Center for
Civic Education

United States v. Wong Kim Ark

Supreme Court Majority Opinion

Petitioner
United States

Respondent
Wong Kim Ark

Docket No.
132

Citation
169 US 649 (1898)

Argued
March 5, 1897

Decided
March 28, 1898

Opinion by
Horace Gray

Mr. Justice GRAY, after stating the facts in the foregoing language, delivered the opinion of the court.

The facts of this case, as agreed by the parties, are as follows: Wong Kim Ark was born in 1873, in the city of San Francisco, in the state of California and United States of America, and was and is a laborer. His father and mother were persons of Chinese descent, and subjects of the emperor of China. They were at the time of his birth domiciled residents of the United States, having previously established and are still enjoying a permanent domicile and residence therein at San Francisco. They continued to reside and remain in the United States until 1890, when they departed for China; and, during all the time of their residence in the United States, they were engaged in business, and were never employed in any diplomatic or official capacity under the emperor of China. Wong Kim Ark, ever since his birth, has had but one residence, to wit, in California, within the United States and has there resided, claiming to be a citizen of the United States, and has never lost or changed that residence, or gained or acquired another residence; n d neither he, nor his parents acting for him, ever renounced his allegiance to the United States, or did or committed any act or thing to exclude him therefrom. In 1890 (when he must have been about 17 years of age) he departed for China, on a temporary visit, and with the intention of returning to the United States, and did return thereto by sea in the same year, and was permitted by the collector of customs to enter the United States, upon the sole ground that he was a native-born citizen of the United States. After such return, he remained in the United States, claiming to be a citizen thereof, until 1894, when he (being about 21 years of age, but whether a little above or a little under that age does not appear) again departed for China on a temporary visit, and with the intention of returning to the United States; and he did return thereto, by sea, in August, 1895, and applied to the collector of customs for permission to land, and was denied such permission, upon the sole ground that he was not a citizen of the United States.

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It is conceded that, if he is a citizen of the United States, the acts of congress known as the 'Chinese Exclusion Acts,' prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States, do not and cannot apply to him.

The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who at the time of his birth are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the fourteenth amendment of the constitution: '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.'

I. In construing any act of legislation, whether a statute enacted by the legislature, or a constitution established by the people as the supreme law of the land, regard is to be had, not only to all parts of the act itself, and of any former act of the same lawmaking power, of which the act in question is an amendment, but also to the condition and to the history of the law as previously existing, and in the light of which the new act must be read and interpreted.

The constitution of the United States, as originally adopted, uses the words 'citizen of the United States' and 'natural-born citizen of the United States.' By the original constitution, every representative in congress is required to have been 'seven years a citizen of the United States,' and every senator to have been 'nine years a citizen of the United States'; and 'no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president.' Article 2, § 1. The fourteenth article of amendment, besides declaring 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,' also declares that 'no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' And the fifteenth article of amendment declares that 'the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.'

The constitution nowhere defines the meaning of these words, either by way of inclusion or of exclusion, except in so far as this is done by the affirmative declaration that 'all persons born r naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.' Amend. art. 14. In this, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the constitution. Minor v. Happersett, 21 Wall. 162; Ex parte Wilson, 114 U. S. 417, 422, 5 Sup. Ct. 935; Boyd v. U. S., 116 U. S. 616, 624, 625, 6 Sup. Ct. 524; Smith v. Alabama, 124 U. S. 465, 8 Sup. Ct. 564. The language of the constitution, as has been well said, could not be understood without reference to the common law. 1 Kent, Comm. 336; Bradley, J., in Moore v. U. S., 91 U. S. 270, 274.

In Minor v. Happersett, Chief Justice Waite, when construing, in behalf of the court, the very provision of the fourteenth amendment now in question, said: 'The constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that.' And he proceeded to resort to the common law as an aid in the construction of this provision. 21 Wall. 167.

In Smith v. Alabama, Mr. Justice Matthews, delivering the judgment of the court, said: 'There is no common law of the United States, in the sense of a national customary law, distinct from the common law of England as

adopted by the several states each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes.' 'There is, however, one clear exception to the statement that there is no national common law. The interpretation of the constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history.' 124 U. S. 478, 8 Sup. Ct. 569.

II. The fundamental principle of the common law with regard to English nationality was birth within the allegiance—also called 'ligealty,' 'obedience,' 'faith,' or 'power'—of the king. The principle embraced all persons born within the king's allegiance, and subject to his protection. Such allegiance and protection were mutual,—as expressed in the maxim, 'Protectio trahit subjectionem, et subjectio protectionem,'—and were not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the kingdom. Children, born in England, of such aliens, were therefore natural-born subjects. But the children, born within the realm, of foreign ambassadors, or the children of alien enemies, born during and within their hostile occupation of part of the king's dominions, were not natural-born subjects, because not born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction, of the king.

This fundamental principle, with these qualifications or or explanations of it, was clearly. though quaintly, stated in the leading case known as 'Calvin's Case,' or the 'Case of the Postnati,' decided in 1608, after a hearing in the exchequer chamber before the lord chancellor and all the judges of England, and reported by Lord Coke and by Lord Ellesmere. Calvin's Case, 7 Coke, 1, 4b-6a, 18a, 18b; Ellesmere, Postnati, 62-64; s. c. 2 How. St. Tr. 559, 607, 613-617, 639, 640, 659, 679.

The English authorities ever since are to the like effect. Co. Litt. 8a, 128b; Lord Hale, in Harg. Law Tracts, 210, and in 1 Hale, P. C. 61, 62; 1 Bl. Comm. 366, 369, 370, 374; 4 Bl. Comm. 74, 92; Lord Kenyon, in Doe v. Jones, 4 Term R. 300, 308; Cockb. Nat. 7; Dicey, Confl. Laws, pp. 173-177, 741.

In Udny v. Udny (1869) L. R. 1 H. L. Sc. 441, the point decided was one of inheritance, depending upon the question whether the domicile of the father was in England or in Scotland, he being in either alternative a British subject. Lord Chancellor Hatherley said: 'The question of naturalization and of allegiance is distinct from that of domicile.' Page 452. Lord Westbury, in the passage rei ed on by the counsel for the United States, began by saying: 'The law of England, and of almost all civilized countries, ascribes to each individual at his birth two distinct legal states or conditions,—one by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political status; another by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status.' And then, while maintaining that the civil status is universally governed by the single principle of domicile (domicilium), the criterion established by international law for the purpose of determining civil status, and the basis on which 'the personal rights of the party—that is to say, the law which determines his majority or minority, his marriage, succession, testacy, or intestacy— must depend,' he yet distinctly recognized that a man's political status, his country (patria), and his 'nationality,—that is, natural allegiance,'—'may depend on different laws in different countries.' Pages 457, 460. He evidently used the word 'citizen,' not as equivalent to 'subject,' but rather to 'inhabitant'; and had no thought of impeaching the established rule that all persons born under British dominion are natural-born subjects.

Lord Chief Justice Cockburn, in the same year, reviewing the whole matter, said: 'By the common law of England, every person born within the dominions of the crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning, in the country, was an English subject, save only the children of foreign ambassadors (who were excepted because their fathers carried their own nationality with them), or a child born to a foreigner during the hostile occupation of any part of the territories of England. No effect appears to have been given to descent as a source of nationality.' Cockb. Nat. 7.

Mr. Dicey, in his careful and thoughtful Digest of the Law of England with Reference to the Conflict of Laws, published in 1896, states the following propositions, his principal rules being printed below in italics: "British subject' means any person who owes permanent allegiance to the crown. 'Permanent' allegiance is used to distinguish the allegiance of a British subject from the allegiance of an alien, who, because he is within the British dominions, owes 'temporary' allegiance to the crown. 'Natural-born British subject' means a British subject who has become a British subject at the moment of his birth.' 'Subject to the exceptions hereinafter mentioned, any person who (whatever the nationality of his parents) is born within the British dominions is a natural-born British subject. This rule contains the leading principle of English law on the subject of British nationality.' The exceptions afterwards mentioned by Mr. Dicey are only these two: '(1) Any person who (his father being an alien enemy) is born in a part of the British dominions, which at the time of such person's birth is in hostile occupation, is an alien.' '(2) Any person whose father (being an alien) is at the time of such person's birth an ambassador or other diplomatic agent accredited to the crown by the sovereign of a foreign state is (though born within the British dominions) an alien.' And he adds: 'The exceptional and unimportant instances in which birth within the British dominions does not of itself confer British nationality are due to the fact that, though at common law nationality or allegiance in substance depended on the place of a person's birth, it in theory at least depended, not upon the locality of a man's birth, but upon his being born within the jurisdiction and allegiance of the king of Enl and; and it might occasionally happen that a person was born within the dominions without being born within the allegiance, or, in other words, under the protection and control of the crown.' Dicey, Confl. Laws, pp. 173-177, 741.

It thus clearly appears that by the law of England for the last three centuries, beginning before the settlement of this country, and continuing to the present day, aliens, while residing in the dominions possessed by the crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, and the jurisdiction of the English sovereign; and therefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign state, or of an alien enemy in hostile occupation of the place where the child was born.

III. The same rule was in force in all the English colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the constitution as originally established.

In the early case of The Charming Betsy (1804) it appears to have been assumed by this court that all persons born in the United States were citizens of the United States, Chief Justice Marshall saying: 'Whether a person born within the United States, or becoming a citizen according to the established laws of the country, can devest himself absolutely of that character, otherwise than in such manner as may be prescribed by law, is a question which it is not necessary at present to decide.' 2 Cranch, 64, 119.

