Who do you think you are, Part II?

Subtitle:
Are you a resident ?

Much of this research is from Nevada.
If you research your State,
you should find analogous material.

Disclaimer: Nothing in this white paper is to be construed as legal advice. The reader should go to a law library and check every fact and citation for themselves, and form your own conclusions. The reader should get assistance of counsel, if you think you need it.

Let’s start with two words “nationality” and “reside”:

U.S. Government Printing Office

Style Manual

An official guide to the form and style of Federal Government printing

2008

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Geographic names

5.20. The spelling of geographic names must conform to the decisions of the U.S. Board on Geographic Names (BGN) (http://geonames.usgs.gov). In the absence of such a decision, the U.S. Directory of Post Offices is to be used.

5.21. If the decisions or the rules of the BGN permit the use of either the local official form or the conventional English form, it is the prerogative of the originating office to select the form which is most suitable for the matter in hand; therefore, in marking copy or reading proof, it is required only to verify the spelling of the particular form used. GPO’s preference is for the conventional English form. Copy will be followed as to accents, but these should be consistent throughout the entire job.

Nationalities, etc.

5.22. The table on Demonyms in Chapter 17 “Useful Tables” shows forms to be used for nouns and adjectives denoting nationality.

5.23. In designating the natives of the States, the following forms will be used.

Alabamian	Louisianian	Ohioan
Alaskan	Mainer	Oklahoman
Arizonan	Marylander	Oregonian
Arkansan	Massachusettsan	Pennsylvanian
Californian	Michiganian	Rhode Islander
Coloradan	Minnesotan	South Carolinian
Connecticuter	Mississippian	South Dakotan
Delawarean	Missourian	Tennessean
Floridian	Montanan	Texan
Georgian	Nebraskan	Utahn
Hawaiian	Nevadan	Vermonter
Idahoan	New Hampshirite	Virginian
Illinoisan	New Jerseyan	Washingtonian
Indianian	New Mexican	West Virginian
Iowan	New Yorker	Wisconsinite
Kansan	North Carolinian	Wyomingite
Kentuckian	North Dakotan	

Notice that “U.S. citizen” is **not** on this list.

AN

AMERICAN DICTIONARY

OF THE

ENGLISH LANGUAGE:

INTENDED TO EXHIBIT,

I. The origin, affinities and primary signification of English words, as far as they have been ascertained.
II. The genuine orthography and pronunciation of words, according to general usage, or to just principles of analogy.
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TO WHICH ARE PREFIXED,

AN INTRODUCTORY DISSERTATION

ON THE

ORIGIN, HISTORY AND CONNECTION OF THE

LANGUAGES OF WESTERN ASIA AND OF EUROPE,

AND A CONCISE GRAMMAR

OF THE

ENGLISH LANGUAGE.

BY NOAH WEBSTER, LL. D.

IN TWO VOLUMES.

VOL. I.

He that wishes to be counted among the benefactors of posterity, must add, by his own toil, to the acquisitions of his ancestors.—*Rambler.*

NEW YORK:
PUBLISHED BY S. CONVERSE.
PRINTED BY HEZEKIAH HOWE—NEW HAVEN.
1828.

RESENT'IVE, *a.* Easily provoked or irritated; quick to feel an injury or affront. *Thomson.*

RESENT'MENT, *n.* [Fr. *ressentiment*; It. *risentimento*; Sp. *resentimiento*.]

1. The excitement of passion which proceeds from a sense of wrong offered to ourselves, or to those who a with us; anger. This word presses less excitement than it is often synonymous with presses much less than *wrath*, and *indignation*. In this use, not the sense or perception o the excitement which is the e

Can heavenly minds such hi show?

2. Strong perception of good.

RESERVA'TION, *n.* *s* as *z*. [*reservo*.]

1. The act of reserving or keep in the mind; reserve; con withholding from disclosure *reservation*.

2. Something withheld, either n or disclosed, or not given u forward.

With *reservation* of a hundre

In the United States, a trac sold with the rest, is called a

3. Custody; state of being tre kept in store.

4. In *law*, a clause or part of an instrument by which something is reserved, not conceded or granted; also, a proviso.

Mental reservation is the withholding of expression or disclosure of something that affects a proposition or statement, and which if disclosed, would materially vary its import.

Mental reservations are the refuge of hypocrites. *Encyc.*

RESERV'ATIVE, *a.* Keeping; reserving.

RESERV'ATORY, *n.* [from *reserve*.] A place in which things are reserved or kept. *Woodward.*

RESERVE, *v. t.* *rezerv'*. [Fr. *reserver*; L. *reservo*; *re* and *servo*, to keep.]

1. To keep in store for future or other use; to withhold from present use for another purpose. The farmer sells his corn, *reserving* only what is necessary for his family.

Hast thou seen the treasures of hail, which I have *reserved* against the day of trouble? Job xxxviii.

2. To keep; to hold; to retain.

Will he *reserve* his anger for ever? Jer. iii.

3. To lay up and keep for a future time. 2 Pet. ii.

Reserve your kind looks and language for private hours. *Swift.*

RESERVE, *n.* *rezerv'*. That which is kept for other or future use; that which is retained from present use or disposal.

The virgins, besides the oil in their lamps, carried likewise a *reserve* in some other vessel for a continual supply. *Tillotson.*

2. Something in the mind withheld from disclosure.

However any one may concur in the general scheme, it is still with certain *reserves* and deviations. *Addison.*

3. Exception; something withheld.

Is knowledge so despis'd? Or envy, or what *reserve* forbids to taste? *Milton.*

4. Exception in favor.

Each has some darling lust, which pleads for a *reserve*. *Rogers.*

5. Restraint of freedom in words or actions;

frankness. *Woodward.*

2. Scrupulously; cautiously; coldly. *Pope.*

RESERV'EDNESS, *n.* Closeness; want of frankness, openness or freedom. A man may guard himself by that silence and *reservedness* which every one may innocently practice. *South.*

RESERV'ER, *n.* One that reserves.

RESERV'ING, *ppr.* Keeping back; keeping for other use or for use at a future time; retaining.

RESERVOIR', *n.* [Fr.] A place where any thing is kept in store, particularly a place where water is collected and kept for use when wanted, as to supply a fountain, a canal or a city by means of aqueducts, or to drive a mill-wheel and the like; a cistern; a mill-pond; a bason.

RE'SET, *n.* In *Scots law*, the receiving and harboring of an outlaw or a criminal. *Encyc.*

RESET'TLE, *v. t.* [*re* and *settle*.] To settle again. *Swift.*

2. To install, as a minister of the gospel.

RESET'TLE, *v. i.* To settle in the ministry a second time; to be installed.

RESET'TLED, *pp.* Settled again; installed.

RESET'TLEMENT, *n.* The act of settling or composing again.

The *resettlement* of my discomposed soul. *Norris.*

2. The state of settling or subsiding again; as the *resettlement* of lees. *Mortimer.*

3. A second settlement in the ministry.

RESET'TLING, *ppr.* Settling again; installing.

RESHIP', *v. t.* [*re* and *ship*.] To ship again; to ship what has been conveyed by water or imported; as coffee and sugar imported into New York, and *reshipped* for Hamburg.

RESHIP'MENT, *n.* The act of shipping or loading on board of a ship a second time; the shipping for exportation what has been imported.

2. That which is reshipped.

RESHIP'PED, *pp.* Shipped again.

RESHIP'PING, *ppr.* Shipping again.

RE'SIANCE, *n.* [See *Resiant*.] Residence; abode. *Obs.* *Bacon.*

RE'SIANT, *a.* [Norm. *resiant*, *resseant*, from the L. *resideo*. See *Reside*.]

Resident; dwelling; present in a place. *Obs.* *Knolles.*

RESI'DE, *v. i.* *s* as *z*. [Fr. *resider*; L. *resideo*, *resido*; *re* and *sedeo*, to sit, to settle.]

1. To dwell permanently or for a length of time; to have a settled abode for a time. The peculiar uses of this word are to be noticed. When the word is applied to the natives of a state, or others who dwell in it as permanent citizens, we use it only with reference to the *part* of a city or country in which a man dwells. We do not say generally, that Englishmen *reside* in England, but a particular citizen *resides* in London or York, or at such a house in such a street, in the Strand, &c.

When the word is applied to strangers or travelers, we do not say, a man *resides* in an inn for a night, but he *resided* in London or Oxford a month or a year; or he may *reside* in a foreign country a great part of his life. A man lodges, stays, remains, abides, for a day or very short time, but *reside* implies a longer time, though not definite.

2. To sink to the bottom of liquors; to settle. *Obs.* *Boyle.*

[In this sense, *subside* is now used.]

RES'IDENCE, *n.* [Fr.] The act of abiding or dwelling in a place for some continuance of time; as the *residence* of an American in France or Italy for a year.

The confessor had often made considerable *residences* in Normandy. *Hale.*

2. The place of abode; a dwelling; a habitation.

Caprea had been—the *residence* of Tiberius for several years.

3. That which falls to the bottom of liquors. *Obs.* *Bacon.*

4. In *the canon* and *common law*, the abode of a parson or incumbent on his benefice; opposed to *non-residence*. *Blackstone.*

RES'IDENT, *a.* [L. *residens*; Fr. *resident*.] Dwelling or having an abode in a place for a continuance of time, but not definite; as a minister *resident* at the court of St. James. A B is now *resident* in South America.

RES'IDENT, *n.* One who resides or dwells in a place for some time. A B is now a *resident* in London.

2. A public minister who resides at a foreign court. It is usually applied to ministers of a rank inferior to that of embassadors. *Encyc.*

RESIDEN'TIARY, *a.* Having residence. *More.*

RESIDEN'TIARY, *n.* An ecclesiastic who keeps a certain residence. *Eccles. Canons.*

RESI'DER, *n.* One who resides in a particular place. *Swift.*

Putting these two together, we have:

“Take notice”
that
“we do not say that Nevadans ***reside*** in Nevada”.

The framers of the Constitution of Nevada got it right at Art. 1, Sec. 16, when they said:

"**Foreigners** who are, or who may hereafter become Bona-fide **residents** of this State, shall enjoy the same rights, in respect to the possession, enjoyment and inheritance of property, as **native born Citizens**."

So, are you a foreigner ? in your own State ? Or, are you a native born Citizen ?

