

IN THE
SUPREME COURT
OF THE
UNITED STATES.

UNITED STATES OF AMERICA,
Appellant,

vs.

WONG KIM ARK,
Respondent.

STATEMENT OF THE CASE.

In August, 1895, Wong Kim Ark arrived on the steamship "Coptic," at the port of San Francisco, and demanded permission to land on the ground that he was a native born citizen of the United States. The collector of customs refused to permit him to enter this country solely on the ground that he was not a citizen of the United States. Thereupon a petition was presented to the district court of the United States, alleging that Wong Kim Ark was unlawfully restrained of his liberty, and praying that a writ of habeas corpus issue directed to the collector

of customs and the general manager of the Occidental and Oriental Steamship Company, acting under his authority. The writ was accordingly issued, and before the hearing of the case, by leave, an amended petition was filed on behalf of Wong Kim Ark.

The substantial averments of this petition, which are not controverted, in addition to stating the facts of the unlawful detention, are: that the father and mother of Wong Kim Ark were and are persons of Chinese descent, and subjects of the emperor of China, and in the year 1873, and for a long time prior thereto, and more especially at the date of the birth of Wong Kim Ark, were domiciled residents of the United States, and had therein a continued, established and permanent residence in the city and county of San Francisco, state of California, and had come to the United States in pursuance of the invitation extended to them, and at that time to all other persons of the Chinese race, by the provisions of the treaty between the United States of America and the Tz Tsing Empire of the 18th day of June, 1858, and the additional articles thereto, concluded and signed on the 28th day of July, 1868 (Burlingame Treaty); that during their residence in the city and county of San Francisco, and in the year 1873, Wong Kim Ark was born in said city and county; that his parents continued to have and maintain their residence in the United States, at said city and county, until the year 1890, when they departed for China, and that during their said residence they were not engaged in any diplomatic or official function under

the emperor of China, and were only engaged in the prosecution of business.

The petition further avers that in the year 1890 Wong Kim Ark departed for China upon a temporary visit with the intention of returning to the United States, and did return thereto on the 26th day of July, 1890, on the steamship "Gaelic," and was permitted to enter the United States by the collector of customs upon the sole ground that he was a native born citizen of the United States; that after his said return he remained in the United States, claiming to be a citizen thereof, until the year 1894, when he again departed for China upon a temporary visit, *animo revertendi*, and returned in August, 1895.

The petition further recites that ever since the birth of Wong Kim Ark he has had but one residence, a residence at said city and county of San Francisco, state of California, and within the dominion and jurisdiction of the United States, and that he has never changed or lost said residence, or gained or acquired another residence; that he was born within the dominion, power, protection and obedience of the United States, and subject to the jurisdiction thereof, that he has always subjected himself to the jurisdiction and dominion of the United States, and yielded thereto direct and immediate allegiance, and has been taxed, recognized and treated as a citizen of the United States, and that he has never lost his said nationality as a citizen of the United States, or lost or renounced his allegiance thereto, or his said citizenship, either by expatriation, change of residence,

oath of allegiance, or in any other manner whatsoever, or at all. Finally the petition avers that Wong Kim Ark has never done or committed any act or thing to exclude him from the United States, and that the acts of congress inhibiting the immigration of Chinese to this country are not applicable to him, being a native born citizen of the United States.

Upon the hearing which followed, the case was argued and submitted upon an agreed statement of the facts substantially as above stated; and the court held, as conclusions of law, that Wong Kim Ark was a native born citizen of the United States, and that his detention, therefore, was illegal, and directed his discharge from custody.

From this order and judgment an appeal was taken to this court by the United States.

BRIEF OF ARGUMENT.

I.

By the common law, birth within the dominions and jurisdiction of the United States of itself creates citizenship.

Lynch vs. Clarke, 1 Sandf. Ch. 583;

McKay vs. Campbell, 2 Saw. 119.

II.

The fourteenth amendment to the constitution of the United States is only declara-

tory of the common law rule; that amendment was adopted to declare and enforce it uniformly throughout the United States and the several states.