In Inglis v. Sailors' Snug Harbor (1830) 3 Pet. 99, in which the plaintiff was born in the city of New York, about the

time of the Declaration of Independence, the justices of this court (while differing in opinion upon other points) all agreed that the law of England as to citizenship by birth was the law of the English colonies in America. Mr. Justice Thompson, speaking for the majority of the court, said: 'It is universally admitted, both in the English courts and in those of our own country, that all persons born within the colonies of North America, while subject to the crown of Great Britain, were natural-born British subjects.' Id. 120. Mr. Justice Johnson said: 'He was entitled to inherit as a citizen born of the state of New York.' Id. 136. Mr. Justice Story stated the reasons upon this point more at large, referring to Calvin's Case, Blackstone's Commentaries, and Doe v. Jones, above cited, and saying: 'Allegiance is nothing more than the tie or duty of obedience of a subject to the sovereign under whose protection he is; and allegiance by birth is that which arises from being born within the dominions and under the protection of a particular sovereign. Two things usually concur to create citizenship: First, birth locally within the dominions of the sovereign; and, secondly, birth within the protection and obedience, or, in other words, within the ligeance, of the sovereign. That is, the party must be born within a place where the sovereign is at the time in full possession and exercise of his power, and the party must also at his birth derive protection from, and consequently owe obedience or allegiance to, the sovereign, as such, de facto. There are some exceptions which are founded upon peculiar reasons, and which, indeed, illustrate and confirm the general doctrine. Thus, a person who is born on the ocean is a subject of the prince to whom his parents then owe allegiance; for he is still deemed under the protection of his sovereign, and born in a place where he has dominion in common with all other sovereigns. So the children of an ambassador are held to be subjects of the prince whom he represents, although born under the actual protection and in the dominions of a foreign prince.' Id. 155. 'The children of enemies, born in a place within the dominions of another sovereign, then occupied by them by conquest, are still aliens.' Id. 156. 'Nt hing is better settled at the common law than the doctrine that the children, even of aliens, born in a country, while the parents are resident there under the protection of the government, and owing a temporary allegiance thereto, are subjects by birth.' Id. 164.

In Shanks v. Dupont, 3 Pet. 242, decided (as appears by the records of this court) on the same day as the last case, it was held that a woman born in South Carolina before the Declaration of Independence, married to an English officer in Charleston during its occupation by the British forces in the Revolutionary War, and accompanying her husband on his return to England, and there remaining until her death, was a British subject, within the meaning of the treaty of peace of 1783, so that her title to land in South Carolina, by descent cast before that treaty, was protected thereby. It was of such a case that Mr. Justice Story, delivering the opinion of the court, said: 'The incapacities of femes covert, provided by the common law, apply to their civil rights, and are for their protection and interest. But they do not reach their political rights, nor prevent their acquiring or losing a national character. Those political rights do not stand upon the mere doctrines of municipal law, applicable to ordinary transactions, but stand upon the more general principles of the law of nations.' Id. 248. This last sentence was relied on by the counsel for the United States, as showing that the question whether a person is a citizen of a particular country is to be determined, not by the law of that country, but by the principles of international law. But Mr. Justice Story certainly did not mean to suggest that, independently of treaty, there was any principle of international law which could defeat the operation of the established rule of citizenship by birth within the United States: for he referred (page 245) to the contemporaneous opinions in Inglis v. Sailors' Snug Harbor, above cited, in which this rule had been distinctly recognized, and in which he had said (page 162) that 'each government had a right to decide for itself who should be admitted or deemed citizens.' And in his treatise on the Conflict of Laws, published in 1834, he said that, in respect to residence in different countries or sovereignties, 'there are certain principles which have

been generally recognized, by tribunals administering public law [adding, in later editions, 'or the law of nations'], as of unquestionable authority'; and stated, as the first of those principles: 'Persons who are born in a country are generally deemed citizens and subjects of that country.' Story, Confl. Laws, § 48.

The English statute of 11 & 12 Wm. III. (1700) c. 6, entitled 'An act to enable his majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens,' enacted that 'all and every person or persons, being the king's natural-born subject or subjects, within any of the king's realms or dominions,' might and should thereafter lawfully inherit and make their titles by descent to any lands 'from any of their ancestors, lineal or collateral, although the father and mother, or father or mother, or other ancestor, of such person or persons, by, from, through or under whom' title should be made or derived, had been or should be 'born out of the king's allegiance, and out of his majesty's realms and dominions,' as fully and effectually, as if such parents or ancestors 'had been naturalized or natural-born subject or subjects within the king's dominions.' 7 Statutes of the Realm, 590. It may be observed that, throughout that statute, persons born within the realm, although children of alien parents, were called 'natural-born subjects.' As that statute included persons born 'within any of the king's realms or dominions,' if of course extended to the colonies, and, not having been repealed in Maryland, was in force there. In McCreery v. Somerville (1824) 9 Wheat. 354, which concernedt he title to land in the state of Maryland, it was assumed that children born in that state of an alien who was still living, and who had not been naturalized, were 'native-born citizens of the United States'; and without such assumption the case would not have presented the question decided by the court, which, as stated by Mr. Justice Story in delivering the opinion, was 'whether the statute applies to the case of a living alien ancestor, so as to create a title by heirship, where none would exist by the common law, if the ancestor were a natural-born subject.' Id. 356.

Again, in Levy v. McCartee (1832) 6 Pet. 102, 112, 113, 115, which concerned a descent cast since the American Revolution, in the state of New York, where the statute of 11 & 12 Wm. III. had been repealed, this court, speaking by Mr. Justice Story, held that the case must rest for its decision exclusively upon the principles of the common law, and treated it as unquestionable that by that law a child born in England of alien parents was a natural-born subject; quoting the statement of Lord Coke in Co. Litt. 8a, that 'if an alien cometh into England, and hath issue two sons, these two sons are indigenae, subjects born, because they are born within the realm'; and saying that such a child 'was a native-born subject, according to the principles of the common law, stated by this court in McCreery v. Somerville, 9 Wheat. 354.'

In Dred Scott v. Sandford (1857) 19 How. 393, Mr. Justice Curtis said: 'The first section of the second article of the constitution uses the language, 'a natural-born citizen.' It thus assumes that citizenship may be acquired by birth. Undoubtedly, this language of the constitution was used in reference to that principle of public law, well understood in this country at the time of the adoption of the constitution, which referred citizenship to the place of birth.' Id. 576. And to this extent no different opinion was expressed or intimated by any of the other judges.

In U. S. v. Rhodes (1866), Mr. Justice Swayne, sitting in the circuit court, said: 'All persons born in the allegiance of the king are natural-born subjects, and all persons born in the allegiance of the United States are natural-born citizens. Birth and allegiance go together. Such is the rule of the common law, and it is the common law of this country, as well as of England.' 'We find no warrant for the opinion that this great principle of the common law has ever been changed in the United States. It has always obtained here with the same vigor, and subject only to the same exceptions, since as before the Revolution.' 1 Abb. (U. S.) 28, 40, 41, Fed. Cas. No. 16,151.

The supreme judicial court of Massachusetts, speaking by Mr. Justice (afterwards Chief Justice) Sewall, early

held that the determination of the question whether a man was a citizen or an alien was 'to be governed altogether by the principles of the common law,' and that it was established, with few exceptions, 'that a man, born within the jurisdiction of the common law, is a citizen of the country wherein he is born. By this circumstance of his birth, he is subjected to the duty of allegiance which is claimed and enforced by the sovereign of his native land and becomes reciprocally entitled to the protection of that sovereign, and to the other rights and advantages which are included in the term 'citizenship." Gardner v. Ward (1805) 2 Mass. 244, note. And again: 'The doctrine of the common law is that every man born within its jurisdiction is a subject of the sovereign of the country where he is born; and allegiance is not personal to the sovereign in the extent that has been contended for; it is due to him in his political capacity of sovereign of the territory where the person owing the allegiance was born.' Kilham v. Ward (1806) Id. 236, 265. It may here be observed that in a recent English case Lord Coleridge expressed the opinion of the queen's bench division that the statutes of 4 Geo. II. (1731) c. 21, and 13 Geo. III. (1773) c. 21 (hereinafe r referred to), 'clearly recognize that to the king in his politic, and not in his personal, capacity, is the allegiance of his subjects due.' Isaacson v. Durant, 17 Q. B. Div. 54, 65.

The supreme court of North Carolina, speaking by Mr. Justice Gaston, said: 'Before our Revolution, all free persons born within the dominions of the king of Great Britain, whatever their color or complexion, were native-born British subjects; those born out of his allegiance were aliens.' 'Upon the Revolution, no other change took place in the law of North Carolina than was consequent upon the transition from a colony dependent on an European king to a free and sovereign state.' 'British subjects in North Carolina became North Carolina freemen;' 'and all free persons born within the state are born citizens of the state.' 'The term 'citizen,' as understood in our law, is precisely analogous to the term 'subject' in the common law, and the change of phrase has entirely resulted from the change of government. The sovereignty has been transferred from the man to the collective body of the people; and he who before was a 'subject of the king' is now 'a citizen of the state." State v. Manuel (1838) 4 Dev. & b. 20, 24-26.

That all children, born within the dominion of the United States, of foreign parents holding no diplomatic office, became citizens at the time of their birth, does not appear to have been contested or doubted until more than 50 years after the adoption of the constitution, when the matter was elaborately argued in the court of chancery of New York, and decided upon full consideration by Vice Chancellor Sandford in favor of their citizenship. Lynch v. Clarke (1844) 1 Sandf. Ch. 583.

The same doctrine was repeatedly affirmed in the executive departments, as, for instance, by Mr. Marcy, secretary of state, in 1854 (2 Whart. Int. Dig. [2d Ed.] p. 394); by Attorney General Black in 1859 (9 Ops. Attys. Gen. 373); and by Attorney General Bates in 1862 (10 Ops. Attys. Gen. 328, 382, 394, 396).

Chancellor Kent, in his Commentaries, speaking of the 'general division of the inhabitants of every country, under the comprehensive title of 'Aliens' and 'Natives," says: 'Natives are all persons born within the jurisdiction and allegiance of the United States. This is the rule of the common law, without any regard or reference to the political condition or allegiance of their parents, with the exception of the children of ambassadors, who are, in theory, born within the allegiance of the foreign power they represent.' 'To create allegiance by birth, the party must be born, not only within the territory, but within the ligeance of the government. If a portion of the country be taken and held by conquest in war, the conqueror acquires the rights of the conquered as to its dominion and government, and children born in the armies of a state, while abroad, and occupying a foreign country, are deemed to be born in the allegiance of the sovereign to whom the army belongs. It is equally the doctrine of the English common law that during

such hostile occupation of a territory, and the parents be adhering to the enemy as subjects de facto, their children, born under such a temporary dominion, are not born under the ligeance of the conquered.' 2 Kent, Comm. (6th Ed.) 39, 42. And he elsewhere says: 'And if, at common law, all human beings born within the ligeance of the king, and under the king's obedience, were natural-born subjects, and not aliens, I do not perceive why this doctrine does not apply to these United States in all cases in which there is no express constitutional or statute declaration to the contrary.' "Subject' and 'citizen' are, in a degree, convertible terms as applied to natives; and though the term 'citizen' seems to be appropriate to republican freemen, yet we are, equally with the inhabitants of all other countries, 'subjects,' for we are equally bound by allegiance and subjection to the government and law of the land.' Id. 258, note.

