partners. Against this view there is, we think, an insuperable objection. By section 5118 of the Revised Statutes, formerly section 33 of the act of March 2, 1867, c. 176, (14 St. 533,) the rule of the common law, as declared by this court in Mason v. Eldred, 6 Wall. 231, that a judgment against one upon a contract, merely joint, of several persons, bars an action against the others on the same contract, is rendered entirely inapplicable to adjudications in bankruptcy. That section provides: "No discharge * * * shall release, discharge, or affect any person liable for the same debt for or with the bankrupt, either as partner, joint contractor, indorser, surety, or otherwise." If the discharge of the two bankrupt partners, which is the final judgment in the proceedings, cannot estop the creditor from afterwards setting up the liability of the third partner for the joint debt, clearly the other and previous adjudication in the course of the proceedings cannot be held to have that effect. Though the action in the court below was brought against the three defendants, the jury was directed by the court to render its verdict against Abendroth alone, and the judgment was entered up against him alone, *75 thus fully recognizing the validity and force of the adjudication of bankruptcy of the other two partners. This form of action for enforcing the liability of a special partner, imposed by the statute of New York, has been decided by the New York court of appeals to be the proper one in the cases of Durant v. Abendroth, 97 N. Y. 132; Sharp v. Hutchinson, 100 N. Y. 533, 3 N. E. Rep. 500; and Durant v. Abendroth, 69 N. Y. 148. We think these decisions are correct. The judgment of the court below is affirmed.

BLATCHFORD, J., took no part in the decision of this case.

(130 U. S. 581)

CHAE CHAN PING v. UNITED STATES.[1]

(May 13, 1889.)

1. CHINESE—ACT OCT. 1, 1888—TREATY RIGHTS.
The fact that the Chinese exclusion act of Oct. 1, 1888, violates existing treaties with China, is no objection to its validity. Treaties are of no higher dignity than acts of congress, and may be modified or repealed by congress in like manner; and whether such modification or repeal is wise or just is not a judicial question.

2. SAME—CERTIFICATES OF IDENTITY.
The certificates of identity issued under the act of May 6, 1882, were mere licenses, revocable at the pleasure of congress.

3. ALIENS—POWER OF CONGRESS TO EXCLUDE.
Congress has power, even in times of peace, to exclude aliens from, or prevent their return to, the United States, for any reason it may deem sufficient.

Appeal from the Circuit Court of the United States for the Northern District of California.

Thos. D. Riordan, Harvey S. Brown, George Hoadly, and *Jas. C. Carter,* for appellant. *Sol. Gen. Jenks,* for the United States. *Geo. A. Johnson, John F. Swift,* and *Stephen M. White,* for the State of California.

FIELD, J. This case comes before us on appeal from an order of the circuit court of the United States for the Northern district of California, refusing to release the appellant, on a writ of *habeas corpus*, from his alleged unlawful detention by Capt. Walker, *582 master of the steam-ship Belgic, lying within the harbor of San Francisco. The appellant is a subject of the emperor of China, and a laborer by occupation. He resided at San Francisco, Cal., following his occupation, from some time in 1875 until June 2, 1887, when he left for China on the steam-ship Gaelic, having in his possession a certificate in terms entitling him to return to the United States, bearing date on that day, duly issued to him by the collector of customs of the port of San Francisco, pursuant to the provisions of section 4 of the restriction act of May 6, 1882, as amended by the act of July 5, 1884, (22 St. p. 59, c. 126; 23 St. p. 115, c. 220.) On the 7th of September, 1888, the appellant, on his return to California, sailed from Hong Kong in the steam-ship Belgic, which arrived within the port of San Francisco on the 8th of October following. On his arrival he presented to the proper custom-house officers his certificate, and demanded permission to land. The collector of the port refused the permit, solely on the ground that under the act of congress approved October 1, 1888, supplementary to the restriction acts of 1882 and 1884, the certificate had been annulled, and his right to land abrogated, and he had been thereby forbidden again to enter the United States. 25 St. p. 504, c. 1064. The captain of the steam-ship, therefore, detained the appellant on board the steamer. Thereupon a petition on his behalf was presented to the circuit court of the United States for the Northern district of California, alleging that he was unlawfully restrained of his liberty, and praying that a writ of *habeas corpus* might be issued directed to the master of the steam-ship, commanding him to have the body of the appellant, with the cause of his detention, before the court at a time and place designated, to do and receive what might there be considered in the premises. A writ was accordingly issued, and in obedience to it the body of the appellant was produced before the court. Upon the hearing which followed, the court, after finding the facts substantially as stated, held as conclusions of law that the appellant was not entitled to enter the United States, and was not unlawfully restrained of his liberty, and ordered that he be remanded to the custody of the master of the steam-ship from which he had been taken under the writ. From this order an appeal was taken to this court. *583 *589

