UNITED STATES V. WONG KIM ARK (1898)

View the case on the National Constitution Center's website here.

SUMMARY

Ratified in 1868, the 14th Amendment opens with the Citizenship Clause. It reads, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Supreme Court addressed the meaning of this key provision in *United States v. Wong Kim Ark*. Wong Kim Ark was born in San Francisco to parents who were both Chinese citizens. At age 21, he took a trip to China to visit his parents. When he returned to the United States, he was denied entry on the grounds that he was not a U.S. citizen. In a 6-2 decision, the Court ruled in favor of Wong Kim Ark. Because he was born in the United States and his parents were not "employed in any diplomatic or official capacity under the Emperor of China," the Citizenship Clause of the 14th Amendment automatically made him a U.S. citizen. This case highlighted a disagreement between the justices over the precise meaning of one key phrase in the Citizenship Clause: "subject to the jurisdiction thereof."

Read the Full Opinion

Excerpt: Majority Opinion, Justice Gray

This case addresses the meaning of the Fourteenth Amendment's Citizenship Clause. The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States by virtue of the first clause of the Fourteenth Amendment of the Constitution, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." . . .

The main purpose of the Citizenship Clause was to reverse *Dred Scott*, ensure that African American could become citizens, and establish the principle of birthright citizenship. As appears upon the face of the amendment, as well as from the history of the times, th[e] [Citizenship Clause] was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States who would thereby have become citizens according to the law existing before its

adoption. It is declaratory in form, and enabling and extending in effect. Its main purpose doubtless was, as has been often recognized by this court, to establish the citizenship of free negroes, which had been denied in the opinion delivered by Chief Justice Taney in *Dred Scott v. Sandford*, . . . and to put it beyond doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States are citizens of the United States. . . . But the opening words, "All persons born," are general, not to say universal, restricted only by place and jurisdiction, and not by color or race . . . .

The Fourteenth Amendment only calls for a narrow group of exceptions to the broad principle of birthright citizenship. The real object of the Fourteenth Amendment of the Constitution, in qualifying the words, "All persons born in the United States" by the addition "and subject to the jurisdiction thereof," would appear to have been to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the National Government, unknown to the common law), the two classes of cases – children born of alien enemies in hostile occupation and children of diplomatic representatives of a foreign State – both of which, . . . by the law of England and by our own law from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country. . . .

The Citizenship Clause applies to children born on American soil to non-citizen parents; if they fall outside of the narrow exceptions written into the Fourteenth Amendment, they become U.S. citizens, even though their parents were citizens of another county. [T]he Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. . . .

Generally speaking, non-citizens must follow American laws when on American soil, so they are "subject to the jurisdiction thereof" within the language of the Citizenship Clause. It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides – seeing that, as said by Mr. Webster, when Secretary of State, in his Report to the President on *Thrasher's Case* in 1851, and since repeated by this court, ". . . it is well known that, by the public law, an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that

government, and may be punished for treason, or other crimes, as a native-born subject might be, unless his case is varied by some treaty stipulations." . . .

Neither the President nor Congress can change this rule; it is part of the Constitution. Whatever considerations, in the absence of a controlling provision of the Constitution, might influence the legislative or the executive branch of the Government to decline to admit persons of the Chinese race to the status of citizens of the United States, there are none that can constrain or permit the judiciary to refuse to give full effect to the peremptory and explicit language of the Fourteenth Amendment, which declares and ordains that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."

The Chinese are not an exception to the general rule. Chinese persons, born out of the United States, remaining subjects of the Emperor of China, and not having become citizens of the United States, are entitled to the protection of, and owe allegiance to, the United States so long as they are permitted by the United States to reside here, and are "subject to the jurisdiction thereof" in the same sense as all other aliens residing in the United States. . . .

The Chinese Exclusion Acts can't change the meaning of the Fourteenth Amendment. The acts of Congress known as the Chinese Exclusion Acts, the earliest of which was passed some fourteen years after the adoption of the Constitutional Amendment, cannot control its meaning or impair its effect, but must be construed and executed in subordination to its provisions. And the right of the United States, as exercised by and under those acts, to exclude or to expel from the country persons of the Chinese race born in China and continuing to be subjects of the Emperor of China, though having acquired a commercial domicil in the United States, has been upheld by this court for reasons applicable to all aliens alike, and inapplicable to citizens of whatever race or color . . . .

