

**Ah How Vs. United States**

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**Court :** US Supreme Court

**Decided On :** Feb-23-1904

**Appeal No. :** 193 U.S. 65

**Appellant :** Ah How

**Respondent :** United States

**Judgement :**

Ah How v. United States - 193 U.S. 65 (1904)

U.S. Supreme Court Ah How v. United States, 193 U.S. 65 (1904)

**Ah How v. United States**

**Nos. 307-309, 312**

**Argued January 12, 1904**

**Decided February 23, 1904**

**193 U.S. 65**

*APPEALS FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE EASTERN DISTRICT OF NEW YORK*

## SYLLABUS

The Act of April 29, 1902, c. 641, continuing all laws then in force "so far as the same are not inconsistent with treaty obligations," does not repeal 3 of the Act of May 5, 1892, putting the burden of proving their right to remain in this country on Chinese arrested under the act. Neither does it repeal 6 of the act requiring Chinese laborers who are entitled to remain in the United States to obtain a certificate of residence.

A written statement by a United States commissioner that a Chinese person of a certain name was brought before him and was adjudged to have the right to remain in the United States by reason of being a citizen is not evidence of a judgment.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

These are appeals from judgments of the United States district court confirming decisions of a commissioner and adjudging that the appellants be removed from the United States to China. *Chin Bak Kan v. United States*, [186 U. S. 193](#). The commissioner decided that each of the appellants was a Chinese laborer found without certificate of residence, as required by law, within the United States, and was not entitled to remain within the United States. The facts may be summed up as follows: the appellants were arrested in July, 1902, when working in laundries, they all having failed to produce certificates of residence when called upon to do so by the Chinese inspector. At the hearing before the commissioner, they offered testimony of witnesses other than Chinese that they were residents of the United States on May 5, 1892. Ah How and Chu Do put in evidence that they were not laborers. Yung Lee offered evidence of illness, which he contended made him unable to procure his certificate. Chu Do offered parol evidence that he was born in the United States, and therefore was a citizen, and also that he was a minor

during the time allowed by the statute for obtaining a certificate. Lew Guey offered similar evidence and a certificate of another United States commissioner of a hearing before him and an adjudication that Lew Guey had the right to remain in the United States by reason of being a citizen thereof. The United States offered no evidence beyond the facts stated above.

The ground of appeal common to all the cases is that 3

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and 6 of the Act of May 5, 1892, 27 Stat. 25, have been repealed. By 3, any Chinese person arrested under the provisions of the act shall be adjudged to be unlawfully within the United States unless he shall establish by affirmative proof, to the satisfaction of the judge or commissioner, his right to remain. Of course, if the burden of proof was on the appellants, the commissioner and judge might not be satisfied by the affirmative evidence produced. We are not asked to review the finding of fact. See *Fong Yue Ting v. United States*, [149 U. S. 698](#) , [149 U. S. 714](#) -715. But it is argued that this section is done away with by 1 of the Act of April 29, 1902, c. 641, 32 Stat. 176, continuing all laws then in force, "so far as the same are not inconsistent with treaty obligations." It is said that the section is inconsistent with Article 4 of the Treaty of December 8, 1894, 28 Stat. 1210, agreeing that Chinese laborers, or Chinese of any other class, either permanently or temporarily residing in the United States, shall have, for the protection of their persons and property, all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens. It is pointed out that the Treaty of 1894 with Japan and the Treaty of 1859 with Paraguay give the rights and privileges of native citizens to the subjects of those countries in access to the courts and in the defense of their rights, and it is said that the law as to the burden of proof cuts down those privileges and rights. The section has been upheld, however, by this Court, since the treaty and after the passage of the act. *Chin Bak Kan v. United States*, [186 U. S. 193](#) , [186 U. S. 200](#) ; *United States v. Lee Yen Tai*, [185 U. S. 213](#) . It is not repealed by the laws of 1902. The clause of the treaty had a different object, and, in view of the difficulties encountered in such an investigation, it could not have been supposed

to promise that special measures theretofore taken should not be continued in force for the purpose of ascertaining the very question whether the laborers were lawfully residing in the United States or not. See *Fong Yue Ting v. United States*, [149 U. S. 698](#) , [149 U. S. 730](#) . But it is enough to say that the treaty itself, in Article 5, expressly refers to the act of 1892 as

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amended by the act of 1893, and states that the Chinese government will not object to the enforcement of those acts.