*The appeal involves a consideration of the validity of the act of congress of October 1, 1888, prohibiting Chinese laborers from en-

[1] Affirming 36 Fed. Rep. 431.

tering the United States who had departed before its passage, having a certificate issued under the act of 1882 as amended by the act of 1884, granting them permission to return. The validity of the act is assailed as being in effect an expulsion from the country of Chinese laborers, in violation of existing treaties between the United States and the government of China, and of rights vested in them under the laws of congress.

It will serve to present with greater clearness the nature and force of the objections to the act if a brief statement be made of the general character of the treaties between the two countries, and of the legislation of congress to carry them into execution. *590 The first treaty between the United States and the empire of China was concluded on the 3d of July, 1844, and ratified in December of the following year. 8 St. 592. Previous to that time there had been an extensive commerce between the two nations, that to China being confined to a single port. It was not, however, attended by any serious disturbances between our people there and the Chinese. In August, 1842, as the result of a war between England and China, a treaty was concluded stipulating for peace and friendship between them, and, among other things, that British subjects, with their families and establishments, should be allowed to reside for the purpose of carrying on mercantile pursuits at the five principal ports of the empire. 6 Hert. Treaties, 221. Actuated by a desire to establish by treaty friendly relations between the United States and the Chinese empire, and to secure to our people the same commercial privileges which had been thus conceded to British subjects, congress placed at the disposal of the president the means to enable him to establish future commercial relations between the two countries, "on terms of national equal reciprocity." Act March, 1843, c. 90, (5 St. 624.) A mission was accordingly sent by him to China, at the head of which was placed Mr. Caleb Cushing, a gentleman of large experience in public affairs. He found the Chinese government ready to concede by treaty to the United States all that had been reluctantly yielded to England through compulsion. As the result of his negotiations, the treaty of 1844 was concluded. It stipulated, among other things, that there should be a "perfect, permanent, and universal peace, and a sincere and cordial amity," between the two nations; that the five principal ports of the empire should be opened to the citizens of the United States, who should be permitted to reside with their families and trade there, and to proceed with their vessels and merchandise to and from any foreign port and either of said five ports; and while peaceably attending to their affairs should receive the protection of the Chinese authorities. Senate Document No. 138, 28th Cong. 2d Sess. *591 The treaty between England and China did not have the effect of securing permanent peace and friendship between those countries. British subjects in China were often subjected, not only to the violence of mobs, but to insults and outrages from local authorities of the country, which led to retaliatory measures for the punishment of the aggressors. To such an extent were these measures carried, and such resistance offered to them, that in 1856 the two countries were in open war. England then determined with the co-operation of France, between which countries there seemed to be perfect accord, to secure from the government of China, among other things, a recognition of the right of other powers to be represented there by accredited ministers, an extension of commercial intercourse with that country, and stipulations for religious freedom to all foreigners there, and for the suppression of piracy. England requested of the president the concurrence and active co-operation of the United States similar to that which France had accorded, and to authorize our naval and political authorities to act in concert with the allied forces. As this proposition involved a participation in existing hostilities, the request could not be acceded to, and the secretary of state in his communication to the English government explained that the war-making power of the United States was not vested in the president, but in congress, and that he had no authority, therefore, to order aggressive hostilities to be undertaken. But as the rights of citizens of the United States might be seriously affected by the results of existing hostilities, and commercial intercourse between the United States and China be disturbed, it was deemed advisable to send to China a minister plenipotentiary to represent our government, and watch our interests there. Accordingly, Mr. William B. Reed, of Philadelphia, was appointed such minister, and instructed, while abstaining from any direct interference, to aid by peaceful cooperation the objects the allied forces were seeking to accomplish. Senate Document No. 47, 35th Cong. 1st Sess. Through him a new treaty was negotiated with the Chinese government. It was concluded in June, 1858, and ratified in August of the following year. *12 St. 1023. It reiterated the pledges *592 of peace and friendship between the two nations, renewed the promise of protection to all citizens of the United States in China peaceably attending to their affairs, and stipulated for security to Christians in the profession of their religion.

