

March 28, 1898 - United States v. Wong Kim Ark by Philip Chin

United States v. Wong Kim Ark was a landmark Supreme Court case which held that anyone born on United States soil, regardless of the parent's nationality, is a United States citizen.

Wong Kim Ark was born in San Francisco in 1873 to Chinese immigrant parents (although other sources have cited his birth as 1868 or 1871.) In 1890, they moved back to China and Wong went to visit them later that year. He was allowed re-entry to the United States upon his return on the grounds that he was born in the United States and was a citizen. However, a few years later, in 1895, Wong Kim Ark went on another visit to China. When he returned to the US, he was denied entry at San Francisco harbor on the grounds that he was not a US citizen. Under the Naturalization Act of 1790 only "free white persons" of "good moral character" were allowed to become citizens. The Naturalization Act of 1870 had extended this right to "aliens of African nativity and to persons of African descent" but Congress had specifically left out Chinese and other non-white minorities. Moreover, the Chinese Exclusion Act of 1882 forbade Chinese from entering the US as immigrants or to become naturalized US citizens.

Thomas Riordan, a lawyer for the Chinese Consulate in San Francisco and the Chinese Six Companies (Chinese Consolidated Benevolent Association), said that Wong was born in the United States, and was an American perfectly entitled to enter the country. The United States District Attorney argued:

That, as he is informed and believes, the said person in whose behalf said application was made is not entitled to land in the United States, or to be or remain therein, as is alleged in said application, or otherwise.

Because the said Wong Kim Ark, although born in the city and county of San Francisco, State of California, United States of America, is not, under the laws of the State of California and of the United States, a citizen thereof, the mother and father of the said Wong Kim Ark being Chinese persons and subjects of the Emperor of China, and the said Wong Kim Ark being also a Chinese person and a subject of the Emperor of China.

Because the said Wong Kim Ark has been at all times, by reason of his race, language, color and dress, a Chinese person, and now is, and for some time last past has been, a laborer by occupation.

That the said Wong Kim Ark is not entitled to land in the United States, or to be or remain therein, because he does not belong to any of the privileged classes enumerated in any of the acts of Congress, known as the Chinese Exclusion Acts, [*] which would exempt him from the class or classes which are especially excluded from the United States by the provisions of the said acts.

Wherefore the said United States Attorney asks that a judgment and order of this honorable court be made and entered in accordance with the allegations herein contained, and that the said Wong Kim Ark be detained on board of said vessel until released as provided by law, or otherwise to be returned to the country from whence he

came, and that such further order be made as to the court may seem proper and legal in the premises.

The two parties to the case agreed on these facts:

That the said Wong Kim Ark was born in the year 1873, at No. 751 Sacramento Street, in the city and county of San Francisco, State of California, United States of America, and that his mother and father were persons of Chinese descent and subjects of the Emperor of China, and that said Wong Kim Ark was and is a laborer.

That, at the time of his said birth, his mother and father were domiciled residents of the United States, and had established and enjoyed a permanent domicil and residence therein at said city and county of San Francisco, State aforesaid.

That said mother and father of said Wong Kim Ark continued to reside and remain in the United States until the year 1890, when they departed for China.

That during all the time of their said residence in the United States as domiciled residents therein, the said mother and father of said Wong Kim Ark were engaged in the prosecution of business, and were never engaged in any diplomatic or official capacity under the Emperor of China.

That ever since the birth of said Wong Kim Ark, at the time and place hereinbefore stated and stipulated, he has had but one residence, to-wit, a residence in said State of California, in the United States of America, and that he has never changed or lost said residence or gained or acquired another residence, and there resided claiming to be a citizen of the United States.

That, in the year 1890 the said Wong Kim Ark departed for China upon a temporary visit and with the intention of returning to the United States, and did return thereto on July 26, 1890, on the steamship Gaelic, and was permitted to enter the United States by the collector of customs upon the sole ground that he was a native-born citizen of the United States.