Are you a resident ?
in your own State ?

The implied question is,
Are you a
resident [foreigner] ?

[*We need to know*
so we can treat you
<u>differently</u> from a native
born Citizen!]

So, What's the difference ?

patent, in as full an extent and beneficial a manner (subject only to the rights of the commonwealth) as the commonwealth itself held them. At the time of the passing of the act of 1779 Kentucky was a wilderness. It was the haunt of savages and beasts of prey. Actual entry or possession was impracticable; and, if practicable, it could answer no beneficial purpose. It could create no notoriety; it could be evidence to no vicinage of a change of the property. An entry therefore would have been a vain and useless and perilous act; and if there ever was a case in which the maxim would apply that the law does not oblige to vain or impossible things, we think it is such a one as the present. There is no pretense that the legislature have expressly made an entry a prerequisite to the completion of the title. Such a prerequisite, if it exist at all, must arise from mere implication only, and under circumstances which would render it nugatory or absurd. We do not, therefore, feel at liberty to insert in the operation of the grant a limitation which the law has not of itself interposed.

249* *And this leads us to say, that even if, at common law, an actual *pedis positio*, followed up by an actual perception of the profits, were necessary to maintain a writ of right, which we do not admit, the doctrine would be inapplicable to the waste and vacant lands of our country. The common law itself in many cases dispenses with such a rule; and the reason of the rule itself ceases when applied to a mere wilderness. The object of the law in requiring actual seizin was to evince notoriety of title to the neighborhood, and the consequent burthens of feudal duties. In the simplicity of ancient times there were no means of ascertaining titles but by the visible seizin; and, indeed, there was no other mode, between subjects, of passing title, but livery of the land itself by the symbolical delivery of turf and twig. The moment that a tenant was thus seized, he had a perfect investiture; and, if ousted, could maintain his action in the realty, although he had not been long enough in possession even to touch the esplees. The very object of the rule, therefore, was notoriety, to prevent frauds upon the lord and upon the other tenants. But in a mere uncultivated country, in wild and impenetrable woods, in the sullen and solitary haunts of beasts of prey, what notoriety could an entry, a gathering of a twig or an acorn convey to civilized man at the distance of hundreds of miles? The reason of the rule could not apply to such a state of things; and *cessante ratione, cessat ipsa lex.* We are entirely satisfied that a conveyance of wild or vacant lands gives a constructive seizin thereof, in deed, to the grantee, and attaches to him all the legal remedies incident to the estate. *A fortiori*, this principle applies to a patent; since, at the common law, it imports a livery in law. Upon any other construction, infinite mischiefs would result. Titles by descent and devise, and purchase, where the party from whom the title was derived was never in actual seizin, would, upon principles of the common law, be utterly lost.

As to the sixth question. We are of opinion that in Kentucky a patent is the completion of the legal title of the parties; and it is the legal title only that can come in controversy in a writ of right. The previous stages of title are merely equitable, which a court of chancery may enforce, but a court of common law will not entertain. In this opinion we adopt the principles which the *courts of [**250** Kentucky have been understood uniformly to sanction. And this opinion is also an answer to the seventh question.

As to the eighth question. We are of opinion that a better subsisting adverse title in a third person is no defense in a writ of right. That writ brings into controversy only the mere rights of the parties to the suit.

As to the ninth question. We have already expressed our opinion that tenants claiming different parcels of land by distinct titles cannot be joined in a writ of right. If, however, they omit to plead in abatement and join the mise, it is an admission that they are joint tenants of the whole; and the verdict, if for the demandant for any parcel of the land, may be general, that he hath more mere right to hold the same than the tenants; and if of any parcel for the tenants, that they have more mere right to hold the same than the demandant.

As to the tenth question. The general rule is, that if a man enter into lands, having title, his seizin is not bounded by his actual occupancy, but is held to be co-extensive with his title. But if a man enter without title, his seizin is confined to his possession by metes and bounds. In the case put by the court below, the first patentee had the better legal title; and his seizin presently, by virtue of his patent, gave him the best mere right to the whole land, upon the principles which we have already stated. *A fortiori*, he must have the best mere right to the land not included in the actual close of the second patentee. For, by construction of law, he has the eldest seizin as well as the eldest patent.

As to the eleventh point. We are of opinion that if a man having title to land enter into a part in the name of the whole, he is, upon common law principles, adjudged in seizin of the whole, notwithstanding an adverse seizin thereof. But if the land be in the seizin of several tenants claiming different parcels thereof in severalty, an entry into the parcel held by one tenant will not give seizin of the parcels held by the other tenants; but there must be an entry into each. (Co. Litt., 252, b.) By parity of reason, an entry into a parcel which is vacant will not give seizin of a parcel which is in an adverse seizin. But an entry into the last parcel, in the name of the whole, will enure as an entry *into the vacant parcel. It [**251** does not appear, in the question put by the court below, into which parcel the entry is supposed to be made.

Such are the unanimous opinions of this court, which are to be certified to the Circuit Court of Kentucky.

Cited—7 Wheat. 26, 31; 2 Pet. 212; 3 Pet. 133, 172, 188; 5 Pet. 354, 493; 6 Pet. 743; 9 Pet. 735; 10 Pet. 224; 12 Pet. 449; 3 How. 699; 9 How. 447; 15 How. 208; 13 Wall. 86; 1 Otto, 375; 9 Otto, 167; 12 Otto, 399; 3 Wash. 478; 2 Sawy. 496; 1 Mason, 212; 4 Mason, 272, 274; 5 Mason, 464; 1 Wood. & M. 216; 2 Wood. & M. 214, 364; 2 Ware, 248; McCahon, 241; 1 McLean, 480.

CARTER'S HEIRS
v.
CUTTING AND WIFE.

Absent—WASHINGTON, *J.*

An appeal lies to this court from the sentence of the Circuit Court of the District of Columbia affirming the sentence of the Orphan's Court of Alexandria county, which dismissed a petition to revoke the probate of a will.

THIS was an appeal from the Circuit Court for the District of Columbia.

E. I. Lee, for the Appellants.

Taylor, for the Appellees.

March 11th. STORY, *J.*, delivered the opinion of the court as follows:

The appellants, who are heirs at law of Sally Carter, deceased, petitioned the Orphan's Court of the county of Alexandria to revoke and repeal the probate of a will of the said Sally Carter procured by the respondents, upon the ground that the said will was admitted to probate without notice to the appellants, and that the supposed testatrix was an inhabitant of and resident in Virginia at the time of her death, and left no assets, real or personal, or debts in the county of Alexandria. The Orphan's Court, without issuing a summons to the respondents, dismissed the petition, and upon an appeal this dismissal was confirmed by the Circuit Court of the District of Columbia.

Two objections have been taken to the sustaining of the appeal to this court. 1. That by the act of Congress of 27th February, 1801, (ch. 86, s. 12, vol. 5, p. 272), it is enacted that on **252*** appeals from the Orphan's *Court to the Circuit Court, the latter "shall therein have all the powers of the chancellor" of the state of Maryland; and by the laws of Maryland the decree of the chancellor in a like case would be final. 2. That the decree of dismissal is not any final judgment, order, or decree of the Circuit Court wherein the matter in dispute, exclusive of costs, exceeds one hundred dollars.

The majority of the court cannot yield assent to the validity of either of these objections. As to the first, we are of opinion that the conclusiveness of its sentence forms no part of the essence of the powers of the court. Its powers to act are as ample, independent of their final quality, as with it. Besides, the act of February 27, 1801, (§ 8, vol. 5, p. 270), has expressly allowed an appeal from "all final judgments, orders and decrees of the Circuit Courts" where the matter in dispute exceeds the limited value, and there is nothing in the context to narrow the ordinary import of the language. We cannot admit that construction to be a sound one, which seeks by remote inferences to withdraw a case from the general provisions of a statute, which is clearly within its words and perfectly consistent with its intent. The case of *Young* v. *The Bank of Alexandria* (4 Cranch, 384), is, in our judgment, decisive against this objection.

As to the second objection, it is conceded by both parties that the estate devised to the respondent, Sally C. Cutting, is worth several thousand dollars. If, then, the probate of the will had any legal operation and was not merely that probate was a matter in dispute equal to the value of the estate devised away from the heirs. It cannot be doubted that the Orphan's Court had jurisdiction to allow probate of wills made by persons in foreign states; and that probate, once allowed, operated as a sentence affirming the validity of such wills between the parties so far as the *lex loci* could give them operation. It is understood that a will regularly proved in another state in strict conformity with the laws of that state, acquires, if it possess the other legal requisites, a binding efficacy in Virginia, so that it may be admitted to record there. The estate devised is understood to be situated *in Virginia, and the [**253** title of the heirs thereto would consequently be affected by the probate in this district. The probate then not being merely void, but affecting the title to lands exceeding one hundred dollars in value, is a matter in controversy beyond that value within the purview of the act of 1801.

The decree of the Circuit Court dismissing the petition is reversed, and the cause is to be remanded to that court with directions to proceed to a hearing upon the merits.

Cited—19 Wall. 64.

THE VENUS, RAE, MASTER.

If a citizen of the United States establishes his domicile in a foreign country between which and the United States hostilities afterwards break out, any property shipped by such citizen before knowledge of the war, and captured by an American cruiser after the declaration of war, must be condemned as lawful prize.

Upon a shipment of goods to be sold, on joint account of the consignee and shipper, or of the latter alone at the option of the consignee, the right of property does not vest in the consignee until he has made his election under the option given him.

If two partners own jointly a commercial house in New York, and one of them obtains an American register for a ship by swearing that he, together with his partner, of the city of New York, merchant, are the only owners of the vessel for which the register is obtained, when in fact his partner is domiciled in England, the vessel is liable to forfeiture under the act of Congress of December 31st, 1792. (Laws U. S., vol. 2, p. 133.)

APPEAL from the sentence of the Circuit Court for the District of Massachusetts.

The following were the facts of the case, as stated by WASHINGTON, *J.*, in delivering the opinion of the court:

This is the case of a vessel which sailed from Great Britain, with a cargo belonging to the respective claimants, as was contended, before the declaration of war by the United States against Great Britain was or could have been known by the shippers. She sailed from Liverpool on the 4th of July, 1812, under a British license, for the port of New York, and was captured on the 6th of August, 1812, by the American privateer Dolphin, and sent into the District of Massachusetts, where the vessel and cargo were libeled in the District Court.