Neither the treaty of 1844 nor that of 1858 touched upon the migration and emigration of the citizens and subjects of the two nations, respectively, from one country to the other. But in 1868 a great change in the relations of the two nations was made in that respect. In that year a mission from China, composed of distinguished functionaries of that empire, came to the United States with the professed object of establishing closer relations between the two countries and their peoples. At its head was placed Mr. Anson Burlingame, an eminent citizen of the United

States, who had at one time represented this country as commissioner to China. He resigned his office under our government to accept the position tendered to him by the Chinese government. The mission was hailed in the United States as the harbinger of a new era in the history of China,—as the opening up to free intercourse with other nations and peoples a country that for ages had been isolated and closed against foreigners, who were allowed to have intercourse and to trade with the Chinese only at a few designated places; and the belief was general, and confidently expressed, that great benefits would follow to the world generally, and especially to the United States. On its arrival in Washington, additional articles to the treaty of 1858 were agreed upon, which gave expression to the general desire that the two nations and their peoples should be drawn closer together. The new articles, eight in number, were agreed to on the 28th of July, 1868, and ratifications of them were exchanged at Pekin in November of the following year. 16 St. 739. Of these articles, the fifth, sixth, and seventh are as follows: "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 the one country to the other for purposes of curiosity, of trade, or as permanent residents. The high contracting parties, therefore, join in reprobating any other than an entirely voluntary emigration for these purposes. They consequently agree to pass laws making it a penal offense for a citizen of the United States or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country, or for a Chinese subject or citizen of the United States to take citizens of the United States to China or to any other foreign country, without their free and voluntary consent, respectively. Art. 6. Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation; and, reciprocally, Chinese subjects visiting or residing in the United 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. Art. 7 Citizens of the United States shall enjoy all the privileges of the public educational institutions under the control of the government of China, and, reciprocally, Chinese subjects shall enjoy all the privileges of the public educational institutions under the control of the government of the United States, which are enjoyed in the respective countries by the citizens or subjects of the most favored nation. The citizens of the United States may freely establish and maintain schools within the empire of China at those places where foreigners are by treaty permitted to reside; and, reciprocally, Chinese subjects may enjoy the same privileges and immunities in the United States."

But notwithstanding these strong expressions of friendship and good will, and the desire they evince for free intercourse, events were transpiring on the Pacific coast which soon dissipated the anticipations indulged as to the benefits to follow the immigration of Chinese to this country. The previous treaties of 1844 and 1858 were confined principally to mutual declarations of peace and friendship, and to stipulations for commercial intercourse at certain ports in China, and for protection to our citizens while peaceably attending to their affairs. It was not until the additional articles of 1868 were adopted that any public declaration was made by the two nations that there were advantages in the free migration and emigration of their citizens and subjects, respectively, from one country to the other, and stipulations given that each should enjoy in the country of the other, with respect to travel or residence, the "privileges, immunities, and exemptions" enjoyed by citizens or subjects of the most favored nation. Whatever modifications have since been made to these general provisions have been caused by a well-founded apprehension—from the experience of years—that a limitation to the immigration of certain classes from China was essential to the peace of the community on the Pacific coast, and possibly to the preservation of our civilization there. A few words on this point may not be deemed inappropriate here, they being confined to matters of public notoriety, which have frequently been brought to the attention of congress. Report of Committee of H. R. No. 872, 46th Cong. 2d Sess.

The discovery of gold in California in 1848, as is well known, was followed by a large immigration thither from all parts of the world, attracted not only by the hope of gain from the mines, but from the great prices paid for all kinds of labor. The news of the discovery penetrated China, and laborers came from there in great numbers, a few with their own means, but by far the greater number under contract with employers, for whose benefit they worked. These laborers readily secured employment, and, as domestic servants, and in various kinds of outdoor work, proved to be exceedingly useful. For some years little opposition was made to them, except when they sought to work in the mines, but, as their numbers increased, they began to engage in various mechanical pursuits and trades, and thus came in competition with our artisans and mechanics, as well as our laborers in the field. The competition steadily increased as the laborers came in crowds on each steamer that arrived from China, or Hong Kong, an adjacent En-