Mr. Binney in the second edition of a paper on the Alienigenae of the United States, printed in pamphlet at Philadelphia, with a preface bearing his signature and the date of December 1, 1853, said: 'The common-law principle of allegiance was the law of all the states at the time of the Revolution and at the adoption of the constitution; and by that principle the citizens of the United States are, with the exceptions before mentioned [namely, foreign-born children of citizens, under statutes to be presently referred to], such only as are either born or made so, born within the limits and under the jurisdiction of the United States, or naturalized by the authority of law, either in one of the states before the constitution, or, since that time, by virtue of an act of the congress of the United States.' Page 20. 'The right of citizenship never descends in the legal sense, either by the common law, or under the common naturalization acts. It is incident to birth in the country, or it is given personally by statute. The child of an alien, if born in the country, is as much a citizen as the natural-born child of a citizen, and by operation of the same principle.' Page 22, note. This paper, without Mr. Binney's name, and with the note in a less complete form, and not containing the passage last cited, was published (perhaps from the first edition) in the American Law Register for February, 1854. 2 Am. Law Reg. 193, 203, 204.

IV. It was contended by one of the learned counsel for the United States that the rule of the Roman law, by which the citizenship of the child followed that of the parent, was the true rule of international law as now recognized in most civilized countries, and had superseded the rule of the common law, depending on birth within the realm, originally founded on feudal considerations.

But at the time of the adoption of the constitution of the United States in 1789, and long before, it would seem to have been the rule in Europe generally, as it certainly was in France, that, as said by Pothier, 'citizens, true and native-born citizens, are those who are born within the extent of the dominion of France,' and 'mere birth within the realm gives the rights of a native-born citizen, independently of the origin of the father or mother, and of their domicile'; and children born in a foreign country, of a French father who had not established his domicile there, nor given up the intention of returning, were also deemed Frenchmen, as Laurent says, by 'a favor, a sort of fiction,' and Calvo, 'by a sort of fiction of exterritoriality, considered as born in France, and therefore invested with French nationality.' Poth. Trait e des Personnes, pt. 1, tit. 2, § 1, Nos. 43, 45; Walsh-Serrant v. Walsh-Serrant (1802) 3 Journal du Palais, 384, 8 Merlin, Jurisprudence, 'Domicile' (5th Ed.) § 13; Pr efet du Nord v. Lebeau (1862) Journal du Palais 1863, 312, and note; 1 Laurent, Droit Civil, No. 321; 2 Calvo, Droit International (5th Ed.) § 542; Cockb. Nat. 13, 14; Hall, Int. Law (4th Ed.) § 68. The general principle of citizenship by birth within French territory prevailed until after the French Revolution, and was affirmed in successive constitutions from the one adopted by the constituent assembly in 1791 to that of the French republic in 1799. Constitutions et Chartes (Ed. 1830) pp. 100, 136, 148, 186. The Code Napoleon of 1807 changed the law of France, and adopted, instead of the rule of country of birth, jus soli, the rule of descent or blood, jus sanguinis, as the leading principle; but an

eminent commentator has observed that the framers of that code 'appear not to have wholly freed themselves from the ancient rule of France, or rather, indeed, ancient rule of Europe,—'De la vieille regle francaise, ou plutot meme de la vieille regle europ eenne,'—according to which nationality had always been, in former times, determined by the place of birth.' 1 Demolombe, Cours de Code Napoleon (4th Ed.) No. 146.

The later modifications of the rule in Europe res upon the constitutions, laws, or ordinances of the various countries, and have no important bearing upon the interpretation and effect of the constitution of the United States. The English naturalization act of 33 Vict. (1870) c. 14, and the commissioners' report of 1869, out of which it grew, both bear date since the adoption of the fourteenth amendment of the constitution; and, as observed by Mr. Dicey, that act has not affected the principle by which any person who, whatever the nationality of his parents, is born within the British dominions, acquires British nationality at birth, and is a natural-born British subject. Dicey, Confl. Laws, 741. At the time of the passage of that act, although the tendency on the continent of Europe was to make parentage, rather than birthplace, the criterion of nationality, and citizenship was denied to the native-born children of foreign parents in Germany, Switzerland, Sweden, and Norway, yet it appears still to have been conferred upon such children in Holland, Denmark, and Portugal, and, when claimed under certain specified conditions, in France, Belgium, Spain, Italy, Greece, and Russia. Cockb. Nat. 14-21.

There is, therefore, little ground for the theory that at the time of the adoption of the fourteenth amendment of the constitution of the United States there was any settled and definite rule of international law generally recognized by civilized nations, inconsistent with the ancient rule of citizenship by birth within the dominion.

Nor can it be doubted that it is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship.

Both in England and in the United States, indeed, statutes have been passed at various times enacting that certain issue born abroad of English subjects, or of American citizens, respectively, should inherit, to some extent at least, the rights of their parents. But those statutes applied only to cases coming within their purport, and they have never been considered, in either country, as affecting the citizenship of persons born within its dominion.

The earliest statute was passed in the reign of Edward III. In the Rolls of Parliament of 17 Edw. III. (1343), it is stated that, 'before these times there have been great doubt and difficulty among the lords of this realm and the commons, as well men of the law as others, whether children who are born in parts beyond sea ought to bear inheritance after the death of their ancestors in England, because no certain law has been thereon ordained'; and by the king, lords, and commons it was unanimously agreed that 'there was no manner of doubt that the children of our lord, the king, whether they were born on this side the sea or beyond the sea, should bear the inheritance of their ancestors'; 'and in regard to other children it was agreed in this parliament that they also should inherit wherever they might be born in the service of the king'; but, because the parliament was about to depart, and the business demanded great advisement and good deliberation how it should be best and most surely done, the making of a statute was put off to the next parliament. 2 Rot. Parl. 139. By reason, apparently, of the prevalence of the plague in England, no act upon the subject was passed until 25 Edw. III. (1350), when parliament passed an act entitled 'A statute for those who are born in parts beyond sea,' by which, after reciting that 'some people be in doubt if the children born in the parts beyond the sea, out of the ligeance of England, should be able to demand any inheritance within the same ligeance, or not, whereof a petition was put in the parliament' of 17 Edw. III.,

'and was not at the same time wholly assented,' it was (1) agreed and affirmed 'that the law of the crown of England is, and always hath been such, that the children of the kings of England, in whatsoever parts they be born, in England or elsewhere, be able and ought to bear the inheritance after the death of their ancestors'; (2) also agreed that certain persons named, 'which were born beyond the sea, out of the ligeance of England, shall be from henceforth able to have and enjoy their inheritance after the death of their ancestors, in all parts within the ligeance of England, as well as those that should be born within the same ligeance'; (3) and further agreed 'that all children inheritors, which from henceforth shall be born without the ligeance of the king, whose fathers and mothers at the time of their birth be and shall be at the faith and ligeance of the king of England, shall have and enjoy the same benefits and advantages to have and bear the inheritance within the same ligeance, as the other inheritors aforesaid, in time to come; so always, that the mothers of such children do pass the sea by the license and wills of their husbands.' 2 Rot. Parl. 231; 1 Statutes of the Realm, 310.

It has sometimes been suggested that this general provision of the statute of 25 Edw. III. was declaratory of the common law. See Bacon, arguendo, in Calvin's Case, 2 How. St. Tr. 585; Westlake and Pollock, arguendo, in De Geer v. Stone, 22 Ch. Div. 243, 247; 2 Kent, Comm. 50, 53; Lynch v. Clarke, 1 Sandf. Ch. 583, 659, 660; Ludlam v. Ludlam, 26 N. Y. 536. But all suggestions to that effect seem to have been derived, immediately or ultimately, from one or the other of these two sources: The one, the Year Book of 1 Rich. III. (1483) fol. 4, pl. 7, reporting a saying of Hussey, C. J., 'that he who is born beyond sea, and his father and mother are English, their issue inherit by the common law, but the statute makes clear,' etc.,—which, at best, was but obiter dictum, for the chief justice appears to have finally rested his opinion on the statute. The other, a note added to the edition of 1688 of Dyer's Reports, 224a, stating that at Trinity term 7 Edw. III. Rot. 2 B. R., it was adjudged that children of subjects born beyond the sea in the service of the king were inheritable,—which has been shown, by a search of the roll in the king's bench so referred to, to be a mistake, inasmuch as the child there in question did not appear to have been born beyond sea, but only to be living abroad. Westl. Priv. Int. Law (3d Ed.) 324.

The statute of 25 Edw. III. recites the existence of doubts as to the right of foreignborn children to inherit in England; and, while it is declaratory of the rights of children of the king, and is retrospective as to the persons specifically named, yet as to all others it is, in terms, merely prospective, applying to those only 'who shall be born henceforth.' Mr. Binney, in his paper above cited, after a critical examination of the statute, and of the early English cases, concluded: 'There is nothing in the statute which would justify the conclusion that it is declaratory of the common law in any but a single particular, namely, in regard to the children of the king; nor has it at any time been judicially held to be so.' 'The notion that there is any common-law principle to naturalize the children born in foreign countries, of native-born American father 'and' mother, father 'or' mother, must be discarded. There is not, and never was, any such common-law principle.' Binney, Alienigenae, 14, 20; 2 Am. Law Reg. 199, 203. And the great weight of the English authorities, before and since he wrote, appears to support his conclusion. Calvin's Case, 7 Coke, 17a, 18a; Co. Litt. 8a, and Hargrave's note 36; 1 Bl. Comm. 373; Barrington, Statutes (5th Ed.) 268; Lord Kenyon, in Doe v. Jones, 4 Term R. 300, 308; Lord Chancellor Cranworth, in Shedden v. Patrick, 1 Macq. 535, 611; Cockb. Nat. 7, 9; De Geer v. Stone, 22 Ch Div. 243, 252; Dicey, Confl. Laws, 178, 741. 'The acquisition,' says Mr. Dicey (page 741), 'of nationality by descent, is foreign to the principles of the common law, and is based wholly upon statutory enactments.'