The ship, 100 casks of white lead, 150 crates of earthen ware, 85 cases and 3 casks of copper, 9 pieces of cotton bagging, and a quantity of coal, were claimed by Lenox and Maitland.

198 packages of merchandise and 25 pieces

my hands, says, "the citizens are the members "of the civil society; bound to this society by "certain duties, and subject to its authority, "they equally participate in its advantages. "The natives, or indigenes, are those born in the "country, of parents who are citizens. Society "not being able to subsist and to perpetuate it- "self but by the children of the citizens, those "children naturally follow the condition of "their fathers, and succeed to all their rights."

"The inhabitants, as distinguished from citi- "zens, are strangers who are permitted to set- "tle and stay in the country. Bound by "their residence to the society, they are sub- "ject to the laws of the state, while they re- "side there, and they are obliged to defend it, "because it grants *them protection, 290*] "though they do not participate in all the rights "of citizens. They enjoy only the advantages "which the laws or custom gives them. The "perpetual inhabitants are those who have re- "ceived the right of perpetual residence. These "are a kind of citizens of an inferior order, "and are united and subject to the society, "without participating in all its advantages."

"The domicile is the habitation fixed in any "place, with an intention of always staying "there. A man does not, then, establish his "domicile in any place, unless he makes suf- "ficiently known his intention of fixing there, "either tacitly or by an express declaration. "However, this declaration is no reason why, if "he afterwards changes his mind, he may not "remove his domicile elsewhere. In this sense, "he who stops, even for a long time, in a place, "for the management of his affairs, has only "a simple habitation there, but has no domicile."

A domicile, then, in the sense in which this term is used by Vattel, requires not only actual residence in a foreign country, but "an inten- tion of always staying there." Actual residence without this intention, amounts to no more than "simple habitation."

Although this intention may be implied without being expressed, it ought not, I think, to be implied, to the injury of the individual, from acts entirely equivocal. If the stranger has not the power of making his residence perpetual, if circumstances, after his arrival in a country, so change as to make his continuance there disadvantageous to himself, and his power to continue, doubtful; "an intention always to stay there" ought not, I think, to be fixed upon him, in consequence of an unexplained residence previous to that change of circumstances. Mere residence, under particular circumstances, would seem to me, at most, to prove only an intention to remain so long as those circumstances continue the same, or equally advantageous. This does not give a domicile. The intention which gives a domicile is an unconditional intention "to stay always."

The right of the citizens or subjects of one country to remain in another, depends on the 291*] will of the sovereign, *of that other; and if that will be not expressed otherwise than by that general hospitality which receives and affords security to strangers, it is supposed to terminate with the relations of peace between the two countries. When war breaks out, the subjects of one be"[illegible]erent in the country of the other are consid[illegible]s enemies, and have no right to remain t[illegible]

Vattel says, "enemies continue such wher- "ever they happen to be. The place of abode "is of no account here. It is the political ties "which determine the quality. While a man "remains a citizen of his own country he re- "mains the enemy of all those with whom his "nation is at war."

It would seem to me to require very strong evidence of an intention to become the permanent inhabitant of a foreign country to justify a court in presuming such intention to continue, when that residence must expose the person to the inconvenience of being considered and treated as an enemy. The intention to be inferred solely from the fact of residence during peace, for commercial purposes, is, in my judgment, necessarily conditional, and dependent on the continuance of the relations of peace between the two countries.

So far is the law of nations from considering residence in a foreign country in time of peace as evidence of an intention "always to stay there," even in time of war, that the very contrary is expressed. Vattel says, "the sovereign "declaring war can neither detain those sub- "jects of the enemy who are within his domin- "ions at the time of the declaration, nor their "effects. They came into his country on the "public faith. By permitting them to enter "his territory and to continue there, he tacitly "promised them liberty and security for their "return. He is therefore to allow them a rea- "sonable time for withdrawing with their "effects; and if they stay beyond the time pre- "scribed, he has a right to treat them as ene- "mies, though as enemies disarmed."

The stranger merely residing in a country during peace, however long his stay, and whatever his employment, provided it be such as strangers may engage in, cannot, on the principles of national law, be considered *as [*292 incorporated into that society, so as, immediately on a declaration of war, to become the enemy of his own. "His property," says Vattel, "is still a part of the totality of the wealth of "his nation." "The citizen or subject of a "state, who absents himself for a time, without "any intention to abandon the society of which "he is a member, does not lose his privilege by "his absence; he preserves his rights, and re- "mains bound by the same obligations. Being "received in a foreign country, in virtue of the "natural society, the communication and com- "merce, which nations are obliged to cultivate "with each other, he ought to be considered "there as a member of his own nation, and treat- "ed as such."

The subject of one power inhabiting the country of another, ought not to be considered as a member of the nation in which he resides, even by foreigners; nor ought he, on the first commencement of hostilities, to be treated as an enemy by the enemies of that nation.

Burlamaqui says, "as to strangers, those who "settle in the enemy's country after a war is "begun, of which they had previous notice, "may justly be looked upon as enemies and "treated as such. But in regard to such as "went thither before the war, justice and hu- "manity require that we should give them a "reasonable time to retire; and if they neglect "that opportunity, they are accounted ene- "mies."

If this rule be obligatory on foreign nations, much more ought it to bind that of which the individual is a member.

I think I cannot be mistaken when I say that, in all the views taken of this subject by the most approved writers on the law of nations, the citizen of one country residing in another is not considered as incorporated in that other, but is still considered as belonging to that society of which he was originally a member. And if war break out between the two nations, he is to be permitted, and is expected, to return to his own. I do not perceive in those writers any exception with regard to merchants.

It must, however, be acknowledged that the 293*] great extension *of commerce has had considerable influence on national law. Rules have been adopted, perhaps by general consent, principles have been engrafted on the original stalk of public law, by which merchants, while belonging politically to one society, are considered commercially as the members of another. For commercial purposes the merchant is considered as a member of that society in which he has his domicile; and less conclusive evidence than would seem to be required in general cases, by the law of nations, has been allowed to fix the domicile for commercial purposes. But I cannot admit that the original meaning of the term is to be entirely disregarded, or the true nature of this domicile to be overlooked. The effects of the rule ought to be regulated by the motives which are presumed to have induced its establishment, and by the convenience it was intended to promote.

The policy of commercial nations receives foreign merchants into their bosom; and permits their own citizens to reside abroad for the purposes of trade without injury to their rights or character as citizens. This free intercommunication must certainly be believed, by the nations who allow it, to be promotive of their interests. Nor is this opinion ill founded. Nothing can be more obvious than that the affairs of a commercial company will be transacted to most advantage by being conducted, as it respects both purchase and sale, under the eye of a person interested in the result. The nation which takes an interest in the prosperity of its commerce can feel no inclination to restrain its citizens from residence abroad for the purposes of commerce; nor will it hastily construe such residence into a change of national character, to the injury of the individual. It is not the policy of such a nation, nor can it be its wish, to restrain its citizens from pursuing abroad a business which tends to enrich itself. It ought not, then, to consider them as enemies in consequence of their having engaged in such pursuit in the country of a friend, who, before their removal, becomes an enemy.

If, indeed, it be the real intention of the citizen permanently to change his national character, if it be his choice to remain in the country 294*] of the enemy during *war, there can be no harshness—no injustice in treating him as an enemy. But if, while prosecuting his business in a foreign country, he contemplates a return to his own; if, in the prosecution of that business, he is promoting rather than counteracting the interests and policy of the country of which he is a member, it would seem to me to be pressing the principle too far, and to be drawing conclusions which the premises will not warrant, to infer, conclusively, an intention to continue in a country which has become hostile, from a residence and trading in that country while it was friendly; and to punish him by the confiscation of his goods, as if he was fully convicted of that intention.

It is admitted to be a general rule, that, while the state of things remains unaltered, while the motives which carried the citizen abroad continue, while he still prosecutes a business of uncertain duration, his capacity to prosecute which is not impaired, his mercantile character is confounded with that of the country in which he resides, and his trade is considered as the trade of that country.

It will require but a slight examination of the subject to perceive the reason of this rule; and that, to a certain extent, it is convenient without being unjust.

In times of universal peace, the question of national character can arise only when some privilege or some disability is attached to it, or in cases of insurance. A particular trade may be allowed or be prohibited to the merchants of a particular nation, or property may be warranted to be of a particular nation. If, in such cases, the residence of the individual be received as evidence of his national mercantile character, the subjects of inquiry are simplified, the questions are reduced to a plain one, and the various complex inquiries, which might otherwise arise, are avoided. There is, therefore, much convenience in adopting this principle in such a state of things; and it is not perceived that any injustice can grow out of it; since the individual to whom the rule is applied is not surprised by any new or unlooked-for event.

So if war exists between two nations. Each belligerent *having a right to capture [*295 the property of the other found on the ocean, each being intent on detroying the commerce of the other, and on depriving it of every cover under which it may seek to shelter itself, will certainly not allow the advantages of neutrality to a merchant residing in the country of his enemy. Were this permitted, the whole trade of the enemy could assume, and would assume, a neutral garb.

There is, in general, no reason for supposing that a merchant residing in a foreign country, and carrying on trade, means to withdraw from it, on its engaging in war with any other country to which he is bound by no obligation. By continuing, during war, the domicile acquired in peace, he violates no duty, offends against no generally acknowledged principle, and retains all his rights of residence and commerce. The war, then, furnishes no motive for presuming that he is about to change his situation, and to resume his original national character.

These reasons appear to me to require the rule as a general one, and to justify its application to general cases. But they do not, in my opinion, justify its application to the case of a merchant whom war finds engaged in trade in a country which becomes the enemy of his own. His country ought not, I think, to bind him by his residence during peace; nor to consider him as precluded by it from showing an intention that it should terminate with the relations of peace.

If you are being asked,
“Are you a resident ?”
you are *really* being asked,
“Are you a citizen
of an inferior order ?” [!]

As you can see,
a “domicile” is only
a “resident” with an
intention to stay.

They are both foreigners.

The distinction between a “resident” or “domicile” and a native born Citizen is:

They are at *opposite ends* of the political spectrum.