glish port. They were generally industrious and frugal. Not being accompanied by families, except in rare instances, their expenses were small; and they were content with the simplest fare, such as would not suffice for our laborers and artisans. The competition between them and our people was for this reason altogether in their favor, and the consequent irritation, proportionately deep and bitter, was followed, in many cases, by open conflicts, to the great disturbance of the public peace. The differences of race added greatly to the difficulties of the situation. Notwithstanding the favorable provisions of the new articles of the treaty of 1868, by which all the privileges, immunities, and exemptions were extended to subjects of China in the United States which were accorded to citizens or subjects of the most favored nation, they remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country. It seemed impossible for them to assimilate with our people, or to make any change in their habits or modes of living. As they grew in numbers each year the people of the coast saw, or believed they saw, in the facility of immigration, and in the crowded millions of China, where population presses upon the means of subsistence, great danger that at no distant day that portion of our country would be overrun by them, unless prompt action was taken to restrict their immigration. The people there accordingly petitioned earnestly for protective legislation.

In December, 1878, the convention which framed the present constitution of California, being in session, took this subject up, and memorialized congress upon it, setting forth, in substance, that the presence of Chinese laborers had a baneful effect upon the material interests of the state, and upon public morals; that their immigration was in numbers approaching the character of an Oriental invasion, and was a menace to our civilization; that the discontent from this cause was not confined to any political party, or to any class or nationality, but was well nigh universal; that they retained the habits and customs of their own country, and in fact constituted a *596 Chinese settlement within the state, without any interest in our country or its institutions; and praying congress to take measures to prevent their further immigration. This memorial was presented to congress in February, 1879. So urgent and constant were the prayers for relief against existing and anticipated evils, both from the public authorities of the Pacific coast and from private individuals, that congress was impelled to act on the subject. Many persons, however, both in and out of congress, were of opinion that, so long as the treaty remained unmodified, legislation restricting immigration would be a breach of faith with China. A statute was accordingly passed appropriating money to send commissioners to China to act with our minister there in negotiating and concluding by treaty a settlement of such matters of interest between the two governments as might be confided to them. 21 St. p. 133, c. 88. Such commissioners were appointed, and as the result of their negotiations the supplementary treaty of November 17, 1880, was concluded and ratified in May of the following year. 22 St. 826. It declares in its first article that "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 character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse." In its second article it declares that "Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in *597 the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation."

The government of China thus agreed that, notwithstanding the stipulations of former treaties, the United States might regulate, limit, or suspend the coming of Chinese laborers, or their residence therein, without absolutely forbidding it, whenever in their opinion the interests of the country, or of any part of it, might require such action. Legislation for such regulation, limitation, or suspension was intrusted to the discretion of our government, with the condition that it should only be such as might be necessary for that purpose, and that the immigrants should not be maltreated or abused. On the 6th of May, 1882, an act of congress was approved, to carry this supplementary treaty into effect. 22 St. 58, c. 126. It is entitled "An act to execute certain treaty stipulations relating to Chinese." Its first section declares that after 90 days from the passage of the act, and for the period of 10 years from its date, the coming of Chinese laborers to the United States is suspended, and that it shall be unlawful for any such laborer to come, or, having come, to remain within the United States. The second makes it a misdemeanor, punishable by fine, to which imprisonment may be added, for the master of any vessel knowingly to bring within the United States from a foreign

country, and land, any such Chinese laborer. The third provides that those two sections shall not apply to Chinese laborers who were in the United States November 17, 1880, or who shall come within 90 days after the passage of the act. The fourth declares that, for the purpose of identifying the laborers who were here on the 17th of November, 1880, or who should come within the 90 days mentioned, and to furnish them with "the proper evidence" of their right to go from and come to the United States, the "collector of customs of the district from which any such Chinese laborer shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such *598 Chinese laborer and cleared or about to sail from his district for a foreign port, and on such vessel make a list of all such Chinese laborers, which shall be entered in registry books to be kept for that purpose, in which shall be stated the name, age, occupation, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the custom-house;" and each laborer thus departing shall be entitled to receive, from the collector or his deputy, a certificate containing such particulars, corresponding with the registry, as may serve to identify him. "The certificate herein provided for," says the section, "shall entitle the Chinese laborer to whom the same is issued to return to and reenter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer shall seek to re-enter."