That after his said return, the said Wong Kim Ark remained in the United States, claiming to be a citizen thereof, until the year 1894, when he again departed for China upon a temporary visit, and with the intention of returning to the United States, and did return thereto in the month of August, 1895, and applied to the collector of customs to be permitted to land, and that such application was denied upon the sole ground that said Wong in Ark was not a citizen of the United States. [p652]

That said Wong Kim Ark has not, either by himself or his parents acting for him, ever renounced his allegiance to the United States, and that he has never done or committed any act or thing to exclude him therefrom.

The district court ordered Wong Kim Ark discharged from custody as a United States citizen by birth citing previous decisions of the same court. The decision was appealed directly to the United States Supreme Court.

The government stated that because Wong Kim Ark was born of Chinese immigrants, he was subject to the emperor of China, and was not entitled to American citizenship.

The Supreme Court cited the Civil Rights Act of 1866 to show Congress intended to include all those born in the United States as American citizens regardless of race or color:

All persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States, and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains and penalties, and to none other, any law, statute, ordinance, regulation or custom to the contrary notwithstanding.

To insure that no further laws of Congress would ever change this precedent without extraordinary effort the Fourteenth Amendment was passed by Congress in 1868. They also cited a range of precedents from state court cases, British case law, and even the Napoleonic Code to support what they knew would be a controversial decision. In conclusion the United States Supreme Court held in a 6-2 decision (in the selected excerpts below) that:

The foregoing considerations and authorities irresistibly lead us to these conclusions: the Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.

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

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."

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

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

This was a huge legal victory for Chinese Americans during a time of intense anti-Chinese sentiments in the country. Prior to the case, birthplace was not enough to constitute citizenship, in fact many places in the world at the time still held that the citizenship of the father decided the citizenship of the child. The Supreme Court's decision to acknowledge both citizenship by place of birth (*jus soli*) and citizenship inherited from the father (*jus sanguinis*) thus became established United States law.¹ Wong's eldest son, Wong Yoke Fun, was denied admission to the US in 1910 based upon discrepancies between interrogation answers between him and his father.² Three other sons were admitted as US citizens in 1924, 1925, and 1926 by *jus sanguinis*.

Wong Kim Ark's case has been cited in a few other Supreme Court cases. In 1939, it was cited to decide *Perkins v. Elg*, where a US born woman had allegedly lost her citizenship when her parents took her back to Sweden as a baby. Wong Kim Ark was also mentioned in the 1967 case *Afroyim v. Rug*, in which a naturalized US citizen had moved to Israel and participated in an Israeli election. When he tried to apply for a US passport, he was denied. The case decided that a citizen cannot forcibly lose citizenship, *US v. Wong Kim Ark* had determined that those born in the United States or naturalized citizens retained the rights of a US citizen until they voluntarily let go of them.

The major effect of the Wong Kim Ark case was to grant birthright citizenship to many millions of children whose parents were legal and illegal immigrants, most of whom grew up to become productive Americans who have contributed greatly to the greatness and wealth of American life. Some members of Congress have attempted to change the law to deny citizenship to the children of illegal immigrants in the US ever since the Wong Kim Ark case was decided. However, such legislation cannot pass unless the Supreme Court overturns its decision on Wong Kim Ark and a constitutional amendment is passed to change the Citizenship Clause in the 14th Amendment.

Wong Kim Ark is still considered a pioneer and symbol of resistance by Asian American activists and activists from all immigrant communities fighting against racist and xenophobic legislation. In 1998, the San Francisco Board of Supervisors declared March 28 "Wong Kim Ark Day" in honor of the 100th anniversary of the court decision.

External Links: <http://supreme.justia.com/cases/federal/us/169/649/case.html>

¹ *Jus Sanguinis* would apply where a child was born abroad to American parents or theoretically in foreign occupied territory of the United States during a war.

² http://upload.wikimedia.org/wikipedia/commons/e/e2/Wong_Yoke_Fun_immigration_denial.png