Indeed, native born Citizens *are to be protected from* foreigners, i.e. aliens.

Examine excerpts from the next case, *Fong Yue Ting v. United States*, 149 U. S. 698 (1893), and you will see:

The right of a nation to expel or deport foreigners . . . is as **absolute** and **unqualified** as the right to prohibit and prevent their entrance into the country.

Residents and **domiciles** can be **deported at will *!***

"It is an accepted maxim of international law that every sovereign nation has the power … to forbid the entrance of foreigners … or to admit them only … **upon such conditions** as it may see fit to prescribe."

***ANY* CONDITIONS** can be put upon foreigners, i.e., aliens, i.e., **residents**, i.e., **domiciles**.

Congress, having the right, as it may see fit, to expel aliens of a particular class or to permit them to remain, has undoubtedly the right **to provide a system of registration and identification** of the members of that class within the country, and to take all proper means to carry out the system which it provides.

"Residents" can be "registered" and required to have government issued identification.

Sound familiar ?

… it appears to be impossible to hold that … [a resident foreigner] acquired … any right … to be and remain in this country except by the license, permission, and sufferance of Congress, to be withdrawn whenever, in its opinion, the public welfare might require it.

How do you like being here by license, permission, and at the sufferance of your government?

And, perhaps the most important:

If [the above were] applied to a citizen, none of the Justices of this Court would hesitate a moment to pronounce it illegal. [*!*]

So, after all of this,
do you still want to be a resident !

There is much more to the Fong Yue Ting case. You may want to Google the case and read it for yourself.

(9 U. S. 698)

FONG YUE TING v. UNITED STATES et al. WONG QUAN v. SAME. LEE JOE v. SAME.

(May 15, 1893.)

Nos. 1,345, 1,346, 1,347.

CHINESE — POWER OF EXCLUSION AND EXPULSION — INTERNATIONAL AND CONSTITUTIONAL LAW — TREATIES.

1. It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. Nishimura Ekiu v. U. S., 12 Sup. Ct. Rep. 336, 142 U. S. 651; Chae Chan Ping v. U. S., 9 Sup. Ct. Rep. 623, 130 U. S. 581; Knox v. Lee, 12 Wall. 457,—followed.

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

3. The political department of the federal government, through the constitutional grant to it of control over international relations, has authority to expel aliens who have taken no steps to become citizens, even though they are subjects of a friendly power, and have acquired a domicile in this country. Mr. Chief Justice Fuller, Mr. Justice Field, and Mr. Justice Brewer, dissenting.

4. Chinese laborers who came to this country after the making of the Chinese treaties of July 28, 1868, and November 17, 1880, (16 Stat. 740; 22 Stat. 826,) acquired no right thereunder, or under the acts of congress in relation to the Chinese, as denizens or otherwise, to remain in this country, except by the license, permission, and sufferance of congress, to be withdrawn whenever, in its opinion, the public welfare might require it. Mr. Chief Justice Fuller, Mr. Justice Field, and Mr. Justice Brewer, dissenting. Chae Chan Ping v. U. S., 9 Sup. Ct. Rep. 623, 130 U. S. 581, followed.

5. Chinese laborers residing in the United States are entitled, like all other aliens, so long as they are permitted by the government to remain in the country, to all the safeguards of the constitution, and to the protection of the laws in regard to their rights of person and of property, and to their civil and criminal responsibility; but, as they have taken no steps to become citizens, and are incapable of becoming such under the naturalization laws, they remain subject to the power of congress to order their expulsion or deportation whenever, in its judgment, such a measure is necessary or expedient for the public interest. Mr. Chief Justice Fuller, Mr. Justice Field, and Mr. Justice Brewer, dissenting.

6. The act of May 5, 1892, requires in section 6 that all Chinese laborers entitled to remain in this country shall within one year from the date of the act obtain from the collector of internal revenue of the districts in which they reside, free of cost, a certificate of residence, which shall be in the nature of a passport enabling him to go into all parts of the United States, and which shall be recorded in the office of the collector; and provides that Chinese laborers who neglect to obtain such certificates, or are found in the United States without them, "shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge." The act makes it the duty of the judge to order that such laborer be deported from the United States, "unless he shall establish clearly, to the satisfaction of said judge, that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of the court, by at least one credible white witness, that he was a resident of the United States at the time of the passage of the act." *Held*, that the proceeding here provided for is in no proper sense a trial and sentence for crime, nor is the order of deportation a banishment in the technical sense, but the whole proceeding is merely a method of enforcing the return to his own country of an alien who fails to comply with the conditions prescribed for his continued residence here; and the provisions of the constitution requiring due process of law and trial by jury, and prohibiting unreasonable searches and seizures and cruel and unusual punishments, have no application. Mr. Chief Justice Fuller, Mr. Justice Field, and Mr. Justice Brewer, dissenting.

7. The provision which puts the burden of proof upon a Chinese laborer arrested for having no certificate, as well as the requirement of proof by one credible white witness that he was a resident of the United States at the time of the passage of the act, is within the acknowledged power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence in the courts of its own government.

8. The provisions of an act of congress passed in the exercise of its constitutional authority must prevail even if they contravene the express stipulations of an earlier treaty.

Appeals from the circuit court of the United States in and for the southern district of New York. Affirmed.

*Statement by Mr. Justice GRAY:

These were three writs of habeas corpus, granted by the circuit court of the United States for the southern district of New York, upon petitions of Chinese laborers arrested and held by the marshal of the district for not having certificates of residence, under section 6 of the act of May 5, 1892, c. 60, which is copied in the margin.[1]

[1] An act to prohibit the coming of Chinese persons into the United States.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, that all laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for a period of ten years from the passage of this act.

Sec. 2. That any Chinese person or person of Chinese descent, when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country: provided, that in any case where such other country, of which such Chinese person shall claim to be a citizen or subject, shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China.

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

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

Sec. 5. That after the passage of this act, on an application to any judge or court of the United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed, and such application shall be heard and determined promptly, without unnecessary delay.

Sec. 6. And it shall be the duty of all Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence; and any Chinese laborer within the limits of the United States, who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as hereinbefore provided, unless he shall establish clearly, to the satisfaction of said judge, that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and if upon the hearing it shall appear that he is so entitled to a certificate, it shall be granted, upon his paying the cost. Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained, and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it; and in such cases the cost of said arrest and trial shall be in the discretion of the court. And any Chinese person other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge.

Sec. 7. That immediately after the passage of this act the secretary of the treasury shall make such rules and regulations as may be necessary for the efficient execution of this act, and shall prescribe the necessary forms and furnish the necessary blanks to enable collectors of internal revenue to issue the certificates required hereby, and make such provisions that certificates may be procured in localities convenient to the applicants. Such certificates shall be issued without charge to the applicant, and shall contain the name, age, local residence, and occupation of the applicant, and such other description of the applicant as shall be prescribed by the secretary of the treasury; and a duplicate thereof shall be filed in the office of the collector of internal revenue for the district within which such Chinaman makes application.

Sec. 8. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate, or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in such certificate, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, or imprisoned in the penitentiary for a term of not more than five years.

Sec. 9. The secretary of the treasury may authorize the payment of such compensation in the nature of fees to the collectors of internal revenue, for services performed under the provisions of this act, in addition to salaries now allowed by law, as he shall deem necessary, not exceeding the sum of one dollar for each certificate issued.

[2] Collectors of internal revenue will receive applications on the following form, at their own offices, from such Chinese as are conveniently located thereto, and will cause their deputies to proceed to the towns or cities in their respective divisions where any considerable number of Chinese are residing, for the purpose of receiving applications. No application will be received later than May 5, 1893.

Collectors and deputies will give such notice, through leading Chinese, or by notices posted in the Chinese quarter of the various localities, as will be sufficient to apprise all Chinese residing in their districts of their readiness to receive applications, and the time and place where they may be made. All applications received by deputies must be forwarded to the collector's office, from whose office all certificates of residence will be issued, and sent to the deputy for delivery.

The affidavit of at least one credible witness of good character to the fact of residence and lawful status within the United States must be furnished with every application. If the applicant is unable to furnish such witness satisfactory to the collector or his deputy, his application will be rejected, unless he shall furnish other proof of his right to remain in the United States, in which case the application, with the proofs presented, shall be forwarded to the commissioner of internal revenue for his decision. The witness must appear before the collector or his deputy, and be fully questioned in regard to his testimony before being sworn.

In all cases of loss or destruction of original certificates of residence, where it can be established to the satisfaction of the collector of the district in which the certificate was issued that such loss or destruction was accidental, and without fault or negligence on the part of the applicant, a duplicate of the original may be issued under the same conditions that governed the original issue.

[2] The rules and regulations made and promulgated by the secretary of the treasury under section 7 of that act prescribe forms for applications for certificates of residence, for affidavits in support thereof, and for the certificates themselves; contain the provisions copied in the margin; and also provide for recording duplicates of the certificates in the office of the collector of internal revenue.

The first petition alleged that the petitioner was a person of the Chinese race, born in China, and not a naturalized citizen of the United States; that in or before 1879 he came to the United States, with the intention of remaining and taking up his residence therein, and with no definite intention of returning to China, and had ever since been a permanent resident of the United States, and for more than a year last past had resided in the city, county, and state of New York, and within the second district for the collection of internal revenue in that state; that he had not, since the passage of the act of 1892, applied to the collector of internal revenue of that district for a

certificate of residence, as required by section 6, and was, and always had been, without such certificate of residence; and that he was arrested by the marshal, claiming authority to do so under that section, without any writ or warrant. The return of the marshal stated that the petitioner was found by him within the jurisdiction of the United States and in the southern district of New York, without the certificate of residence required by that section; that he had, therefore, arrested him, with the purpose and intention of taking him before a United States judge within that district; and that the petitioner admitted to the marshal, in reply to questions put through an interpreter, that he was a Chinese laborer, and was without the required certificate of residence.

The second petition contained similar allegations, and further alleged that the petitioner was taken by the marshal before the district judge for the southern district of New York, and that "the said United States judge, without any hearing of any kind, thereupon ordered that your petitioner be remanded to the custody of the marshal in and for the southern district of New York, and deported forthwith from the United States, as is provided in said act of May 5, 1892, all of which more fully appears by said order, a copy of which is hereto annexed and made a part hereof," and which is copied in the margin;[1] and that he was detained by virtue of the marshal's claim of authority and the judge's order. The marshal returned that he held the petitioner under that order.