The enforcement of this act with respect to laborers who were in the United States on November 17, 1880, was attended with great embarrassment, from the suspicious nature, in many instances, of the testimony offered to establish the residence of the parties, arising from the loose notions entertained by the witnesses of the obligation of an oath. This fact led to a desire for further legislation restricting the evidence receivable, and the amendatory act of July 5, 1884, was accordingly passed. 23 St. p. 115, c. 220. The committee of the house of representatives on foreign affairs, to whom the original bill was referred, in reporting it, recommending its passage, stated that there had been such manifold evasions, as well as attempted evasions, of the act of 1882, that it had failed to meet the demands which called it into existence. Report in H. R. No. 614, 48th Cong. 1st Sess. To obviate the difficulties attending its enforcement, the amendatory act of 1884 declared that the certificate which the laborer must obtain "shall be the only evidence permissible to establish his right of reentry" into the United States. This act was held by this court not to require the certificate from laborers who were in the United States on the 17th of November, 1880, who had departed out of the country before May 6, 1882, and remained out until after July 5, 1884. *Chew Heong v. U. S., 112 U. S. 536, 5 Sup. Ct. Rep. 255. The same difficulties and embarrassments continued with respect to the proof of their former residence. Parties were able to pass successfully the required examination as to their residence before November 17, 1880, who, it was generally believed, had never visited our shores. To prevent the possibility of the policy of excluding Chinese laborers being evaded, the act of October 1, 1888, the validity of which is the subject of consideration in this case, was passed. It is entitled "An act a supplement to an act entitled 'An act to execute certain treaty stipulations relating to Chinese,' approved the 6th day of May, eighteen hundred and eigthy-two." 25 St. p. 504, c. 1064. It is as follows: "Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, that from and after the passage of this act it shall be unlawful for any Chinese laborer who shall at any time heretofore have been, or who may now or hereafter be, a resident within the United States, and who shall have departed, or shall depart, therefrom, and shall not have returned before the passage of this act, to return to or remain in the United States. Sec. 2. That no certificates of identity provided for in the fourth and fifth sections of the act to which this is a supplement shall hereafter be issued; and every certificate heretofore issued in pursuance thereof is hereby declared void and of no effect, and the Chinese laborer claiming admission by virtue thereof shall not be permitted to enter the United States. Sec. 3. That all the duties prescribed, liabilities, penalties, and forfeitures imposed, and the powers conferred, by the second, tenth, eleventh, and twelfth sections of the act to which this is a supplement, are hereby extended, and made applicable to the provisions of this act. Sec. 4. That all such part or parts of the act to which this is a supplement as are inconsistent herewith are hereby repealed. Approved October 1, 1888."

The validity of this act, as already mentioned, is assailed, as being in effect an ex- *600 pulsion from the country of Chinese laborers, in violation of existing treaties between the United States and the government of China, and of rights vested in them under the laws of congress. The objection that the act is in conflict with the treaties was earnestly pressed in the court below, and the answer to it constitutes the principal part of its opinion. 36 Fed. Rep. 431. Here the objection made is that the act of 1888 impairs a right vested under the treaty of 1880, as a law of the United States, and the statutes of 1882 and of 1884 passed in execution of it. It must be conceded that the act of 1888 is in contravention of express stipulations of the treaty of 1868, and of the supplemental treaty of 1880, but it is not on that account invalid, or to be restricted in its enforcement. The treaties were of no greater legal obligation than the act of congress. By the constitution, laws made in pursuance there-

of, and treaties made under the authority of the United States, are both declared to be the supreme law of the land, and no paramount authority is given to one over the other. A treaty, it is true, is in its nature a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of congress. In either case the last expression of the sovereign will must control.

The effect of legislation upon conflicting treaty stipulations was elaborately considered in the Head-Money Cases, and it was there adjudged "that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as congress may pass for its enforcement, modification, or repeal." 112 U. S. 580, 599, 5 Sup. Ct. Rep. 247. This doctrine was affirmed and followed in Whitney v. Robertson, 124 U. S. 190, 195, 8 Sup. Ct. Rep. 456. It will not be presumed that the legislative department of the government will lightly pass laws which are in conflict with the treaties of the country; but
*601 that circumstances may arise which would not only justify the government in *disregarding their stipulations, but demand in the interests of the country that it should do so, there can be no question. Unexpected events may call for a change in the policy of the country. Neglect or violation of stipulations on the part of the other contracting party may require corresponding action on our part. When a reciprocal engagement is not carried out by one of the contracting parties, the other may also decline to keep the corresponding engagement. In 1798 the conduct towards this country of the government of France was of such a character that congress declared that the United States were freed and exonerated from the stipulations of previous treaties with that country. Its act on the subject was as follows: "An act to declare the treaties heretofore concluded with France no longer obligatory on the the United States. Whereas, the treaties concluded between the United States and France have been repeatedly violated on the part of the French government, and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity; and whereas, under authority of the French government, there is yet pursued against the United States a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation: be it enacted by the senate and house of representatives of the United States of America, in congress assembled, that the United States are of right freed and exonerated from the stipulations of the treaties, and of the consular convention, heretofore concluded between the United States and France, and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States." 1 St. 578.