It has been pertinently observed that, if the statute of Edward III. had only been declaratory of the common law, the sb sequent legislation on the sebject would have been wholly unnecessary. Cockb. Nat. 9. By the statute of 29 Car. II. (1677) c. 6, § 1, entitled 'An act for the

naturalization of children of his majesty's subjects born in foreign countries during the late troubles,' all persons who, at any time between June 14, 1641, and March 24, 1660, 'were born out of his majesty's dominions, and whose fathers or mothers were natural-born subjects of this realm,' were declared to be natural-born subjects. By the statute of 7 Anne (1708) c. 5, § 3, 'the children of all natural-born subjects, born out of the ligeance of her majesty, her heirs and successors,'—explained by the statute of 4 Geo. II. (1731) c. 21, to mean all children born out of the ligeance of the crown of England, 'whose fathers were or shall be natural-born subjects of the crown of England, or of Great Britain, at the time of the birth of such children respectively,'—'shall be deemed, adjudged and taken to be natural-born subjects of this kingdom, to all intents, constructions and purposes whatsoever.' That statute was limited to foreign-born children of natural-born subjects; and was extended by the statute of 13 Geo. III. (1773) c. 21, to foreign-born grandchildren of natural-born subjects, but not to the issue of such grandchndren; or, as put by Mr. Dicey, 'British nationality does not pass by descent or inheritance beyond the second generation.' See De Geer v. Stone, above cited; Dicey, Confl. Laws, 742.

Moreover, under those statutes, as is stated in the report, in 1869, of the commissioners for inquiring into the laws of naturalization and allegiance: 'No attempt has ever been made on the part of the British government (unless in Eastern countries, where special jurisdiction is conceded by treaty) to enforce claims upon, or to assert rights in respect of, persons born abroad, as against the country of their birth while they were resident therein, and when by its law they were invested with its nationality.' In the appendix to their report are collected many such cases in which the British government declined to interpose, the reasons being most clearly brought out in a dispatch of March 13, 1858, from Lord Malmesbury, the foreign secretary, to the British ambassador at Paris, saying: 'It is competent to any country to confer by general or special legislation the privileges of nationality upon those who are born out of its own territory; but it cannot confer such privileges upon such persons as against the country of their birth, when they voluntarily return to and reside therein. Those born in the territory of a nation are (as a general principle) liable when actually therein to the obligations incident to their status by birth. Great Britain considers and treats such persons as natural-born subjects, and cannot, therefore, deny the right of other nations to do the same. But Great Britain cannot permit the nationality of the children of foreign parents born within her territory to be questioned.' Naturalization Commission Report, pp. viii. 67; U. S. Foreign Relations, 1873-74, pp. 1237, 1337. See, also, Drummond's Case (1834) 2 Knapp, 295.

By the constitution of the United States, congress was empowered 'to establish an uniform rule of naturalization.' In the exercise of this power, congress, by successive acts, beginning with the act entitled 'An act to establish an uniform rule of naturalization,' passed at the second session of the first congress under the constitution, has made provision for the admission to citizenship of three principal classes of persons: First. Aliens, having resided for a certain time 'within the limits and under the jurisdiction of the United States,' and naturalized individually by proceedings in a court of record. Second. Children of persons so naturalized, 'dwelling within the United States, and being under the age of twenty-one years at the time of such naturalization.' Third. Foreign-born children of American citizens, coming within the definitions prescribd by congress. Acts March 26, 1790, c. 3 (1 Stat. 103); January 26, 1795, c. 20 (Id. 414); June 18, 1798, c. 54 (Id. 566); April 14, 1802, c. 28 (2 Stat. 153); March 26, 1804, c. 47 (Id. 292); February 10, 1855, c. 71 (10 Stat. 604); Rev. St. §§ 2165, 2172, 1993.

In the act of 1790, the provision as to foreign-born children of American citizens was as follows: 'The children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural-born citizens:

provided, that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States.' 1 Stat. 104. In 1795, this was re-enacted, in the same words, except in substituting, for the words 'beyond sea, or out of the limits of the United States,' the words, 'out of the limits and jurisdiction of the United States.' Id. 415.

In 1802, all former acts were repealed, and the provisions concerning children of citizens were re-enacted in this form: 'The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: provided, that the right of citizenship shall not descend to persons whose fathers have never resided within the United States.' Act April 14, 1802, c. 28, § 4 (2 Stat. 155).

The provision of that act, concerning 'the children of persons duly naturalized under any of the laws of the United States,' not being restricted to the children of persons already naturalized, might well be held to include children of persons thereafter to be naturalized. 2 Kent, Comm. 51, 52; West v. West, 8 Paige, 433; U. S. v. Kellar, 11 Biss. 314, 13 Fed. 82; Boyd v. Nebraska, 143 U. S. 135, 177, 12 Sup. Ct. 375.

But the provision concerning foreign-born children, being expressly limited to the children of persons who then were or had been citizens, clearly did not include foreign-born children of any person who became a citizen since its enactment. 2 Kent, Comm. 52, 53; Binney, Alienigenae, 20, 25; 2 Am. Law Reg. 203, 205.

Mr. Binney's paper, as he states in his preface, was printed by him in the hope that congress might supply this defect in our law.

In accordance with his suggestions, it was enacted by the statute of February 10, 1855, c. 71, that 'persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: provided, however, that the rights of citizenship shall not descend to persons whose fathers never resided in the United States.' 10 Stat. 604; Rev. St. § 1993.

It thus clearly appears that, during the half century intervening between 1802 and 1855, there was no legislation whatever for the citizenship of children born abroad, during that period, of American parents who had not become citizens of the United States before the act of 1802; and that the act of 1855, like every other act of congress upon the subject, has, by express proviso, restricted the right of citizenship, thereby conferred upon foreign-born children of American citizens, to those children themselves, unless they became residents of the United States. Here is nothing to countenance the theory that a general rule of citizenship by blood or descent has displaced in this country the fundamental rule of citizes hip by birth within its sovereignty.

So far as we are informed, there is no authority, legislative, executive, or judicial, in England or America, which maintains or intimates that the statutes (whether considered as declaratory, or as merely prospective) conferring citizenship on foreign-born children of citizens have superseded or restricted, in any respect, the established rule of citizenship by birth within the dominion. Even those authorities in this country which have gone the furthest towards holding such statutes to be but declaratory of the common law have distinctly recognized and emphatically asserted the citizenship of native-born children of foreign parents. 2 Kent, Comm.

39, 50, 53, 258, note; Lynch v. Clarke, 1 Sandf. Ch. 583, 659; Ludlam v. Ludlam, 26 N. Y. 356, 371.

Passing by questions once earnestly controverted, but finally put at rest by the fourteenth amendment of the constitution, it is beyond doubt that, before the enactment of the civil rights act of 1866 or the adoption of the constitutional amendment, all white persons, at least, born within the sovereignty of the United States, whether children of citizens or of foreigners, excepting only children of ambassadors or public ministers of a foreign government, were native-born citizens of the United States.

V. In the forefront, both of the fourteenth amendment of the constitution, and of the civil rights act of 1866, the fundamental principle of citizenship by birth within the dominion was reaffirmed in the most explcit and comprehensive terms.

The civil rights act, passed at the first session of the Thirty-Ninth congress, began by enacting that 'all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every state and territory in the United States, to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains and penalties, and to none other, any law, statute, ordinance, regulation or custom, to the contrary notwithstanding.' Act April 9, 1866, c. 31, § 1 (14 Stat. 27).

The same congress, shortly afterwards, evidently thinking it unwise, and perhaps unsafe, to leave so important a declaration of rights to depend upon an ordinary act of legislation, which might be repealed by any subsequent congress, framed the fourteenth amendment of the constitution, and on June 16, 1866, by joint resolution, proposed it to the legislatures of the several states; and on July 28, 1868, the secretary of state issued a proclamation showing it to have been ratified by the legislatures of the requisite number of states. 14 Stat. 358; 15 Stat. 708.

The first section of the fourteenth amendment of the constitution begins with the words, '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.' As appears upon the face of the amendment, as well as from the history of the times, this was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States, who would thereby have become citizens according to the law existing before its adoption. It is declaratory in form, and enabling and extending in effect. Its main purpose doubtless was, as has been often recognized by this court, to establish the citizenship of free negroes, which had been denied in the opinion delivered by Chief Justice Tae y in Scott v. Sandford (1857) 19 How. 393; and to put it beyond doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States, are citizens of the United States. Slaughter House Cases (1873) 16 Wall. 36, 73; Strauder v. West Virginia (1879) 100 U. S. 303, 306; Ex parte Virginia (1879) Id. 339, 345; Neal v. Delaware (1880) 103 U. S. 370, 386; Elk v. Wilkins (1884) 112 U. S. 94, 101, 5 Sup. Ct. 41. But the opening words, 'All persons born,' are general, not to say universal, restricted only by place and jurisdiction, and not by color or race, as was clearly recognized in all the opinions delivered in the Slaughter House Cases, above cited.

In those cases the point adjudged was that a statute of Louisiana, granting to a particular corporation the exclusive right for 25 years to have and maintain

slaughter houses within a certain district including the city of New Orleans, requiring all cattle intended for sale or slaughter in that district to be brought to the yards and slaughter houses of the grantee, authorizing all butchers to slaughter their cattle there, and empowering the grantee to exact a reasonable fee for each animal slaughtered, was within the police powers of the state, and not in conflict with the thirteenth amendment of the constitution, as creating an involuntary servitude, nor with the fourteenth amendment, as abridging the privileges or immunities of citizens of the United States or as depriving persons of their liberty or property without due process of law, or as denying to them the equal protection of the laws.

Mr. Justice Miller, delivering the opinion of the majority of the court, after observing that the thirteenth, fourteenth, and fifteenth articles of amendment of the constitution were all addressed to the grievances of the negro race, and were designed to remedy them, continued as follows: 'We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly, while negro slavery alone was in the mind of the congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. And so, if other rights are assailed by the states, which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent.' 16 Wall. 72. And, in treating of the first clause of the fourteenth amendment, he said: 'The distinction between citizenship of the United States and citizenship of a state is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.' Id. 73, 74.