In the third case the petition alleged, and the judge's order showed, the following state of facts: On April 11, 1893, the petitioner applied to the collector of internal revenue for a certificate of residence. The collector refused to give him a certificate, on the ground that the witnesses whom he produced to prove that he was entitled to the certificate were persons of the Chinese race, and not credible witnesses, and required of him to produce a witness other than a Chinaman to prove that he was entitled to the certificate, which he was unable to do, because there was no person other than one of the Chinese race who knew and could truthfully swear that he was lawfully within the United States on May 5, 1892, and then entitled to remain therein; and because of such unavoidable cause he was unable to produce a certificate of residence, and was now without one. The petitioner was arrested by the marshal, and taken before the judge, and clearly established to the satisfaction of the judge that he was unable to procure a certificate of residence by reason of the unavoidable cause aforesaid; and also established to the judge's satisfaction, by the testimony of a Chinese resident of New York, that the petitioner was a resident of the United States at the time of the passage of the act; but, having failed to establish this fact clearly to the satisfaction of the court by at least one credible white witness, as required by the statute, the judge ordered the petitioner to be remanded to the custody of the marshal, and to be deported from the United States, as provided in the act.

Each petition alleged that the petitioner was arrested and detained without due process of law, and that section 6 of the act of May 5, 1892, was unconstitutional and void.

In each case the circuit court, after a hearing upon the writ of habeas corpus and the return of the marshal, dismissed the writ of habeas corpus, and allowed an appeal of the petitioner to this court, and admitted him to bail pending the appeal. All the proceedings, from the arrest to the appeal, took place on May 6th.

Jos. H. Choate, J. Hubley Ashton, and Maxwell Evarts, for appellants. Sol. Gen. Aldrich, for appellees.

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

The general principles of public law which lie at the foundation of these cases are clearly established by previous judgments of this court, and by the authorities therein referred to.

In the recent case of Nishimura Ekiu v. U. S., 142 U. S. 651, 659, 12 Sup. Ct. Rep. 336, the court, in sustaining the action of the executive department, putting in force an act of congress for the exclusion of aliens, said: "It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. In the United States this power is vested in the national government, to which the constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the government, and may be exercised either through treaties made by the president and senate or through statutes enacted by congress."

The same views were more fully expounded in the earlier case of Chae Chan Ping v. U. S., 130 U. S. 581, 9 Sup. Ct. Rep. 623, in which the validity of a former act of congress, excluding Chinese laborers from the United States, under the circumstances therein stated, was affirmed.

In the elaborate opinion delivered by Mr. Justice Field in behalf of the court it was said: "Those laborers are not citizens of the United States; they are aliens. That the government of the United States, through the action of the legislative department, can exclude aliens from its territory, is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens, it would be to that extent subject to the control of another power." "The United States, in their relation to foreign countries and their subjects or citizens, are one nation, invested with powers which belong to independent nations, the exercise of which can be invoked for the maintenance of its absolute independence and security throughout its entire territory." 130 U. S. 603, 604, 9 Sup. Ct. Rep. 629.

It was also said, repeating the language of Mr. Justice Bradley in Knox v. Lee, 12 Wall. 457, 555: "The United States is not only a government, but it is a national government, and the only government in this country that has the character of nationality. It is invested with power over all the foreign relations of the country, war, peace, and negotiations and intercourse with other nations; all of which are forbidden to the state governments." 130 U. S. 605, 9 Sup. Ct. Rep. 629. And it was added: "For local interests, the several states of the Union exist; but for international purposes, embracing our relations with foreign nations, we are but one people, one nation, one power." 130 U. S. 606, 9 Sup. Ct. Rep. 630.

The court then went on to say: "To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation; and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character, or from vast hordes of its people crowding in upon us. The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, is necessarily conclusive upon all its departments and officers. If, therefore, the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects. The existence of war would render the necessity of the proceeding only more obvious and pressing. The same necessity, in a less pressing degree, may arise when war does not exist, and the same authority which adjudges the necessity in one case must also determine it in the other. In both cases its determination is conclusive upon the judiciary. If the government of the country of which the foreigners excluded are subjects is dissatisfied with this action, it can make complaint to the executive head of our government, or resort to any other measure which, in its judgment, its interests or dignity may demand; and there lies its only remedy. The power of the government to exclude foreigners from the country, whenever, in its judgment, the public interests require such exclusion, has been asserted in repeated instances, and never denied by the executive or legislative departments." 130 U. S. 606, 607, 9 Sup. Ct. Rep. 631. This statement was supported by many citations from the diplomatic correspondence of successive secretaries of state, collected in Wharton's Int. Law Dig. § 206.

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

This is clearly affirmed in dispatches referred to by the court in Chae Chan Ping's Case. In 1856, Mr. Marcy wrote: "Every society possesses the undoubted right to determine who shall compose its members, and it is exercised by all nations, both in peace and war. A memorable example of the exercise of this power in time of peace was the passage of the alien law of the United States in the year 1798." In 1869, Mr. Fish wrote: "The control of the people within its limits, and the right to expel from its territory persons who are dangerous to the peace of the state, are too clearly within the essential attributes of sovereignty to be seriously contested." Wharton's Int. Law Dig. § 206; 130 U. S. 607, 9 Sup. Ct. Rep. 630.

[1] In the matter of the arrest and deportation of Wong Quan, a Chinese laborer.

Wong Quan, a Chinese laborer, having been arrested in the city of New York on the 6th day of May, 1893, and brought before me, a United States judge, by John W. Jacobus, the marshal of the United States in and for the southern district of New York, as being a Chinese laborer found within the jurisdiction of the United States after the expiration of one year from the passage of the act of congress approved on the 5th day of May, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," without having the certificate of residence required by said act; and the said Wong Quan having failed to clearly establish to my satisfaction that by reason of accident, sickness, or other unavoidable cause he had been unable to procure the said certificate, or that he had procured such certificate, and that the same had been lost or destroyed: Now, on motion of Edward Mitchell, the United States attorney in and for the southern district of New York, it is ordered that the said Wong Quan be, and he hereby is, remanded to the custody of the said John W. Jacobus, the United States marshal in and for the southern district of New York; and it is further ordered, that the said Wong Quan be deported from the United States of America in accordance with the provisions of said act of congress approved on the 5th day of May, 1892.

Dated New York, May 6, 1893.

Addison Brown,

United States District Judge for the Southern District of New York.

islature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution; and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional." "Where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power." McCulloch v. Maryland, 4 Wheat. 316, 421, 423; Juilliard v. Greenman, 110 U. S. 421, 440, 450, 4 Sup. Ct. Rep. 122; Ex parte Yarbrough, 110 U. S. 651, 658, 4 Sup. Ct. Rep. 152; In re Rapier, 143 U. S. 110, 134, 12 Sup. Ct. Rep. 374; Logan v. U. S., 144 U. S. 263, 283, 12 Sup. Ct. Rep. 617.

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.

In Nishimura Ekiu's Case, it was adjudged that, although congress might, if it saw fit, authorize the courts to investigate and ascertain the facts upon which the alien's right to land was made by the statutes to depend, yet congress might intrust the final determination of those facts to an executive officer; and that, if it did so, his order was due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to re-examine the evidence on which he acted, or to controvert its sufficiency. 142 U. S. 660, 12 Sup. Ct. Rep. 336.

The power to exclude aliens, and the power to expel them, rest 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.

The power of congress, therefore, to expel, like the power to exclude, aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers; or congress may call in the aid of the judiciary to ascertain any contested facts on which an alien's right to be in the country has been made by congress to depend.

Congress, having the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of the members of that class within the country, and to take all proper means to carry out the system which it provides.

It is no new thing for the lawmaking power, acting either through treaties made by the president and senate, or by the more common method of acts of congress, to submit the decision of questions, not necessarily of judicial cognizance, either to the final determination of executive officers, or to the decision of such officers in the first instance, with such opportunity for judicial review of their action as congress may see fit to authorize or permit.

For instance, the surrender, pursuant to treaty stipulations, of persons residing or found in this country, and charged with crime in another, may be made by the executive authority of the president alone, when no provision has been made by treaty or by statute for an examination of the case by a judge or magistrate. Such was the case of Jonathan Robbins, under article 27 of the treaty with Great Britain of 1794, in which the president's power in this regard was demonstrated in the masterly and conclusive argument of John Marshall in the house of representatives. 8 Stat. 129; Whart. State Tr. 392; U. S. v. Nash, Bee, 286, 5 Wheat. append. 3. But provision may be made, as it has been by later acts of congress, for a preliminary examination before a judge or commissioner; and in such case the sufficiency of the evidence on which he acts cannot be reviewed by any other tribunal, except as permitted by statute. Act Aug. 12, 1848, c. 167, (9 Stat. 302;) Rev. St. §§ 5270–5274; Ex parte Metzger, 5 How. 176; Benson v. McMahon, 127 U. S. 457, 8 Sup. Ct. Rep. 1240; In re Luis Oteiza y Cortes, 136 U. S. 330, 10 Sup. Ct. Rep. 1031.

So claims to recover back duties illegally exacted on imports may, if congress so provides, be finally determined by the secretary of the treasury. Cary v. Curtis, 3 How. 236; Curtis v. Fiedler, 2 Black, 461, 478, 479; Arnson v. Murphy, 109 U. S. 238, 240, 3 Sup. Ct. Rep. 184. But congress may, as it did for long periods, permit them to be tried by suit against the collector of customs; or it may, as by the existing statutes, provide for their determination by a board of general appraisers, and allow the decisions of that board to be reviewed by the courts in such particulars only as may be prescribed by law. Act June 10, 1890, c. 407, §§ 14, 15, 25, (26 Stat. 137, 138, 141;) In re Fassett, 142 U. S. 479, 486, 487, 12 Sup. Ct. Rep. 295; Passavant v. U. S., 148 U. S. 214, 13 Sup. Ct. Rep. 572.

To repeat the careful and weighty words uttered by Mr. Justice Curtis in delivering a unanimous judgment of this court upon the question what is due process of law:

"To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law or in equity or admiralty, nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination. At the same time there are matters involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper." Murray v. Hoboken, etc., Co., 18 How. 272, 284.