This act, as seen, applied in terms only to the future. Of course, whatever of a permanent character had been executed or vested under the treaties was not affected by it. In
*602 that respect the abrogation of the obligations of a treaty operates, like the repeal of a law, only upon the future, leaving transactions executed under it to stand unaffected. The validity of this legislative release from the stipulations of the treaties was, of course, not a matter for judicial cognizance. The question whether our government is justified in disregarding its engagements with another nation is not one for the determination of the courts. This subject was fully considered by Mr. Justice CURTIS, while sitting at the circuit, in Taylor v. Morton, 2 Curt. 454, 459, and he held that, while it would always be a matter of the utmost gravity and delicacy to refuse to execute a treaty, the power to do so was prerogative, of which no nation could be deprived without deeply affecting its independence; but whether a treaty with a foreign sovereign had been violated by him, whether the consideration of a particular stipulation of a treaty had been voluntarily withdrawn by one party so as to no longer be obligatory upon the other, and whether the views and acts of a foreign sovereign, manifested through his representative, had given just occasion to the political departments of our government to withhold the execution of a promise contained in a treaty or to act in direct contravention of such promise, were not judicial questions; that the power to determine them has not been confided to the judiciary, which has no suitable means to execute it, but to the executive and legislative departments of the government; and that it belongs to diplomacy and legislation, and not to the administration of existing laws. And the learned justice added, as a necessary consequence of these conclusions, that if congress has this power it is wholly immaterial to inquire whether it has, by the statute complained of, departed from the treaty or not; or, if it has, whether such departure was accidental or designed; and, if the latter, whether the reasons therefor were good or bad. These views were reasserted and fully adopted by this court in Whitney v. Robertson, 124 U. S. 190, 195, 8 Sup. Ct. Rep. 456. And we may add, to the concluding observation of the learned justice, that, if the power mentioned is vested in congress, any reflection upon its motives, or the motives of any of its members in exercising it,
*603 would be entirely uncalled for. This court is not a censor of the morals of other depart- ments of the government; it is not invested

with any authority to pass judgment upon the motives of their conduct. When once it is established that congress possesses the power to pass an act, our province ends with its construction and its application to cases as they are presented for determination. Congress has the power under the constitution to declare war, and in two instances where the power has been exercised—in the war of 1812 against Great Britain, and in 1846 against Mexico—the propriety and wisdom and justice of its action were vehemently assailed by some of the ablest and best men in the country, but no one doubted the legality of the proceeding, and any imputation by this or any other court of the United States upon the motives of the members of congress who in either case voted for the declaration, would have been justly the cause of animadversion. We do not mean to intimate that the moral aspects of legislative acts may not be proper subjects of consideration. Undoubtedly they may be, at proper times and places, before the public, in the halls of congress, and in all the modes by which the public mind can be influenced. Public opinion thus enlightened, brought to bear upon legislation, will do more than all other causes to prevent abuses; but the province of the courts is to pass upon the validity of laws, not to make them, and, when their validity is established, to declare their meaning and apply their provisions. All else lies beyond their domain.

There being nothing in the treaties between China and the United States to impair the validity of the act of congress of October 1, 1888, was it on any other ground beyond the competency of congress to pass it? If so, it must be because it was not within the power of congress to prohibit Chinese laborers who had at the time departed from the United States, or should subsequently depart, from returning to the United States. 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 *604 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. As said by this court in the case of The Exchange, 7 Cranch, 116, 136, speaking by Chief Justice MARSHALL: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source."