Fourteenth Amend. U. S. Const.;

Rev. Stat. U. S., sec. 1992;

Story on the Const., 5th ed., chap. xlvii.,

The Fourteenth Amendment, by Hon. T. M. Cooley;

U. S. vs. Cruikshank, 92 U. S. 542;

Stauder vs. West Virginia, 100 U. S. 303;

Neal vs. Delaware, 103 U. S. 370;

Bush vs. Kentucky, 107 U. S. 110;

Civil Rights Cases, 109 U. S. 3;

Elk vs. Wilkins, 112 U. S. 94;

McKay vs. Campbell, 2 Saw. 119;

In re Look Tin Sing, 10 Saw. 353;

Ex parte Chin King, 13 Saw. 333;

In re Yung Sing Hee, 36 Fed. 437.

III.

The words in the fourteenth amendment, "subject to the jurisdiction thereof" do not exclude the appellee from being a citizen. He is not within any of the classes of persons excepted from citizenship; and the jurisdiction of the United States over him at the time of his birth was exclusive of that of any other country.

Mr. Justice Field, *In re Look Tin Sing*;
10 Sawyer, 353.

IV.

The word "citizen," as employed in the fourteenth amendment, includes those who do not as well as those who do possess the privilege of the elective franchise.

Story on the Const., 5th ed., vol. 2, sec. 1932;
Minor vs. Happersett, 21 Wall, 163;
Ex parte Virginia, 100 U. S. 339;
Virginia vs. Reeves, 100 U. S. 313.

V.

The laws excluding immigrants who are Chinese laborers are inapplicable to a person born in the United States, and subject to its jurisdiction, even though his parents were not citizens, and being Chinese, were not entitled to become citizens under the naturalization laws.

In re Look Tin Sing (supra), 10 Saw. 353;
Gee Fook Sing vs. U. S., 49 Fed. 146; 7 U. S.
App. 27, and 1 C. C. Ap. 211.

VI.

This court should affirm the order and judgment of discharge.

"From the law as announced and the facts as stipulated, I am of opinion that Wong Kim Ark is a citizen of the United States within the meaning of the citizenship clause of the fourteenth amendment. He has not forfeited his right to return to this country. His detention, therefore, is illegal."

Opinion of Morrow, J., in re Wong Kim Ark,
Fed. Rep., vol. 71, No. 3, February 18,
1896, p. 392.

THOS. D. RIOPDAN,
Attorney for respondent.

ADDENDA.

Extracts from Opinion of Mr. Justice Field, that Chinese born in the United States are citizens thereof.

The first section of the fourteenth amendment to the constitution declares that "all persons born or "naturalized in the United States, and subject to the "jurisdiction thereof, are citizens of the United States "and of the state wherein they reside." This language would seem to be sufficiently broad to cover the case of the petitioner. He is a person born in the United States. Any doubt on the subject, if there can be any, must arise out of the words "subject "to the jurisdiction thereof." They alone are subject to the jurisdiction of the United States who are within their dominions and under the protection of their laws, and with the consequent obligation to obey them, when obedience can be rendered; and only those thus subject by their birth or naturalization are within the terms of the amendment. The jurisdiction over these latter must at the time be both actual and exclusive. The words mentioned except from citizenship children born in the United States of persons engaged in the diplomatic service of foreign governments, such as ministers and ambassadors, whose residence, by a fiction of public law, is regarded as part of their own country. This extra-territoriality of their residence secures to their children born here

all the rights and privileges which would inure to them had they been born in the country of their parents. Persons born on a public vessel of a foreign country, whilst within the waters of the United States, and consequently within their territorial jurisdiction, are also excepted. They are considered as born in the country to which the vessel belongs. In the sense of public law, they are not born within the jurisdiction of the United States.

The language used has also a more extended purpose. It was designed to except from citizenship persons who, though born or naturalized in the United States, have renounced their allegiance to our government, and thus dissolved their political connection with the country. The United States recognized the right of every one to expatriate himself and choose another country. This right would seem to follow from the greater right proclaimed to the world in the memorable document in which the American colonies declared their independence and separation from the British crown, as belonging to every human being—God-given and inalienable—the right to pursue his own happiness. The English doctrine of perpetual and unchangeable allegiance to the government of one's birth, attending the subject wherever he goes, has never taken root in this country although there are judicial dicta that a citizen cannot renounce his allegiance to the United States without the permission of the government, under regulations prescribed by law; and this would seem to have been the opinion of Chancellor Kent when he published his

Commentaries. But a different doctrine prevails now. The naturalization laws have always proceeded upon the theory that any one can change his home and allegiance without the consent of his government. And we adopt as citizens those belonging to our race, who, coming from other lands, manifest attachment to our institutions, and desire to be incorporated with us. So profoundly convinced are we of the right of these immigrants from other countries to change their residence and allegiance, that as soon as they are naturalized they are deemed entitled, with the native-born, to all the protection which the government can extend to them wherever they may be, at home or abroad. And the same right which we accord to them to become citizens here is accorded to them as well as to the native-born, to transfer their allegiance from our government to that of other states.