Mr. Justice Field, in a dissenting opinion, in which Chief Justice Chase and Justices Swayne and Bradley concurred, said of the same clause: 'It recognizes in express terms, if it does not create, citizens of the United States, and it makes their citizenship dependent upon the place of their birth, or the fact of their adoption, and not upon the constitution or laws of any state or the condition of their ancestry.' 16 Wall. 95, 111. Mr. Justice Bradley also said: 'The question is now settled by the fourteenth amendment itself, that citizenship of the United States is the primary citizenship in this country, and that state citizenship is secondary and derivative, depending upon citizenship of the United States and the citizen's place of residence. The states have not now, if they ever had,a ny power to restrict their citizenship to any classes or persons.' Id. 112. And Mr. Justice Swayne added: 'The language employed is unqualified in its scope. There is no exception in its terms, and there can be properly none in their application. By the language 'citizens of the United States' was meant all such citizens; and by 'any person' was meant all persons within the jurisdiction of the state. No distinction is intimated on account of race or color. This court has no authority to interpolate a limitation that is neither expressed nor implied. Our duty is to execute the law, not to make it. The protection provided was not intended to be confined to those of any particular race or class, but to embrace equally all races, classes, and conditions of men.' Id. 128, 129.

Mr. Justice Miller, indeed, while discussing the causes which led to the adoption of the fourteenth amendment, made this remark: 'The phrase 'subject to its jurisdiction' was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states, born within the United States.' 16 Wall. 73. This was wholly aside from the question in judgment, and from the course of reasoning bearing upon that question. It was unsupported by any argument, or by any reference

to authorities; and that it was not formulated with the same care and exactness as if the case before the court had called for an exact definition of the phrase is apparent from its classing foreign ministers and consuls together; whereas it was then well settled law, as has since been recognized in a judgment of this court in which Mr. Justice Miller concurred, that consuls, as such, and unless expressly invested with a diplomatic character in addition to their ordinary powers, are not considered as intrusted with authority to represent their sovereign in his intercourse with foreign states, or to vindicate his prerogatives, or entitled by the law of nations to the privileges and immunities of ambassadors or public ministers, but are subject to the jurisdiction, civil and criminal, of the courts of the country in which they reside. 1 Kent, Comm. 44; Story, Confl. Laws, § 48; Wheat. Int. Law (8th Ed.) § 249; The Anne (1818) 3 Wheat. 435, 445, 446; Gittings v. Crawford (1838) Taney, 1, 10, Fed. Cas. No. 5,465; In re Baiz (1890) 135 U. S. 403, 424, 10 Sup. Ct. 854.

In weighing a remark uttered under such circumstances, it is well to bear in mind the often-quoted words of Chief Justice Marshall: 'It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.' Cohens v. Virginia (1821) 6 Wheat. 264, 399.

That neither Mr. Justice Miller, nor any of the justices who took part in the decision of the Slaughter House Cases, understood the court to be committed to the view that all children born in the United States of citizens or subjects of foreign states were excluded from the operation of the first sentence of the fourteenth amendment, is manifest from a unanimous judgment of the court, delivered but two years later, while all those judges but Chief Justice Chase were still on the bench, in which Chief Justice Waite said: 'Allegiance and protection are, in this connection (that is, in relation to citizenship) reciprocal obligations. The one is a compensation for the other; allegiance for protection, and protection for allegiance.' 'At common law, with the nomenclature of which the framers of the constitution were familiar, it was never doubted that all children born in a country, of parents who were its citizens, became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further, and include as citizens children born within the jurisdiction, without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first. For the purposes of this case, it is not necessary to solve these doubts. It is sufficient, for everything we have now to consider, that all children, born of citizen parents within the jurisdiction, are themselves citizens.' Minor v. Happersett (1874) 21 Wall. 162, 166-168. The decision in that case was that a woman born of citizen parents within the United States was a citizen of the United States, although not entitled to vote, the right to the elective franchise not being essential to citizenship.

The only adjudication that has been made by this court upon the meaning of the clause 'and subject to the jurisdiction thereof,' in the leading provision of the fourteenth amendment, is Elk v. Wilkins, 112 U. S. 94, 5 Sup. Ct. 41, in which it was decided that an Indian born a member of one of the Indian tribes within the United States, which still existed and was recognized as an Indian tribe by the United States, who had voluntarily separated himself from his tribe, and taken up his residence among the white citizens of a state, but who did not appear to have been naturalized or taxed or in any way recognized or treated as a citizen, either by the United States or by the state, was not a citizen

of the United States, as a person born in the United States, 'and subject to the jurisdiction thereof,' within the meaning of the clause in question.

That decision was placed upon the grounds that the meaning of those words was 'not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance'; that by the constitution, as originally established, 'Indians not taxed' were excluded from the persons according to whose numbers representatives in congress and direct taxes were apportioned among the several states, and congress was empowered to regulate commerce, not only 'with foreign nations,' and among the several states, but 'with the Indian tribes'; that the Indian tribes, being within the territorial limits of the United States, were not, strictly speaking, foreign states, but were alien nations, distinct political communities, the members of which owed immediate allegiance to their several tribes, and were not part of the people of the United States; that the alien and dependent condition of the members of one of those tribes could not be put off at their own will, without the action or assent of the United States; and that they were never deemed citizens, except when naturalized, collectively or individually, under explicit provisions of a treaty, or of an act of congress; and, therefore, that 'Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more 'born in the United States, and subject to the jurisdiction thereof,' within the meaning of the first section of the fourteenth amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States of ambassadors or otehr public ministers of foreign nations.' And it was observed that the language used, in defining citizenship, in the first section of the civil rights act of 1866, by the very congress which framed the fourteenth amendment, was 'all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed.' 112 U. S. 99-103, 5 Sup. Ct. 44-46.

Mr. Justice Harian and Mr. u stice Woods, dissenting, were of opinion that the Indian in question, having severed himself from his tribe and become a bona fide resident of a state, had thereby become subject to the jurisdiction of the United States, within the meaning of the fourteenth amendment, and, in reference to the civil rights act of 1866, said: 'Beyond question, by that act, national citizenship was conferred directly upon all persons in this country, of whatever race (excluding only 'Indians not taxed'), who were born within the territorial limits of the United States, and were not subject to any foreign power.' And that view was supported by reference to the debates in the senate upon that act, and to the ineffectual veto thereof by President Johnson, in which he said: 'By the first section of the bill, all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States. This provision comprehends the Chinese of the Pacific states, Indians subject to taxation, the people called 'Gypsies,' as well as the entire race designated as blacks, persons of color, negroes, mulattoes, and persons of African blood. Every individual of those races, born in the United States, is, by the bill, made a citizen of the United States.' 112 U. S. 112-114, 5 Sup. Ct. 51, 52.

The decision in Elk v. Wilkins concerned only members of the Indian tribes within the United States, and had no tendency to deny citizenship to children born in the United States of foreign parents of Caucasian, African, or Mongolian descent, not in the diplomatic service of a foreign country.

The real object of the fourteenth amendment of the constitution, in qualifying the words 'all persons born in the United States' by the addition 'and subject to the jurisdiction thereof,' would appear to have been to exclude, by the fewest and fittest words (besides children

of members of the Indian tribes, standing in a peculiar relation to the national government, unknown to the common law), the two classes of cases,—children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state,—both of which, as has already been shown, by the law of England and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country. Calvin's Case, 7 Coke, 1, 18b; Cockb. Nat. 7; Dicey, Confl. Laws, 177; Inglis v. Sailors' Snug Harbor, 3 Pet. 99, 155; 2 Kent, Comm. 39, 42.

The principles upon which each of those exceptions rests were long ago distinctly stated by this court.

In U. S. v. Rice (1819) 4 Wheat. 246, goods imported into Castine, in the state of Maine, while it was in the exclusive possession of the British authorities during the lase war with England were held not to be subject to duties under the revenue laws of the United States, because, as was said by Mr. Justice Story in delivering judgment: 'By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender, the inhabitants passed under a temporary allegiance to the British government, and were bound by such laws, and such only, as it chose to recognize and impose. From the nature of the case, no other laws could be obligatory upon them; for, where there is no protection or allegiance or sovereignty, there can be no claim to obedience.' 4 Wheat. 254.

In the great case of The Exchange (1812) 7 Cranch. 116, the grounds upon which foreign ministers are, and other aliens are not, exempt from the jurisdiction of this country, were set forth by Chief Justc e Marshall in a clear and powerful train of reasoning, of which it will be sufficient, for our present purpose, to give little more than the outlines. The opinion did not touch upon the anomalous case of the Indian tribes, the true relation of which to the United States was not directly brought before this court until some years afterwards, in Cherokee Nation v. Georgia (1831) 5 Pet. 1; nor upon the case of a suspension of the sovereignty of the United States over part of their territory by reason of a hostile occupation, such as was also afterwards presented in U. S. v. Rice, above cited. But in all other respects it covered the whole question of what persons within the territory of the United States are subject to the jurisdiction thereof.

The chief justice first laid down the general principle: 'The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source. This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood, not less obligatory.' 7 Cranch, 136.

He then stated, and supported by argument and illustration, the propositions that 'this full and absolute territorial jurisdiction, being alike the attribute of every sovereign, and being incapable of conferring extraterritorial power,' has 'given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction which has been stated to be the attribute of every nation,' the first of which is the exemption from arrest or detention of the person of a foreign sovereign

entering its territory with its license, because 'a foreign sovereign is not understood as intending to subject himself to a jurisdiction incompatible with his dignity and the dignity of his nation'; 'a second case, standing on the same principles with the first, is the immunity which all civilized nations allow to foreign ministers'; 'a third case, in which a sovereign is understood to cede a portion of his territorial jurisdiction, is where he allows the troops of a foreign prince to pass through his dominions'; and, in conclusion, that 'a public armed ship, in the service of a foreign sovereign, with whom the government of the United States is at peace, and having entered an American port open for her reception, on the terms on which ships of war are generally permitted to enter the ports of a friendly power, must be considered as having come into the American territory, under an implied promise that while necessarily within it, and demeaning herself in a friendly manner, she should be exempt from the jurisdiction of the country.' 7 Cranch, 137-139, 147.