Before examining in detail the provisions of the act of 1892, now in question, it will be convenient to refer to the previous statutes, treaties, and decisions upon the subject.

The act of congress of July 27, 1868, c. 249, (re-enacted in sections 1999–2001, Rev. St.,) began with these recitals: "Whereas, the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas, in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship." It then declared that any order or decision of any officer of the United States to the contrary was inconsistent with the fundamental principles of this government; enacted that "all naturalized citizens of the United States, while in foreign states, shall be entitled to and shall receive from this government the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances;" and made it the duty of the president to take measures to protect the rights in that respect of "any citizen of the United States." 15 Stat. 223, 224.

That act, like any other, is subject to alteration by congress whenever the public welfare requires it. The right of protection which it confers is limited to citizens of the United States. 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. Rev. St. (2d Ed.) §§ 2165, 2169; Acts April 14, 1802, c. 28, (2 Stat. 153;) May 26, 1824, c. 186, (4 Stat. 69;) July 14, 1870, c. 254, § 7, (16 Stat. 256;) Feb. 18, 1875, c. 80, (18 Stat. 318;) In re Ah Yup, 5 Sawy. 155; Act of May 6, 1882, c. 126, § 14, (22 Stat. 61.)

The treaty made between the United States and China on July 28, 1868, contained the following stipulations:

"Art. 5. The United States of America and the emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from one country to the other, for purposes of curiosity, of trade, or as permanent residents.

"Art. 6. Citizens of the United States visiting or residing in China, * * * and, reciprocally, Chinese subjects visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation. But 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.

After some years' experience under that treaty, the government of the United States was brought to the opinion that the presence within our territory of large numbers of Chinese laborers, of a distinct race and religion, remaining strangers in the land, residing apart by themselves, tenaciously adhering to the customs and usages of their own country, unfamiliar with our institutions, and apparently incapable of assimilating with our people, might endanger good order, and be injurious to the public interests, and therefore requested and obtained from China a modification of the treaty. Chew Heong v. U. S., 112 U. S. 536, 542, 543, 5 Sup. Ct. Rep. 255; Chae Chan Ping v. U. S., 130 U. S. 581, 595, 596, 9 Sup. Ct. Rep. 623.

On November 17, 1880, a supplemental treaty was accordingly concluded between the two countries, which contained the following preamble and stipulations:

"Whereas, the government of the United States, because of the constantly increasing immigration of Chinese laborers to the territory of the United States, and the embarrassments consequent upon such immigration, now desires to negotiate a modification of the existing treaties which shall not be in direct contravention of their spirit:

"Article 1. Whenever, in the opinion of the government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country, or of any locality within the territory thereof, the government of China agrees that the government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable, and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a

723 pable of sale and transfer or other disposition; not such as are personal and untransferable in their character." "But far different is this case, where a continued suspension of the exercise of a governmental power is insisted upon as a right, because, by the favor and consent of the government, it has not heretofore been exerted with respect to the appellant, or to the class to which he belongs. Between property rights not affected by the termination or abrogation of a treaty, and expectations of benefits from the continuance of existing legislation, there is as wide a difference as between realization and hopes." 130 U. S. 609, 610, 9 Sup. Ct. Rep. 631.

It thus appears that in that case it was directly adjudged, upon full argument and consideration, that a Chinese laborer, who had been admitted into the United States while the treaty of 1868 was in force, by which the United States and China "cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from one country to the other," not only for the purpose of curiosity or of trade, but "as permanent residents," and who had continued to reside here for 12 years, and who had then gone back to China, after receiving a certificate, in the form provided by act of congress, entitling him to return to the United States, might be refused readmission into the United States, without judicial trial or hearing, and simply by reason of another act of congress, passed during his absence, and declaring all such certificates to be void, and prohibiting all Chinese laborers who had at any time been residents in the United States, and had departed therefrom and not returned before the passage of this act, from coming into the United States.

In view of that decision, which, as before observed, was a unanimous judgment of the court, and which had the concurrence of all the justices who had delivered opinions in the cases arising under the acts of 1882 and 1884, it appears to be impossible to hold that a Chinese laborer acquired, under any of the treaties or acts of congress, any right, as a denizen, or otherwise, to be and remain in this country, except by the license, permission, and sufferance of congress, to be* withdrawn, whenever, in its opinion, the public welfare might require it.

By the law of nations, doubtless, aliens residing in a country, with the intention of making it a permanent place of abode, acquire, in one sense, a domicile there; and, while they are permitted by the nation to retain such a residence and domicile, are subject to its laws, and may invoke its protection against other nations. This is recognized by those publicists who, as has been seen, maintain in the strongest terms the right of the nation to expel any or all aliens at its pleasure. Vatt. Law Nat. lib. 1, c. 19, § 213; 1 Phillim. Int. Law, c. 18, § 321; Mr. Marcy, in Koszta's Case, 2 Whart. Int. Law Dig. § 198. See, also, Lau Ow Bew v. U. S., 144 U. S. 47, 62, 12 Sup. Ct. Rep. 517; Merl. Repert. "Domicile," § 13, quoted in the case above cited, of In re Adam, 1 Moore, P. C. (N. S.) 460, 472, 473.

Chinese laborers, therefore, like all other aliens residing in the United States for a shorter or longer time, are entitled, so long as they are permitted by the government of the United States to remain in the country, to the safeguards of the constitution, and to the protection of the laws, in regard to their rights of person and of property, and to their civil and criminal responsibility. But they continue to be aliens, having taken no steps towards becoming citizens, and incapable of becoming such under the naturalization laws; and therefore remain subject to the power of congress to expel them, or to order them to be removed and deported from the country, whenever, in its judgment, their removal is necessary or expedient for the public interest.

Nothing inconsistent with these views was decided or suggested by the court in Chy Lung v. Freeman, 92 U. S. 275, or in Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. Rep. 1064, cited for the appellants.

In Chy Lung v. Freeman, a statute of the state of California, restricting the immigration of Chinese persons, was held to be unconstitutional and void, because it contravened the grant in the constitutional congress of the power to regulate commerce with foreign nations.

*725 In Yick Wo v. Hopkins the point decided was that the fourteenth amendment of the constitution of the United States, forbidding any state to deprive any person of life, liberty, or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws, was violated by a municipal ordinance of San Francisco, which conferred upon the board of supervisors arbitrary power, without regard to competency of persons or to fitness of places, to grant or refuse licenses to carry on public laundries, and which was executed by the supervisors by refusing licenses to all Chinese residents, and granting them to other persons under like circumstances. The question there was of the power of a state over aliens continuing to reside within its jurisdiction, not of the power of the United States to put an end to their residence in the country.

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

The rest of the act (laying aside, as immaterial, section 5, relating to an application for a writ of habeas corpus "by a Chinese person seeking to land in the United States, to whom that privilege has been denied") deals with two classes of Chinese persons: First, those "not entitled to be or remain in the United States;" and, second, those "entitled to remain in the United States." These words of description neither confer nor take away any right, but simply designate the Chinese persons who were not, or who were, authorized or permitted to remain in the United States under the laws and treaties existing at the time of the passage of this act, but subject, nevertheless, to the power of the United States, absolutely or conditionally, to withdraw the permission, and to terminate the authority to remain.

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

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

The manifest objects of these sections are to provide a system of registration and identification of such Chinese laborers, to require them to obtain certificates of residence, and, if they do not do so within a year, to have them deported from the United States.

Section 6, in the first place, provides that "it shall be the duty of all Chinese laborers, within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence." This provision, by making it the duty of the Chinese laborer to apply to the collector of internal revenue of the district for a certificate, necessarily implies a correlative duty of the collector to grant him a certificate, upon due proof of the requisite facts. What this proof shall be is not defined in the statute, but is committed to the supervision of the secretary of the treasury by section 7, which directs him to make such rules and regulations as may be necessary for the efficient execution of the act, to prescribe the necessary forms, and to make such provisions that certificates may be procured in localities convenient to the applicants, and without charge to them; and the secretary of the treasury has, by such rules and regulations, provided that the fact of residence shall be proved by "at least one credible witness of good character," or, in case of necessity, by other proof. The statute and the regulations, in order to make sure that every *727 such Chinese* laborer may have a certificate, in the nature of a passport, with which he may go into any part of the United States, and that the United States may preserve a record of all such certificates issued, direct that a duplicate of each certificate shall be recorded in the office of the collector who granted it, and may be issued to the laborer upon proof of loss or destruction of his original certificate. There can be no doubt of the validity of these provisions and regulations, unless they are invalidated by the other provisions of section 6.

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

For the reasons stated in the earlier part of this opinion, congress, under the power to exclude or expel aliens, might have directed any Chinese laborer found in the United States without a certificate of residence

shall establish clearly, to the satisfaction of the judge, that by reason of accident, sickness, or other unavoidable cause, he has been unable to secure his certificate, and to the satisfaction of the judge, by at least one credible white witness, that he was a resident of the United States at the time of the passage of the act. His deportation is thus imposed for neglect to obtain a certificate of residence, from which he can only escape by showing his inability to secure it from one of the causes named. That is the punishment for his neglect, and that, being of an infamous character, can only be imposed after indictment, trial, and conviction. If applied to a citizen, none of the justices of this court would hesitate a moment to pronounce it illegal. Had the punishment been a fine, or anything else than of an infamous character, it might have been imposed without indictment; but not so now, unless we hold that a foreigner from a country at peace with us, though domiciled by the consent of our government, is withdrawn from all the guaranties of due process of law prescribed by the constitution, when charged with an offense to which the grave punishment designated is affixed.

The punishment is beyond all reason in its severity. It is out of all proportion to the alleged offense. It is cruel and unusual. As to its cruelty, nothing can exceed a forcible deportation from a country of one's residence, and the breaking up of all the relations of friendship, family, and business there contracted. The laborer may be seized at a distance from his home, his family, and his business, and taken before the judge for his condemnation, without permission to visit his home, see his family, or complete any unfinished business. Mr. Madison well pictures its character in his powerful denunciation of the alien law of 1798, in his celebrated report upon the resolutions, from which we have cited, and concludes, as we have seen, that if a banishment of the sort described be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied.