It follows still more clearly from the language of Article 5 of the treaty that 6, as amended by the Act of November 3, 1893, 28 Stat. 7, remains in force. *Lee Lung v. Patterson*, [186 U. S. 168](#) , [186 U. S. 176](#) -177. That section requires Chinese laborers who are entitled to remain in the United States to obtain a certificate of residence from the collector of internal revenue of their district or to be deported, subject to certain excuses. Article 5 of the treaty especially refers to the requirement of registration in the acts of 1892 and 1893, although, as we have said, it states that the enforcement of the acts as a whole will not be objected to. In one or two of the cases, there was a suggestion below that 6 of the act was unconstitutional, but that question was disposed of in *Fong Yue Ting v. United States*, [149 U. S. 698](#) , and was not pressed.

The complaints are objected to as insufficient because, in addition to alleging that the appellants are laborers not entitled to remain in the United States without certificates, it adds the words "having come unlawfully into the United States without certificates," thus implying, it is said, that an unlawful coming into the United States could be legalized by obtaining a certificate. It is enough to say that such objections have been answered by *Fong Yue Ting v. United States*, [149 U. S. 698](#) , [149 U. S. 729](#) , and *Chin Bak Kan v. United States*, [186 U. S. 193](#) , [186 U. S. 199](#) . In the former, it was laid down that "no formal complaint or pleadings are required." That proposition is not affected by the later statutes. We do not mean to imply that there is anything in the objection if we should consider it on its merits.

As to the testimony that two of the appellants were merchants during the period of registration, all that appears is that the commissioner did not believe it. We cannot go outside the record of the specific case for the purpose of inquiring whether the decision was induced by some view of the law which may be open to argument. The same may be said as to the parol testimony as to the age of two of the appellants or their birth in this country. But we may add that it

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by no means follows from the decision in *United States v. Gue Lim*, [176 U. S. 459](#) , that the minor children of laborers, old enough to do work, are not required to have certificates. The language of the statute certainly is broad enough to include them, and does not indicate a division by local laws with regard to coming of age. The principle applicable to the admission into this country of the wife and children of a certificated merchant is not the principle applicable to such a case. As to the certificate of the United States commissioner offered by Lew Guey, it was merely a written statement by the commissioner that a person of that name was brought before him on the usual charge, and was adjudged to have the right to remain in the United States by reason of being a citizen. Apart from the possibility that the commissioner in the present hearing was not satisfied of the identity of the party, such a statement is not the certificate of residence required by the act of 1892, and is not evidence of a judgment. *United States v. Lee Poy Dew*, 119 F. 786. The evidence that Yung Lee was disabled by sickness from obtaining a certificate did not satisfy the commissioner. We cannot say as matter of law that he was bound to be satisfied by the testimony of Yung Lee himself that he was so disabled.

We have assumed, for the purpose of decision, what does not clearly appear from the record -- that the judge who tried the case on appeal tried it solely on the commissioner's report of evidence, and heard no witnesses. Whether the fact could be assumed if the result would be a reversal of the judgment below we need not decide. See *United States v. Lee Seick*, 100 F. 398, 399. There is no other question worthy of notice. We are asked to express an opinion as to the right of the appellants to give bail pending their appeal, but that now is a moot point. We

agree with the government that these cases are covered by previous decisions of this Court.

*Judgment affirmed.*

MR. JUSTICE BREWER and MR. JUSTICE PECKHAM dissent.

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