As to the immunity of a foreign minister, he said: 'Whatever may be the principle on which this immunity is established, whether we consider him as in the place of the sovereign he represents, or by a political fiction suppose him to be extraterritorial, and therefore, in point of law, not within the jurisdiction of the sovereign at whose court he resides, still the immunity itself is granted by the governing power of the nation to which the minister is deputed. This fiction of exterritoriality could not be erected and supported against the will of the sovereign of the territory. He is supposed to assent to it.' 'The assent of the sovereign to the very important and extensive exemptions from territorial jurisdiction, which are admitted to attach to foreign ministers, is implied from h e considerations that, without such exemption, every sovereign would hazard his own dignity by employing a public minister abroad. His minister would owe temporary and local allegiance to a foreign prince, and would be less competent to the objects of his mission. A sovereign committing the interests of his nation with a foreign power to the care of a person whom he has selected for that purpose cannot intend to subject his minister in any degree to that power; and therefore a consent to receive him implies a consent that he shall possess those privileges which his principal intended he should retain,—privileges which are essential to the dignity of his sovereign, and to the duties he is bound to perform.' 7 Cranch, 138, 139.

The reasons for not allowing to other aliens exemption 'from the jurisdiction of the country in which they are found' were stated as follows: 'When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries are not employed by him, nor are they engaged in national pursuits. Consequently, there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter, can never be construed to grant such exemption.' 7 Cranch, 144.

In short, the judgment in the case of The Exchange declared, as incontrovertible principles, that the jurisdiction of every nation within its own territory is exclusive and absolute, and is susceptible of no limitation not imposed by the nation itself; that all exceptions to its full and absolute territorial jurisdiction must be traced up to its own consent, express or implied; that upon its consent to cede, or to waive the exercise of, a part of its territorial jurisdiction, rest the exemptions from that jurisdiction of foreign sovereigns or their armies entering its territory with its permission, and of their foreign

ministers and public ships of war; and that the implied license, under which private individuals of another nation enter the territory and mingle indiscriminately with its inhabitants, for purposes of business or pleasure, can never be construed to grant to them an exemption from the jurisdiction of the country in which they are found. See, also, Carlisle v. U. S. (1872) 16 Wall. 147, 155; Radich v. Hutchins (1877) 95 U. S. 210; Wildenhus' Case (1887) 120 U. S. 1, 7 Sup. Ct. 385; Chae Chan Ping v. U. S. (1889) 130 U. S. 581, 603, 604, 9 Sup. Ct. 623.

From the first organization of the national government under the constitution, the naturalization acts of the United States, in providing for the admission of aliens to citizenship by judicial proceedings, uniformly required every applicant to have resided for a certain time 'within the limits and under the jurisdiction of the United States,' and thus applied the words 'under the jurisdiction of the United States' to aliens residing here before they had taken an oath to support the constitution of the United States, or had renounced allegiance to a foreign government. Acts March 26, 1790, c. 3 (1 Stat. 103); January 29, 1795, c. 20, § 1 (1 Stat. 414); June 18, 1798, c. 54, §§ 1, 6 (1 Stat. 566, 568); April 14, 1802, c. 28, § 1 (2 Stat. 153); March 22, 1816, c. 32, § 1 (3 Stat. 258); May 24, 1828, c. 116, § 2 (4 Stat. 310); Rev. St. § 2165. And, from 1795, the provisions of those acts, which granted citizenship to foreign-born childe n of American parents, described such children as 'born out of the limits and jurisdiction of the United States.' Acts Jan. 29, 1795, c. 20, § 3 (1 Stat. 415); April 14, 1802, c. 28, § 4 (2 Stat. 155); February 10, 1855, c. 71 (10 Stat. 604); Rev. St. §§ 1993, 2172. Thus congress, when dealing with the question of citizenship in that aspect, treated aliens residing in this country as 'under the jurisdiction of the United States,' and American parents residing abroad as 'out of the jurisdiction of the United States.'

The words 'in the United States, and subject to the jurisdiction thereof,' in the first sentence of the fourteenth amendment of the constitution, must be presumed to have been understood and intended by the congress which proposed the amendment, and by the legislatures which adopted it, in the same sense in which the like words had been used by Chief Justice Marshall in the wellknown case of The Exchange, and as the equivalent of the words 'within the limits and under the jurisdiction of the United States,' and the converse of the words 'out of the limits and jurisdiction of the United States,' as habitually used in the naturalization acts. This presumption is confirmed by the use of the word 'jurisdiction,' in the last clause of the same section of the fourteenth amendment, which forbids any state to 'deny to any person within its jurisdiction the equal protection of the laws.' It is impossible to construe the words 'subject to the jurisdiction thereof,' in the opening sentence, as less comprehensive than the words 'within its jurisdiction,' in the concluding sentence of the same section; or to hold that persons 'within the jurisdiction' of one of the states of the Union are not 'subject to the jurisdiction of the United States.'

These considerations confirm the view, already expressed in this opinion, that the opening sentence of the fourteenth amendment is throughout affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen, and not to impose any new restrictions upon citizenship.

By the civil rights act of 1866, 'all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed,' were declared to be citizens of the United States. In the light of the law as previously established, and of the history of the times, it can hardly be doubted that the words of that act, 'not subject to any foreign power,' were not intended to exclude any children born in this country from the citizenship which would theretofore have been their birthright; or, for instance, for the first time in our history, to deny the right of citizenship to native-born children or foreign white parents not in the diplomatic service of their own country, nor in hostile occupation of part of our territory. But any possible doubt in this regard was removed when the negative words of the civil rights act, 'not

subject to any foreign power,' gave way, in the fourteenth amendment of the constitution, to the affirmative words, 'subject to the jurisdiction of the United States.'

This sentence of the fourteenth amendment is declaratory of existing rights, and affirmative of existing law, as to each of the qualifications therein expressed,—'born in the United States,' 'naturalized in the United States,' and 'subject to the jurisdiction thereof'; in short, as to everything relating to the acquisition of citizenship by facts occurring within the limits of the United States. But it has not touched the acquisition of citizenship by being born abroad of American parents; and has left that subject to be regulated, as it had always been, by congress, in the exercise of the power conferred by the constitution to establish a uniform rule of naturalization.

The effect of the enactments conferring citizenship on foreign-born children of American parents has been defined, and the fundamental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents, has been affirmed, in wel- considered opinions of the executive departments of the government, since the adoption of the fourteenth amendment of the constitution.

In 1869, Attorney General Hoar gave to Mr. Fish, the secretary of state, an opinion that children born and domiciled abroad, whose fathers were native-born citizens of the United States, and had at some time resided therein, were, under the statute of February 10, 1855 (chapter 71), citizens of the United States, and 'entitled to all the privileges of citizenship which it is in the power of the United States government to confer. Within the sovereignty and jurisdiction of this nation, they are undoubtedly entitled to all the privileges of citizens.' 'But,' the attorney general added, 'while the United States may, by law, fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of American citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it is clear that the United States cannot, by undertaking to confer the rights of citizenship upon the subjects of a foreign nation, who have not come within our territory, interfere with the just rights of such nation to the government and control of its own subjects. If, therefore, by the laws of the country of their birth, children of American citizens, born in that country, are subjects of its government, I do not think that it is competent for the United States, by any legislation, to interfere with that relation, or, by undertaking to extend to them the rights of citizens of this country, to interfere with the allegiance which they may owe to the country of their birth while they continue within its territory, or to change the relation to other foreign nations which, by reason of their place of birth, may at any time exist. The rule of the common law I understand to be that a person 'born in a strange country, under the obedience of a strange prince or country, is an alien' (Co. Litt. 128b), and that every person owes allegiance to the country of his birth' (13 Ops. Attys. Gen. U. S. 89-91).

In 1871, Mr. Fish, writing to Mr. Marsh, the American minister to Italy, said: '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.' This is simply an affirmance of the common law of England and of this country, so far as it asserts the status of citizenship to be fixed by the place of nativity, irrespective of parentage. The qualification 'and subject to the jurisdiction thereof was probably intended to exclude the children of foreign ministers, and of other persons who may be within our territory with rights of extraterritoriality.' 2 Whart. Int. Dig. p. 394.

In August, 1873, President Grant, in the exercise of the authority expressly conferred upon the president by article 2, § 2, of the constitution, to 'require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices,' required the opinions of the members of his cabinet upon several questions

of allegiance, naturalization, and expatriation. Mr. Fish, in his opinion, which is entitled to much weight, as well from the circumstances under which it was rendered, as from its masterly treatment of the subject, said:

'Every independent state has as one of the incidents of its sovereignty the right of municipal legislation and jurisdiction over all persons within its territory, and may therefore change their nationality by naturalization, and this, without regard to the municipal laws of the country whose subjects are so naturalized, as long as they remain, or exercise the rights conferred by naturalization, within the territory and jurisdiction of the state which grants it.

'It may also endow with the rights and privileges of its citizenship persons rei ding in other countries, so as to entitle them to all rights of property and of succession within its limits, and also with political privileges and civil rights to be enjoyed or exercised within the territory and jurisdiction of the state thus conferring its citizenship.

'But no sovereignty can extend its jurisdiction beyond its own territorial limits so as to relieve those born under and subject to another jurisdiction, from their obligations or duties thereto; nor can the municipal law of one state interfere with the duties or obligations which its citizens incur while voluntarily resident in such foreign state, and without the jurisdiction of their own country.

'It is evident from the proviso in the act of February 10, 1855, viz. 'that the rights of citizenship shall not descend to persons whose fathers never resided in the United States,' that the lawmaking power not only had in view this limit to the efficiency of its own municipal enactments in foreign jurisdiction, but that it has conferred only a qualified citizenship upon the children of American fathers born without the jurisdiction of the United States, and has denied to them, what pertains to other American citizens, the right of transmitting citizenship to their children, unless they shall have made themselves residents of the United States, or, in the language of the fourteenth amendment of the constitution, have made themselves 'subject to the jurisdiction thereof.'

'The child born of alien parents in the United States is held to be a citizen thereof, and to be subject to duties with regard to this country which do not attach to the father.

'The same principle on which such children are held by us to be citizens of the United States, and to be subject to duties to this country, applies to the children of American fathers born without the jurisdiction of the United States, and entitles the country within whose jurisdiction they are born to claim them as citizens and to subject them to duties to it.

'Such children are born to a double character: the citizenship of the father is that of the child, so far as the laws of the country of which the father is a citizen are concerned, and within the jurisdiction of that country: but the child, from the circumstances of his birth, may acquire rights and owes another fealty besides that which attaches to the father.'

Opinions of the Executive Departments on Expatriation, Naturalization, and Allegiance (1873) 17, 18; U. S. Foreign Relations, 1873-74, pp. 1191, 1192.