Again, when taken before a United States judge, he is required, in order to avoid the doom declared, to establish clearly, to the satisfaction of the judge, that by reason of accident, sickness, or other unavoidable cause he was unable to secure his certificate, and that he was a resident of the United States at the time, by at least one credible white witness. Here the government undertakes to exact of the party arrested the testimony of a witness of a particular color, though conclusive and incontestable testimony from others may be adduced. The law might as well have said that unless the laborer should also present a particular person as a witness, who could not be produced, from sickness, absence, or other cause, such as the archbishop of the state, to establish the fact of residence, he should be held to be unlawfully within the United States.

There are numerous other objections to the provisions of the act under consideration. Every step in the procedure provided, as truly said by counsel, tramples upon some constitutional right. Grossly it violates the fourth amendment, which declares that "the right of the people to be secure in their persons * * * against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the * * * persons * * * to be seized."

The act provides for the seizure of the person without oath or affirmation or warrant, and without showing any probable cause by the officials mentioned. The arrest, as observed by counsel, involves a search of his person for the certificate which he is required to have always with him. Who will have the hardihood and effrontery to say that this is not an "unreasonable search and seizure of the person?" Until now it has never been asserted by any court or judge of high authority that foreigners domiciled in this country by the consent of our government could be deprived of the securities of this amendment; that their persons could be subjected to unreasonable searches and seizures, and that they could be arrested without warrant upon probable cause, supported by oath or affirmation.

I will not pursue the subject further. The decision of the court, and the sanction it would give to legislation depriving resident aliens of the guaranties of the constitution, fill me with apprehensions. Those guaranties are of priceless value to every one resident in the country, whether citizen or alien. I cannot but regard the decision as a blow against constitutional liberty, when it declares that congress has the right to disregard the guaranties of the constitution intended for the protection of all men domiciled in the country with the consent of the government, in their rights of person and property. How far will its legislation go? The unnaturalized resident feels it to-day, but if congress can disregard the guaranties with respect to any one domiciled in the country with its consent, it may disregard the guaranties with respect to naturalized citizens. What assurance have we that it may not declare that naturalized citizens of a particular country cannot remain in the United States after a certain day, unless they have in their possession a certificate that they are of good moral character, and attached to the principles of our constitution, which certificate they must obtain from a collector of internal revenue upon the testimony of at least one competent witness of a class or nationality to be designated by the government?

What answer could the naturalized citizen in that case make to his arrest for deportation, which cannot be urged in behalf of the Chinese laborers of to-day?

I am of the opinion that the orders of the court below should be reversed, and the petitioners should be discharged.

Mr. Chief Justice FULLER, dissenting.

I also dissent from the opinion and judgment of the court in these cases.

If the protection of the constitution extends to Chinese laborers who are lawfully within, and entitled to remain in, the United States, under previous treaties and laws, then the question whether this act of congress, so far as it relates to them, is in conflict with that instrument, is a judicial question, and its determination belongs to the judicial department.

However reluctant courts may be to pass upon the constitutionality of legislative acts, it is of the very essence of judicial duty to do so, when the discharge of that duty is properly invoked.

I entertain no doubt that the provisions of the fifth and fourteenth amendments, which forbid that any person shall be deprived of life, liberty, or property without due process of law, are, in the language of Mr. Justice Matthews, already quoted by my Brother Brewer, "universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality;" and although in Yick Wo's Case, 118 U. S. 356, 6 Sup. Ct. Rep. 1064, only the validity of a municipal ordinance was involved, the rule laid down as much applies to congress, under the fifth amendment, as to the states, under the fourteenth. The right to remain in the United States, in the enjoyment of all the rights, privileges, immunities, and exemptions accorded to the citizens and subjects of the most favored nation, is a valuable right, and certainly a right which cannot be taken away without taking away the liberty of its possessor. This cannot be done by mere legislation.

The argument is that friendly aliens, who have lawfully acquired a domicile in this country, are entitled to avail themselves of the safeguards of the constitution only while permitted to remain, and that the power to expel them, and the manner of its exercise, are unaffected by that instrument. It is difficult to see how this can be so, in view of the operation of the power upon the existing rights of individuals; and to say that the residence of the alien, when invited and secured by treaties and laws, is held in subordination to the exertion against him, as an alien, of the absolute and unqualified power asserted, is to import a condition not recognized by the fundamental law. Conceding that the exercise of the power to exclude is committed to the political department, and that the denial of entrance is not necessarily the subject of judicial cognizance, the exercise of the power to expel, the manner in which the right to remain may be terminated, rests on different ground, since limitations exist or are imposed upon the deprivation of that which has been lawfully acquired. And while the general government is invested, in respect of foreign countries and their subjects or citizens, with the powers necessary to the maintenance of its absolute independence and security throughout its entire territory, it cannot, in virtue of any delegated power, or power implied therefrom, or of a supposed inherent sovereignty, arbitrarily deal with persons lawfully within the peace of its dominion. But the act before us is not an act to abrogate or repeal treaties or laws in respect of Chinese laborers entitled to remain in the United States, or to expel them from the country, and no such intent can be imputed to congress. As to them, registration for the purpose of identification is required, and the deportation denounced for failure to do so is by way of punishment to coerce compliance with that requisition. No euphuism can disguise the character of the act in this regard. It directs the performance of a judicial function in a particular way, and inflicts punishment without a judicial trial. It is, in effect, a legislative sentence of banishment, and, as such, absolutely void. Moreover, it contains within it the germs of the assertion of an unlimited and arbitrary power, in general, incompatible with the immutable principles of justice, inconsistent with the nature of our government, and in conflict with the written constitution by which that government was created, and those principles secured.

(149 U. S. 662)

CURTNER et al. v. UNITED STATES.

(May 15, 1893.)

No. 258.

PUBLIC LANDS—RAILROAD GRANTS — LISTINGS TO STATE—CANCELLATION—LIMITATIONS—LACHES.

Certain lands granted to a railroad company were erroneously listed to a state as indemnity school selections, and by it patented to private persons. Discovering its mistake, the land department refused to issue patents to the railroad company, until the erroneous listings were canceled. The company constantly urged upon the department the duty of obtaining the cancellation of such listings and patents, but the government delayed beyond the period of the state statute of limitations. *Held*, that the government's obligation to make patents to the railroad company constituted a sufficient interest to warrant it in maintaining a suit for that purpose, and that the railroad company's continuous claims upon the department prevented the running of the statute or the accrual of laches as against it. Per Mr. Justice Field, dissenting.

So, how is the Supreme Court approved "system of registration and identification" *for residents* implemented in Nevada ?

For starters, the Nevada Revised Statutes comprise some *18,000 pages*.
The term "resident" appears
more than 5,000 times,
in every possible context.
The term "native born Citizen"
appears ZERO TIMES !

One might easily surmise that the Supreme Court approved "*upon such conditions*", which means ANY conditions, translates into *18,000 pages of conditions*, and that the Nevada Revised Statutes should be called the "Nevada Revised Statutes for Residents". **Why should one presume** that the Nevada Revised Statutes *even apply* to native born Citizens?

Close analysis of the Nevada Revised Statutes for the word "resident" yields:

CHAPTER 217
AID TO CERTAIN VICTIMS OF CRIME

NRS 217.065 "Resident" defined. "Resident" means a person who:

1. Is a citizen of the United States or who is lawfully entitled to reside *[resident alien]* in the United States; and

CHAPTER 483 - DRIVERS' LICENSES; DRIVING SCHOOLS AND DRIVING INSTRUCTORS

MOTOR VEHICLE DRIVERS' LICENSES (UNIFORM ACT)

GENERAL PROVISIONS

MOTOR VEHICLE DRIVERS' LICENSES (UNIFORM ACT)

General Provisions

NRS 483.100 "Nonresident" defined. "Nonresident" means every person who is not a resident of this State.

[4:190:1941; 1931 NCL § 4442.03]

NRS 483.141 "Resident" defined.

1. "Resident" includes, but is not limited to, a person:

(a) Whose **legal residence** is in the State of Nevada.

(b) Who **engages in** intrastate **business** and operates in such a business any motor vehicle, trailer or semitrailer, or any person maintaining such vehicles in this State, as the home state of such vehicles.

(c) Who physically resides in this State and **engages in a trade, profession, occupation or accepts gainful employment** in this State.

(d) **Who declares** that he or she is a resident of this State **to obtain privileges** not ordinarily extended to nonresidents of this State.

2. The term does not include a person who is an actual tourist, an out-of-state student, a foreign exchange student, a border state employee or a seasonal resident.

3. The provisions of this section do not apply to drivers of vehicles operated in this State under the provisions of NRS 482.385, 482.390, 482.395 or 706.801 to 706.861, inclusive.

(Added to NRS by 1973, 1569; A 1989, 706; 1997, 1221)

TITLE 2 - CIVIL PRACTICE

CHAPTER 10 - GENERAL PROVISIONS

NRS 10.155 Legal residence. Unless otherwise provided by specific statute, **the legal residence of a person** with reference to the person's right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, **is that place** where the person has been physically present within the State or county, as the case may be, **during all of the period for which residence is claimed** by the person. Should any person absent himself or herself from the jurisdiction of his or her residence with the intention in good faith to return without delay and continue his or her residence, the time of such absence is not considered in determining the fact of residence.

[Part 1:158:1911; RL § 3609; NCL § 6405]—(NRS A 1981, 1861)—(Substituted in revision for NRS 10.020)

Issuance, Expiration and Renewal

NRS 483.230 Licensing of drivers required; vehicle being towed; possession of more than one license prohibited.

1. Except persons expressly exempted in NRS 483.010 to 483.630, inclusive, a person shall not drive any motor vehicle upon a highway in this State unless such person has a valid license as a driver under the provisions of NRS 483.010 to 483.630, inclusive, for the type or class of vehicle being driven.

2. Any person licensed as a driver under the provisions of NRS 483.010 to 483.630, inclusive, may exercise the privilege thereby granted upon all streets and highways of this State and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board or body having authority to adopt local police regulations.

3. Except persons expressly exempted in NRS 483.010 to 483.630, inclusive, a person shall not steer or exercise any degree of physical control of a vehicle being towed by a motor vehicle upon a highway unless such person has a license to drive the type or class of vehicle being towed.