In the opinion of Attorney-General Black, in the case of a native Bavarian, who came to this country, and, after being naturalized, returned to Bavaria, and desired to resume his status as a Bavarian, this doctrine is maintained. "There is," he says, "no statute or other law of the United States which prevents either a native or naturalized citizen from severing his political connection with this government, if he sees proper to do so in time of peace, and for a purpose not directly injurious to the interests of the country. There is no mode of renunciation prescribed. In my opinion, if he emigrates, carries his family and effects with him, manifests a plain in-

"tention not to return, takes up his permanent residence abroad, and assumes the obligations of a subject to a foreign government, this would imply a dissolution of his previous relations with the United States, and I do not think we could, or would, afterward claim from him any of the duties of a citizen."

(9 Opin. Atty.-Gens. 62.)

The doctrine thus stated has long been received in the United States as a settled rule of public law; and in the treaty of 1868 between China and this country, the right of man to change his home and allegiance is recognized as "inherent and inalienable." (16 Stats., p. 740. art. 5.) And in the recital of an act of congress passed nearly at the same time with the signing of the treaty, this right is assumed to be "a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness;" and in the body of the act, "any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation," is declared to be "inconsistent with the fundamental principles" of our government. (13 Stats. 223; R. S., Sec 1999.) So, therefore, if persons born or naturalized in the United States have removed from the country and renounced, in any of the ordinary modes of renunciation, their citizenship, they thenceforth cease to be subject to the jurisdiction of the United States.

With this explanation of the meaning of the words in the fourteenth amendment, "subject to the

jurisdiction thereof," it is evident that they do not exclude the petitioner from being a citizen. He is not within any of the classes of persons excepted from citizenship; and the jurisdiction of the United States over him at the time of his birth was exclusive of that of any other country.

The clause as to citizenship was inserted in the amendment not merely as an authoritative declaration of the generally recognized law of the country so far as the white race is concerned, but also to overrule the doctrine of the Dred Scott case, affirming that persons of the African race brought to this country and sold as slaves, and their descendants, were not citizens of the United States nor capable of becoming such. (19 How. 393.) The clause changed the entire status of these people. It lifted them from their condition of mere freedmen and conferred upon them, equally with all other native-born, the rights of citizenship. When it was adopted, the naturalization laws of the United States excluded colored persons from becoming citizens, and the freedmen and their descendants, not being aliens, were without the purview of those laws. So the inability of persons to become citizens under those laws in no respect impairs the effect of their birth, or of the birth of their children, upon the status of either as citizens under the amendment in question.

Independently of the constitutional provision, it has always been the doctrine of this country, except as applied to Africans brought here and sold as slaves, and their descendants, that birth within the domin-

ions and jurisdiction of the United States of itself creates citizenship. This subject was elaborately considered by Assistant Vice-Chancellor Sandford in *Lynch vs. Clarke*, found in the first volume of his reports. (1 Sandf. 583.) In that case one Julia Lynch, born in New York, in 1819, of alien parents, during their temporary sojourn in that city, returned with them the same year to their native country, and always resided there afterwards. It was held that she was a citizen of the United States.

After an exhaustive examination of the law, the vice-chancellor said that he entertained no doubt that every person born within the dominions and allegiance of the United States, whatever the situation of his parents, was a natural-born citizen; and added, that this was the general understanding of the legal profession, and the universal impression of the public mind. In illustration of this general understanding, he mentions the fact, that when at an election an inquiry is made whether the person offering to vote is a citizen or an alien, if he answers that he is a native of this country the answer is received as conclusive that he is a citizen; that no one inquires further; no one asks whether his parents were citizens or foreigners; it is enough that he was born here, whatever was the status of his parents. He shows also that legislative expositions on the subject speak but one language, and he cites to that effect not only the laws of the United States, but the statutes of a great number of the states, and establishes conclusively that there is on this subject a concur-

rence of legislative declaration with judicial opinion, and that both accord with the general understanding of the profession and of the public.

10 Sawyer, 353.

The foregoing opinion was concurred in by Judges Sawyer and Sabin.