In 1886, upon the application of a son born in France of an American citizen, and residing in France, for a passport, Mr. Bayard, the secretary of state, as appears by letters from him to the secretary of legation in Paris, and from the latter to the applicant, quoted and adopted the conclusions of Attorney General Hoar in his opinion above cited. U. S. Foreign Relations, 1886, p. 303; 2 Calvo, Droit International, § 546.

These opinions go to show that since the adoption of the fourteenth amendment the executive branch of the government—the one charged with the duty of protecting American citizens abroad against unjust

treatment by other nations—has taken the same view of the act of congress of 1855, declaring children born abroad of American citizens to be themselves citizens, which, as mentioned in a former part of this opinion, the English foreign office has taken of similar acts of parliament,—holding that such statutes cannot, consistently with our own established rule of citizenship by birth in this country, operate extraterritorially so far as to relieve any person born and residing in a foreign country, and subject to its government, from his allegiance to that country.

In a very recent case, the supreme court of New Jersey held that a person born in this country of Scotch parents who were domiciled, but had not been naturalized, here, was 'subject to the jurisdiction of the United States,' within the meaning of the fourteenth amendment, and was 'not subject to any foreign o wer,' within the meaning of the civil rights act of 1866; and in an opinion delivered by Justice Van Syckel, with the concurrence of Chief Justice Beasley, said: 'The object of the fourteenth amendment, as is well known, was to confer upon the colored race the right of citizenship. It, however, gave to the colored people no right superior to that granted to the white race. The ancestors of all the colored people then in the United States were of foreign birth, and could not have been naturalized, or in any way have become entitled to the right of citizenship. The colored people were no more subject to the jurisdiction of the United States, by reason of their birth here, than were the white children born in this country of parents who were not citizens. The same rule must be applied to both races; and, unless the general rule that, when the parents are domiciled here, birth establishes the right to citizenship, is accepted, the fourteenth amendment has failed to accomplish its purpose, and the colored people are not citizens. The fourteenth amendment, by the language, 'all persons born in the United States, and subject to the jurisdiction thereof,' was intended to bring all races, without distinction of color, within the rule which prior to that time pertained to the white race.' Benny v. O'Brien (1895) 58 N. J. Law, 36, 39, 40, 32 Atl. 696.

The foregoing considerations and authorities irresistibly lead us to these conclusions: The fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The amendment, in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only so long as he remains within our territory, is yet, in the words of Lord Coke in Calvin's Case, 7 Coke, 6a, 'strong enough to make a natural subject, for, if he hath issue here, that issue is a natural-born subject'; and his child, as said by Mr. Binney in his essay before quoted, 'If born in the country, is as much a citizen as the natural-born child of a citizen, and by operation of the same principle.' It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides, seeing that, as said by Mr. Webster, when secretary of state, in his report to the president on Thrasher's case in 1851, and since repeated by this court: 'Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance, or of renouncing any former allegiance,—it is well known that by the public law an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born

subject might be, unless his case is varied by some treaty stipulations.' Executive Documents H. R. No. 10, 1st Sess. 32d Cong. p. 4; 6 Webster's Works, 526; U. S. v. Carlisle, 16 Wall. 147, 155; Calvin's Case, 7 Coke, 6a; Ellesmere, Postnati, 63; 1 Hale, P. C. 62; 4 Bl. Comm. 74, 92.

To hold that the fourteenth amn dment of the constitution excludes from citizenship the children born in the United States of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States.

VI. Whatever considerations, in the absence of a controlling provision of the constitution, might influence the legislative or the executive branch of the government to decline to admit persons of the Chinese race to the status of citizens of the United States, there are none that can constrain or permit the judiciary to refuse to give full effect to the peremptory and explicit language of the fourteenth amendment, which declares and ordains that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.'

Chinese persons, born out of the United States, remaining subjects of the emperor of China, and not having become citizens of the United States, are entitled to the protection of and owe allegiance to the United States, so long as they are permitted by the United States to reside here; and are 'subject to the jurisdiction thereof,' in the same sense as all other aliens residing in the United States. Yick Wo v. Hopkins (1886) 118 U. S. 356, 6 Sup. Ct. 1064; Lau Ow Bew v. U. S. (1892) 144 U. S. 47, 61, 62, 12 Sup. Ct. 517; Fong Yue Ting v. U. S. (1893) 149 U. S. 698, 724, 13 Sup. Ct. 1016; Lem Moon Sing v. U. S. (1895) 158 U. S. 538, 547, 15 Sup. Ct. 967; Wong Wing v. U. S. (1896) 163 U. S. 228, 238, 16 Sup. Ct. 977.

In Yick Wo v. Hopkins, the decision was that an ordinance of the city of San Francisco, regulating a certain business, and which, as executed by the board of supervisors, made an arbitrary discrimination between natives of China, still subjects of the emperor of China, but domiciled in the United States, and all other persons, was contrary to the fourteenth amendment of the constitution. Mr. Justice Matthews, in delivering the opinion of the court, said: 'The rights of the petitioners, as affected by the proceedings of which they complain, are not less because they are aliens and subjects of the emperor of China.' 'The fourteenth amendment to the constitution is not confined to the protection of citizens. It says, 'Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by section 1977 of the Revised Statutes that 'all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.' The questions we have to consider and decide in these cases, therefore, are to be treated as involving the rights of every citizen of the United States, equally with those of the strangers and aliens who now invoke the jurisdiction of this court.' 118 U. S. 368, 369, 6 Sup. Ct. 1070.

The manner in which reference was made in the passage above quoted to section 1977 of the Revised Statutes shows that the change of phrase in that section, re-enacting section 16 of the statute of May 31, 1870, c. 114 (16 Stat. 144), as compared with section 1 of the civil rights act of 1866, by substituting, for the words in that act, 'of every race and color,' the words, 'within the jurisdiction of the United States,' was not considered as

making the section, as it now stands, less applicable to persons of every race and color and nationality than it was in its original form; and is hardly consistent with attributing any narrower meaning to the words 'subject to the jurisdiction thereof,' in the first sentence of the fourteenth amendment of the constitution, which may itself have been the cause of the change in the phraseology of that provision of the civil rights act.

The decision in Yick Wo v. Hopkins, indeed, did not directly pass upon the effect of these words in the fourteenth amendment, but turned upon subsequent provisions of the same section. But, as already observed, it is impossible to attribute to the words, 'subject to the jurisdiction thereof' (that is to say, of the United States), at the beginning, a less comprehensive meaning than to the words 'within its jurisdiction' (that is, of the state), at the end of the same section; or to hold that persons, who are indisputably 'within the jurisdiction' of the state, are not 'subject to the jurisdiction' of the nation.

It necessarily follows that persons born in China, subjects of the emperor of China, but domiciled in the United States, having been adjudged, in Yick Wo v. Hopkins, to be within the jurisdiction of the state, within the meaning of the concluding sentence, must be held to be subject to the jurisdiction of the United States, within the meaning of the first sentence of this section of the constitution; and their children, 'born in the United States,' cannot be less 'subject to the jurisdiction thereof.'

Accordingly, in Quock Ting v. U. S. (1891) 140 U. S. 417, 11 Sup. Ct. 733, 851, which like the case at bar, was a writ of habeas corpus to test the lawfulness of the exclusion of a Chinese person who alleged that he was a citizen of the United States by birth, it was assumed on all hands that a person of the Chinese race, born in the United States, was a citizen of the United States. The decision turned upon the failure of the petitioner to prove that he was born in this country, and the question at issue was, as stated in the opinion of the majority of the court, delivered by Mr. Justice Field, 'whether the evidence was sufficient to show that the petitioner was a citizen of the United States,' or, as stated by Mr. Justice Brewer in his dissenting opinion, 'whether the petitioner was born in this country or not.' 140 U. S. 419, 423, 11 Sup. Ct. 851.

In State v. Ah Chew (188§) 16 Nev. 50, 58, the supreme court of Nevada said: 'The amendments did not confer the right of citizenship upon the Mongolian race, except such as are born within the United States.' In the courts of the United States in the Ninth circuit it has been uniformly held, in a series of opinions delivered by Mr. Justice Field, Judge Sawyer, Judge Deady, Judge Hanford, and Judge Morrow, that a child born in the United States of Chinese parents, subjects of the emperor of China, is a native-born citizen of the United States. In re Look Tin Sing (1884) 10 Sawy. 353, 2§ Fed. 905; Ex parte Chin King (1888) 13 Sawy. 333, 35 Fed. 354; In re Yung Sing Hee (1888) 13 Sawy. 482, 36 Fed. 437; In re Wy Shing (1888), 13 Sawy. 530, 36 Fed. 553; Gee Fook Sing v. U. S. (1892), 7 U. S. App. 27, 1 C. C. A. 211, and 49 Fed. 146; In re Wong Kim Ark (1896) 71 Fed. 382. And we are not aware of any judicial decision to the contrary.

During the debates in the senate in January ary and February, 1866, upon the civil rights bill, Mr. Trumbull, the chairman of the committee which reported the bill, moved to amend the first sentence thereof so as to read: 'All persons born in the United States, and not subject to any foreign power, are hereby declared to be citizens of the United States, without distinction of color.' Mr. Cowan, of Pennsylvania, asked 'whether it will not have the effect of naturalizing the children of Chinese and Gypsies, born in this country?' Mr. Trumbull answered, 'Undoubtedly;' and asked, 'Is not the child born in this country of German parents a citizen?' Mr.C owan replied, 'The children of German parents are citizens; but Germans are not Chinese.' Mr. Trumbull rejoined, 'The law makes no such distinction, and the child of an Asiatic is just as much a citizen as the child of a European.' Mr. Reverdy Johnson suggested that the words, 'without distinction of color,' should be omitted as unnecessary; and said: 'The amendment, as it

stands, is that all persons born in the United States, and not subject to a foreign power, shall, by virtue of birth, be citizens. To that I am willing to consent; and that comprehends all persons, without any reference to race or color, who may be so born.' And Mr. Trumbull agreed that striking out those words would make no difference in the meaning, but thought it better that they should be retained, to remove all possible doubt. Cong. Globe, 39th Cong. 1st Sess. pt. 1, pp. 498, 573, 574.