4. A person shall not receive a driver's license until the person surrenders to the Department all valid licenses in his or her possession issued to the person by this or any other jurisdiction. Surrendered licenses issued by another jurisdiction shall be returned by the Department to such jurisdiction. A person shall not have more than one valid driver's license.

[8:190:1941; 1931 NCL § 4442.07]—(NRS A 1969, 538)

NRS 483.250 Issuance of license to certain persons prohibited; exceptions. The Department shall **not** issue any license pursuant to the provisions of NRS 483.010 to 483.630, inclusive:

1. To any person who is under the age of 18 years, except that the Department may issue:

(a) A restricted license to a person between the ages of 14 and 18 years pursuant to the provisions of NRS 483.267 and 483.270.

(b) An instruction permit to a person who is at least 15 1/2 years of age pursuant to the provisions of subsection 1 of NRS 483.280.

(c) A restricted instruction permit to a person under the age of 18 years pursuant to the provisions of subsection 3 of NRS 483.280.

(d) A driver's license to a person who is 16 or 17 years of age pursuant to NRS 483.2521.

2. To any person whose license has been revoked until the expiration of the period during which the person is not eligible for a license.

3. To any person whose license has been suspended, but upon good cause shown to the Administrator, the Department may issue a restricted license to the person or shorten any period of suspension.

4. To any person who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to legal capacity.

5. To any person who is required by NRS 483.010 to 483.630, inclusive, to take an examination, unless the person has successfully passed the examination.

6. To any person when the Administrator has good cause to believe that by reason of physical or mental disability that person would not be able to operate a motor vehicle safely.

7. To any person who is not a resident of this State.

8. To any child who is the subject of a court order issued pursuant to title 5 of NRS which delays the child's privilege to drive.

9. To any person who is the subject of a court order issued pursuant to NRS 206.330 which delays the person's privilege to drive until the expiration of the period of delay.

10. To any person who is not eligible for the issuance of a license pursuant to NRS 483.283.

Violations

NRS 483.530 Unlawful uses of license; prohibited acts related to provision of false information or commission of fraud in connection with application for license or identification card; penalties.

1. Except as otherwise provided in subsection 2, it is a misdemeanor for any person:

(a) To display or cause or permit to be displayed or possess any cancelled, revoked, suspended, fictitious, fraudulently altered or fraudulently obtained driver's license;

(b) To alter, forge, substitute, counterfeit or use an unvalidated driver's license;

(c) To lend his or her driver's license to any other person or knowingly permit the use thereof by another;

(d) To display or represent as one's own any driver's license not issued to him or her;

(e) To fail or refuse to surrender to the Department, a peace officer or a court upon lawful demand any driver's license which has been suspended, revoked or cancelled;

(f) To permit any unlawful use of a driver's license issued to him or her;

(g) To do any act forbidden, or fail to perform any act required, by NRS 483.010 to 483.630, inclusive; or

(h) To photograph, photostat, duplicate or in any way reproduce any driver's license or facsimile thereof in such a manner that it could be mistaken for a valid license, or to display or possess any such photograph, photostat, duplicate, reproduction or facsimile unless authorized by this chapter.

2. Except as otherwise provided in this subsection, **a person** who uses a false or fictitious name in any application for a driver's license or identification card or **who knowingly makes a false statement or knowingly conceals a material fact or otherwise commits a FRAUD in any such application is guilty of a category E felony and shall be punished as provided in** NRS 193.130. If the false statement, knowing concealment of a material fact or other commission of fraud described in this subsection relates solely to the age of a person, including, without limitation, to establish false proof of age to game, purchase alcoholic beverages or purchase cigarettes or other tobacco products, the person is guilty of a misdemeanor.

[40:190:1941; A 1943, 268; 1943 NCL § 4442.39]—(NRS A 1963, 846; 1965, 1006; 1969, 550; 1973, 165; 1989, 555; 2003, 2466; 2005, 1217)

IDENTIFICATION CARDS FOR PERSONS WITHOUT DRIVERS' LICENSES

NRS 483.810 Legislative findings and declaration. The Legislature finds and declares that:

1. A need exists in this State for the creation of a system of identification for:

(a) Residents who are 10 years of age or older and who do not hold a valid driver's license or identification card from any state or jurisdiction; and

(b) Seasonal residents who are 10 years of age or older and who do not hold a valid Nevada driver's license.

2. To serve this purpose, official identification cards must be prepared for issuance to those residents and seasonal residents who are 10 years of age or older and who apply and qualify for them. The cards must be designed in such form and distributed pursuant to such controls that they will merit the general acceptability of drivers' licenses for personal identification.

(Added to NRS by 1975, 785; A 1979, 301; 1997, 1385, 2987; 1999, 437)

NRS 483.820 Persons entitled to card; fees.

1. **A person who applies** for an identification card in accordance with the provisions of NRS 483.810 to 483.890, inclusive, and who is not ineligible to receive an identification card pursuant to NRS 483.861, **is entitled to receive an identification card if the person is:**

(a) A resident of this State and is 10 years of age or older and does not hold a valid driver's license or identification card from any state or jurisdiction; or

The short story on this is,
that you either have to be engaged in commerce, which can be regulated, OR
you have to *declare yourself* to be a resident*!*
(see NRS 483.141, 1 (d), “Who declares…”, and NRS 10.155, “is claimed”)

And, frankly, if you make such a declaration, and you are not a resident, you have committed fraud, a category E felony !
(see NRS 483.530, 2)

Licenses and identification
are ***prohibited***
from being issued to nonresidents.
(see NRS 483.250)

This prevents
DMV employees *from damaging*
native born Citizens !

But YOU have to know
what your political status is,
or you likely will not get this right.

And, you are presumed
to know the law !

And so, analysis of the statutes reveals that one must be a resident to get a license or government identification.

Further, this is CLEARLY shown on the DMV website.

Nevada Department of Motor Vehicles

New Resident Guide

On This Page

- Residency Requirements
- Items Needed for Typical Transfers
- Get Organized/At The DMV
- Driving Tests
- Teen Driving
- Vehicle Registration Fees
- Tax Relief
- License Plates & Disabled Parking
- Motorcycles, Mopeds & Off-Road
- Boats & Manufactured Housing

What's Related

- Print-Friendly Tip Sheets English | Spanish
- Nevada Traffic Laws
- License Central Issuance
- Nevada Motor Vehicle Laws
- Vehicles in Business
- Fleet Registration (10 or more vehicles)
- Motor Carrier (Apportioned Registration)

New Nevada residents must obtain their driver license and vehicle registration within 30 days. The initial fine for failing to register your vehicle is $1,000. It may be reduced to not less than $200 upon compliance.

Residency Requirements

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You must be a Nevada resident and provide a Nevada street address to obtain a driver license.

Active duty military members, their dependents and others living temporarily in Nevada are not required to transfer their license and registration. If you obtain non-military employment, however, you become a Nevada resident and must obtain a Nevada license and registration.

Licenses are not issued to visitors, out-of-state students or foreign exchange students. Other foreign nationals may or may not be eligible for a license depending on their specific immigration status. E-Mail or call for details and see Beginning Drivers 18 & Older.

Nevada Revised Statutes 483.141 "Resident" defined.

1. "Resident" includes, but is not limited to, a person:
   (a) Whose legal residence is in the State of Nevada.
   (b) Who engages in intrastate business and operates in such a business any motor vehicle, trailer or semitrailer, or any person maintaining such vehicles in this state, as the home state of such vehicles.
   (c) Who physically resides in this state and engages in a trade, profession, occupation or accepts gainful employment in this state.
   (d) Who declares himself to be a resident of this state to obtain privileges not ordinarily extended to nonresidents of this state.
2. The term does not include a person who is an actual tourist, an out-of-state student, a foreign exchange student, a border state employee or a seasonal resident.

Items Needed for Typical Transfers

Forms Help | Back To Top

DRIVER LICENSE

And, if you write to the Department of Motor Vehicles, they will, officially,
tell you the same thing.

Jim Gibbons
Governor

DMV
Nevada Department of Motor Vehicles

555 Wright Way
Carson City, Nevada 89711-0900
Telephone (775) 684-4368
www.dmvnv.com

Edgar J. Roberts
Director

October 1, 2010

[redacted]

Dear Mr. [redacted]

In response to your September 28, 2010 correspondence indicating your *third* inquiry to the Department, please be advised that the Department's Regional Manager, Linda Vantilborg, responded to your firm on September 1, 2010

To reiterate said response, please find the following answers to your two inquiries:

- The Department does not issue driver's licenses to any person who is not a Nevada resident, as prescribed by the law in NRS 483.290, 483.245 and 483.230.
- The Department will only issue identification cards to Nevada residents per NRS 483.820 with the exception of persons who are *seasonal residents* as defined in NRS 483.850
- In addition to the above, applicants for a Nevada license or identification card must meet the requirements outlined in NRS 483.290 for a license and NRS 483.340 for an identification card.
- DMV's Website dmvnv.com also lists documents needed for Drivers licenses and Identification cards.

Therefore, if you have any additional questions, please don't hesitate to contact my office at 775/684-4549.

Sincerely,

Edgar J. Roberts

Edgar J Roberts, CPM
Director

Cc: Farrokh Hormazdi, Deputy Director, DMV
Nancy Wojcik, Administrator, Field Services Division, SMV
Linda Vantilborg, Regional Manager, Field Services Division, DMV

MVO1705

It can be pointed out that NRS 483.230 says,

NRS 483.230 Licensing of drivers required; vehicle being towed; possession of more …
2. **Any person licensed** as a driver … **may exercise the privilege thereby granted** …

Question: If the licensee is the grantee of a privilege, ***who is the grantor ???***

Some might answer, "the State".

But, the People ARE the State.

Penhallow, et al. v. Doane's Administrators, 3 U.S. 55, 94 (A.D. 1795)

And the
native born Citizens
ARE
the People.

Foreigners, i.e. aliens,
are **NOT** members of
the People.

It should also be pointed out that NRS 483.810,

NRS 483.810 Legislative findings and declaration. The Legislature finds and declares that:
1. A need exists in this State for the creation of a system of identification for:
(a) Residents . . . .

is ***in perfect accord*** with Fong Yue Ting.

The problem here is not with the law, or the enforcement of the law.

The problem is that **the People don't know who they are *!***

And so this whole subject boils down to **one question** and **one answer**.

The question is:
Are you a resident?

What is your answer?