Wong Kim Ark is a U.S. citizen. Upon the facts agreed in this case, the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth. . . .

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

Excerpt: Dissent, Justice Field

The Citizenship Clause was a response to *Dred Scott*; however, its reach doesn't extend to non-citizens who owe their allegiance to another country. "By the Thirteenth Amendment of the Constitution, slavery was prohibited. The main object of the opening sentence of the Fourteenth Amendment was to settle the question, upon which there had been a difference of opinion throughout the country and in this court, as to the citizenship of free negroes, *Scott v. Sandford*, . . . and to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and *owing no allegiance to any alien power,* should be citizens of the United States, and of the State in which they reside. . . ."

The Citizenship Clause establishes the principle of birthright citizenship, but there are exceptions to this general rule; the key language reads "subject to the jurisdiction thereof"; this means that the non-citizen must owe full allegiance to the United States and to no other country. "This section contemplates two sources of citizenship, and two sources only: birth and naturalization. The persons declared to be citizens are 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof.' The evident meaning of these last words is not merely subject in some respect or degree to the jurisdiction of the United States, but *completely subject to their political jurisdiction,* and *owing them direct and immediate allegiance.* And the words relate to the time of birth in the one case, as they do to the time of naturalization in the other. *Persons thus subject to the jurisdiction of the United States at the time of birth* cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired."

To meet the requirements of the Citizenship Clause, the non-citizen must not even be partly subject to the political jurisdiction of another country. To be "completely subject" to the political jurisdiction of the United States is to be in no respect or degree subject to the political jurisdiction of any other government. . . .

Chinese citizens living in the United States owe their allegiance to the Emperor of China. Generally speaking, I understand the subjects of the Emperor of China – that ancient Empire, with its history of thousands of years and its unbroken continuity in belief, traditions and government, in spite of revolutions and changes of dynasty – to be bound to him by every conception of duty and by every principle of their religion, of which filial piety is the first and greatest commandment, and formerly, perhaps still, their penal laws denounced the severest penalties on those who renounced their country and allegiance, and their abettors, and, in effect, held the relatives at home of Chinese in foreign lands as hostages for their loyalty. And whatever concession may have been made by treaty in the direction of admitting the right of expatriation in some sense, they seem in the United States to have remained pilgrims and sojourners, as all their fathers were. . . . At all events, they have never been allowed by our laws

to acquire our nationality, and, except in sporadic instances, do not appear ever to have desired to do so.

The Fourteenth Amendment doesn't grant birthright citizenship to children born on U.S. soil to Chinese citizens. The Fourteenth Amendment was not designed to accord citizenship to persons so situated and to cut off the legislative power from dealing with the subject. . . .**Congress and the President can make decisions about whether the children of Chinese parents can become citizens.** I insist that it cannot be maintained that this Government is unable, through the action of the President, concurred in by the Senate, to make a treaty with a foreign government providing that the subjects of that government, although allowed to enter the United States, shall not be made citizens thereof, and that their children shall not become such citizens by reason of being born therein. . . .

Wong Kim Ark doesn't qualify for birthright citizenship under the Fourteenth Amendment. "Born in the United States, and subject to the jurisdiction thereof," and "naturalized in the United States, and subject to the jurisdiction thereof," mean born or naturalized under such circumstances as to be completely subject to that jurisdiction, that is as completely as citizens of the United States, who are, of course, not subject to any foreign power, and can of right claim the exercise of the power of the United States on their behalf wherever they may be. When, then, children are born in the United States to the subjects of a foreign power, with which it is agreed by treaty that they shall not be naturalized thereby, and as to whom our own law forbids them to be naturalized, such children are not born so subject to the jurisdiction as to become citizens, and entitled on that ground to the interposition of our Government, if they happen to be found in the country of their parents' origin and allegiance, or any other. . . .

Fuller lays out the general rule. [T]he Fourteenth Amendment does not exclude from citizenship by birth children born in the United States of parents permanently located therein, and who might themselves become citizens; nor, on the other hand, does it arbitrarily make citizens of children born in the United States of parents who, according to the will of their native government and of this Government, are and must remain aliens.

Wong Kim Ark loses. Tested by this rule, Wong Kim Ark never became and is not a citizen of the United States, and the order of the District Court should be reversed.

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**