The fourteenth amendment of the constitution, as originally framed by the house of representatives, lacked the opening sentence. When it came before the senate in May, 1866, Mr. Howard, of Michigan, moved to amend by prefixing the sentence in its present form (less the words 'or naturalized'), and reading: 'All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.' Mr. Cowan objected, upon the ground that the Mongolian race ought to be excluded, and said, 'Is the child of the Chinese immigrant in California a citizen?' 'I do not know how my honorable friend from California looks upon Chinese, but I do know how some of his fellow citizens regard them. I have no doubt that now they are useful, and I have no doubt that within proper restraints, allowing that state and the other Pacific states to manage them as they may see fit, they may be useful; but I would not tie their hands by the constitution mgone from the country, and is beyond its jurisdiction them hereafter from dealing with them as in their wisdom they see fit.' Mr. Conness, of California, replied: 'The proposition before us relates simply, in that respect, to the children begotten of Chinese parents in California, and it is proposed to declare that they shall be citizens. We have declared that by law; now it is proposed to incorporate the same provision in the fundamental instrument of the Nation. I am in favor of doing so. I voted for the proposition to declare that the children of all parentage whatever, born in California, should be regarded and treated as citizens of the United States, entitled to equal civil rights with other citizens of the United States.' 'We are entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the constitution of the United States to be entitled to civil rights and to equal protection before the law with others.' Cong. Globe, 39th Cong. 1st Sess. pt. 4, pp. 2890-2892. It does not appear to have been suggested, in either house of congress, that children born in the United States of Chinese parents would not come within the terms and effect of the leading sentence of the fourteenth amendment.

Doubtless, the intention of the congress which framed, and of the states which adopted, this amendment of the constitution, must be sought in the words of the amendment, and the debates in congress are not admissible as evidence to control the meaning of those words. But the statements above quoted are valuable as contemporaneous opinions of jurists and statesmen upon the legal meaning of the words themselves, and are, at the least, interesting as showing that the application of the amendment to the Chinese race was considered and not overlooked.

The acts of congress, known as the 'Chinese Exclusion Acts,' the earliest of which was passed some 14 years after the adoption of the constitutional amendment, cannot control its meaning, or impair its effect, but must be construed and executed in subordination to its provisions. Ad the right of the United States, as exercised by and under those acts, to exclude or to expel from the country persons of the Chinese race, born in China, and continuing to be subjects of the emperor of China, though having acquired a commercial domicile in the United States, has been upheld by this court, for reasons applicable to all aliens alike, and inapplicable to citizens, of whatever race or color. Chae Chan Ping v. U. S., 130 U. S. 581, 9 Sup. Ct. 623; Nishimura Ekiu v. U. S., 142 U. S. 651, 12 Sup. Ct. 336; Fong Yue Ting v. U. S., 149 U. S. 698, 13 Sup. Ct. 1016; Lem Moon Sing v. U. S., 158 U. S. 538, 15 Sup. Ct. 967; Wong Wing v. U. S., 163 U. S. 228, 16 Sup. Ct. 977.

In Fong Yue Ting v. U. S., the right of the United States to expel such Chinese persons was placed upon the grounds that the right to exclude or to expel all aliens, or any class of aliens, absolutely or upon certain conditions, is an inherent and inalienable right of every sovereign and independent nation, essential to its safety, its independence, and its welfare; that 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 as the judicial department has been authorized by treaty or by statute, or is required by the paramount law of the constitution, to intervene; that the power to exclude and the power to expel aliens rests upon one foundation, are derived from one source, are supported by the same reasons, and are in truth but parts of one and the same power; and therefore that the power of congress 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. 149 U. S. 711, 713, 714, 13 Sup. Ct. 1016.

In Lem Moon Sing v. U. S., the same principles were reaffirmed, and were applied to a Chinses person, born in China, who had acquired a commercial domicile in the United States, and who, having voluntarily left the country on a temporary visit to China, and with the intention of returning to and continuing his residence in this country, claimed the right under a statute or treaty to re-enter it; and the distinction between the right of an alien to the protection of the constitution and laws of the United States for his person and property while within the jurisdiction thereof, and his claim of a right to re-enter the United States after a visit to his native land, was expressed by the court as follows: 'He is none the less an alien, because of his having a commercial domicile in this country. While he lawfully remains here, he is entitled to the benefit of the guaranties of life, liberty, and property, secured by the constitution to all persons, of whatever race, within the jurisdiction of the United States. His personal rights when he is in this country, and such of his property as is here during his absence, are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States. But when he has voluntarily gone from the country, and is beyond its jurisdiction, being an alien, he cannot re-enter the United States in violation of the will of the government as expressed in enactments of the law-making power.' 158 U. S. 547, 548, 15 Sup. Ct. 971.

It is true that Chinese persons born in China cannot be naturalized, like other aliens, by proceedings under the naturalization laws. But this is for want of any statute or treaty authorizing or permitting such naturalization, as will appear by tracing the history of the statutes, treaties, and decisions upon that subject, always bearing in mind that statutes enacted by congress,a § well as treaties made by the president and senate, must yield to the paramount and supreme law of the constitution.

The power, granted to congress by the constitution, 'to establish an uniform rule of naturalization,' was long ago adjudged by this court to be vested exclusively in congress. Chirac v. Chirac (1817) 2 Wheat. 259. For many years after the establishment of the original constitution, and until two years after the adoption of the fourteenth amendment, congress never authorized the naturalization of any one but 'free white persons.' Acts March 26, 1790, c. 3, and Jan. 29, 1795, c. 20 (1 Stat. 103, 414); April 14, 1802, c. 28, and March 26, 1804, c. 47 (2 Stat. 153, 292); March 22, 1816, c. 32 (3 Stat. 258); May 26, 1824, c. 186, and May 24, 1828, c. 116 (4 Stat. 69, 310). By the treaty between the United States and China, made July 28, 1868, and promulgated February 5, 1870, it was provided that 'nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States.' 16 Stat. 740. By the act of July 14, 1870, c. 254, § 7, for the first time, the naturalization laws were

'extended to aliens of African nativity and to persons of African descent.' Id . 256. This extension, as embodied in the Revised Statutes, took the form of providing that those laws should 'apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent'; and it was amended by the act of Feb. 18, 1875, c. 80, by inserting the words above printed in brackets. Rev. St. (2d Ed.) § 2169 (18 Stat. 318). Those statutes were held, by the circuit court of the United States in California, not to embrace Chinses aliens. In re Ah Yup (1878) 5 Sawy. 155, Fed. Cas. No. 104. And by the act of May 6, 1882, c. 126, § 14, it was expressly enacted that, 'hereafter no state court or court of the United States shall admit Chinese to citizenship.' 22 Stat. 61.

In Fong Yue Ting v. U. S. (1893), above cited, this court said: 'Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws.' 149 U. S. 716, 13 Sup. Ct. 1023.

The convention between the United States and China of 1894 provided that 'Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens.' 28 Stat. 1211. And it has since been decided, by the same judge who held this appellee to be a citizen of the United States by virtue of his birth therein, that a native of China of the Mongolian race could not be admitted to citizenship under the naturalization laws. In re Gee Hop (1895) 71 Fed. 274.

The fourteenth amendment of the constitution, in the declaration 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,' contemplates two sources of citizenship, and two only,—birth and naturalization. Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization. A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of the annexation of foreign territory, or by authority of congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by n abling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts.

The power of naturalization, vested in congress by the constitution, is a power to confer citizenship, not a power to take it away. 'A naturalized citizen,' said Chief Justice Marshall, 'becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize congress to enlarge or abridge those rights. The simple power of the national legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual. The constitution then takes him up, and, among other rights, extends to him the capacity of suing in the courts of the United States, precisely under the same circumstances under which a native might sue.' Osborn v. Bank, 9 Wheat. 738, 827. Congress having no power to abridge the rights conferred by the constitution upon those who have become naturalized citizens by virtue of acts of congress, a fortiori no act or omission of congress, as to providing for the naturalization of parents or children of a particular race, can affect citizenship acquired as a birthright, by virtue of the constitution itself, without any aid of legislation. The fourteenth amendment, while it leaves the power, where it was before, in congress, to regulate naturalization, has conferred no authority upon

congress to restrict the effect of birth, declared by the constitution to constitute a sufficient and complete right to citizenship.

No one doubts that the amendment, as soon as it was promulgated, applied to persons of African descent born in the United States, wherever the birthplace of their parents might have been; and yet, for two years afterwards, there was no statute authorizing persons of that race to be naturalized. If the omission or the refusal of congress to permit certain classes of persons to be made citizens by naturalization could be allowed the effect of correspondingly restricting the classes of persons who should become citizens by birth, it would be in the power of congress, at any time, by striking negroes out of the naturalization laws, and limiting those laws, as they were formerly limited, to white persons only, to defeat the main purpose of the constitutional amendment.

The fact, therefore, that acts of congress or treaties have not permitted Chinese persons born out of this country to become citizens by naturalization, cannot exclude Chinese persons born in this country from the operation of the broad and clear words of the constitution: 'All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States.'

VII. Upon the facts agreed in this case, the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth. No doubt he might himself, after coming of age, renounce this citizenship, and become a citizen of the country of his parents, or of any other country; for by our law, as solemnly declared by congress, 'the right of expatriation is a natural and inherent right of all people,' and 'any declaration, instruction, opinion, order or direction of any officer of the United States, which denies, restricts, impairs or questions the right of expatriation, is declared inconsistent wth the fundamental principles of the republic.' Rev. St. § 1999, re-enacting Act July 27, 1868, c. 249, § 1 (15 Stat. 223, 224). Whether any act of himself, or of his parents, during his minority, could have the same effect, is at least doubtful. But it would be out of place to pursue that inquiry, inasmuch as it is expressly agreed that his residence has always been in the United States, and not elsewhere; that each of his temporary visits to China, the one for some months when he was about 17 years old, and the otherf or something like a year about the time of his coming of age, was made with the intention of returning, and was followed by his actual return, to the United States; and 'that said Wong Kim Ark has not, either by himself or his parents acting for him, ever renounced his allegiance to the United States, and that he has never done or committed any act or thing to exclude him therefrom.'

The evident intention, and the necessary effect, of the submission of this case to the decision of the court upon the facts agreed by the parties, were to present for determination the single question, stated at the beginning of this opinion, namely, whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a citizen of the United States. For the reasons above stated, this court is of opinion that the question must be answered in the affirmative.

Order affirmed.