chinese persons secure a residence in this country, they cannot purge themselves of their offense by assuming the occupation of

members of the privileged class, and establish their right to remain by proof of that character. The right of the defendants to land in this country on the claim of being students was dependent upon their producing to the collector of customs, at the port of their arrival, the certificate required by section 6 of the act of 1882, as amended; and to entitle them to remain here they must thereafter produce the same to the proper authorities whenever lawfully demanded.

But not only do the defendants fail to show that their entry into and residence in the United States was lawful, and under a certificate showing that they belonged to a privileged class, but it appears affirmatively that they were at that time the minor children of a Chinese laborer, and that they are still minors. The status of the defendants, under the laws, was that of the father. The policy of the exclusion acts is to prohibit the entry into the United States of the entire class of Chinese laborers as a class. In *re Ah Quan*, 10 Sawy. 222, 21 Fed. 182; In *re Ah Moy*, 10 Sawy. 345, 21 Fed. 785; In *re Li Foon*, 80 Fed. 881. The defendants belonged to that class upon their arrival in this country, and they so continued up to the time of their arrest; and, not having the certificate as required by section 6 of the act of May 5, 1892, as amended by the act of November 3, 1893, they were not entitled to remain in the United States, and should have been deported. Judgment reversed.

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CORSER v. BRATTLEBORO OVERALL CO.

(Circuit Court, D. Vermont. April 1, 1899.)

1. PATENTS—INVENTION.

Overalls with an upward extension or bib in front being old, there is no invention in making a similar upward extension of about the same height at the back, for the purpose of excluding dust and cinders, and permitting the use of short suspenders, which require no crosspiece to prevent them from slipping from the shoulders.

2. SAME—OVERALLS.

The Corser patent, No. 366,621, for an improvement in overalls, is void as to claim 3, for want of invention.

This was a suit in equity by Brackett G. Corser against the Brattleboro Overall Company for alleged infringement of a patent for an improvement in overalls.

James L. Martin, for plaintiff.

Kittredge Haskins and William E. Simonds, for defendant.

WHEELER, District Judge. This suit is brought upon letters patent No. 366,621 applied for November 12, 1886, dated July 12, 1887, and granted to the plaintiff for an improvement in overalls. The patent covers several different features by various claims. All of it that relates to the one in question is in the specification:

"At Figs. 3 and 9 I have represented a portion of the rear of a pair of overalls; the customary style being indicated in dotted lines, and an improvement in full lines. The back is extended upwardly about as high as the