While under our constitution and form of government the great mass of local matters is controlled by local authorities, 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. The powers to declare war, make treaties, suppress insurrection, repel invasion, regulate foreign commerce, secure republican governments to the states, and admit subjects of other nations to citizenship, are all sovereign powers, restricted in their exercise only by the constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations. As said by this court in the case of Cohens v. Virginia, 6 Wheat. 264, 413, speaking by the same great chief justice: "That the United States form, for many, and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace, we are one people. In all commercial regulations, we are one and the same people. In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests in all these respects is the government of the Union. It is their government, and in that character they have no other. America has chosen to be in many respects, *605 and to many purposes, a nation; and for all these purposes her government is complete; to all these objects, it is competent. The people have declared that in the exercise of all powers given for these objects it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory. The constitution and laws of a state, so far as they are repugnant to the constitution and laws of the United States, are absolutely void. These states are constituent parts of the United States. They are members of one great empire,—for some purposes sovereign, for some purposes subordinate." The same view is expressed in a different form by Mr. Justice BRADLEY, in Knox v. Lee, 12 Wall. 457, 555, where he observes that "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. It has jurisdiction over all those general subjects of legislation and sovereignty which affect the interests of the whole people equally and alike, and which require uniformity of regulations and laws, such as the coinage, weights, and measures, bankruptcies, the postal system,

patent and copyright laws, the public lands, and interstate commerce; all which subjects are expressly or impliedly prohibited to the state governments. It has power to suppress insurrections, as well as to repel invasions, and to organize, arm, discipline, and call into service the militia of the whole country. The president is charged with the duty and invested with the power to take care that the laws be faithfully executed. The judiciary has jurisdiction to decide controversies between the states, and between their respective citizens, as well as questions of national concern; and the government is clothed with power to guaranty to every state a republican government, and to protect each of them against invasion and domestic violence."

*609 The control of local matters being left to local authorities, and national matters being intrusted to the government of the Union, the problem of free institutions existing over a widely extended country, having different climates and varied interests, has been happily solved. For local interests the several states of the Union exist, but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power. 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 determinations, so far as the subjects affected are concerned, are 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 *607 exclusion, has been asserted in repeated in- stances, and never denied by the executive or legislative departments. In a communication made in December, 1852, to Mr. A. Dudley Mann, at one time a special agent of the department of state in Europe, Mr. Everett, then secretary of state under President Fillmore, writes: "This government could never give up the right of excluding foreigners whose presence it might deem a source of danger to the United States." "Nor will this government consider such exclusion of American citizens from Russia necessarily a matter of diplomatic complaint to that country." In a dispatch to Mr. Fay, our minister to Switzerland, in March, 1856, Mr. Marcy, secretary of state under President Pierce, writes: "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." "It may always be questionable whether a resort to this power is warranted by the circumstances, or what department of the government is empowered to exert it; but there can be no doubt that it is possessed by all nations, and that each may decide for itself when the occasion arises demanding its exercise." In a communication in September, 1869, to Mr. Washburne, our minister to France, Mr. Fish, secretary of state under President Grant, uses this language: "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. Strangers visiting or sojourning in a foreign country voluntarily submit themselves to its laws and customs, and the municipal laws of France, authorizing the expulsion of strangers, are not of such recent date, nor has the exercise of the power by the government of France been so infrequent, that sojourners within her territory can claim surprise when the power is put in force." In a communication to Mr. Foster, our minister to Mexico, in July, 1879, Mr. Evarts, secretary of state under President Hayes, referring to the power vested in the constitution of Mexico to expel objectionable foreigners, says: "The admission that, as that constitution now stands and is interpreted, foreigners who render themselves harmful or objectionable to the *608 general government must expect to be liable to the exercise of the power adverted to, even in time of peace, remains, and no good reason is seen for departing from that conclusion now. But, while there may be no expedient basis on which to found objection, on principle and in advance of a special case thereunder, to the constitutional right thus asserted by Mexico, yet the manner of carrying out such asserted right may be highly objectionable. You would be fully justified in making earnest remonstrances should a cit-

izen of the United States be expelled from Mexican territory without just steps to assure the grounds of such expulsion, and in bringing the fact to the immediate knowledge of the department." In a communication to Mr. W. J. Stillman, under date of August 3, 1882, Mr. Frelinghuysen, secretary of state under President Arthur, writes: "This government cannot contest the right of foreign governments to exclude, on police or other grounds, American citizens from their shores." Whart. International Dig. § 206. The exclusion of paupers, criminals, and persons afflicted with incurable diseases, for which statutes have been passed, is only an application of the same power to particular classes of persons, whose presence is deemed injurious or a source of danger to the country. As applied to them, there has never been any question as to the power to exclude them. The power is constantly exercised; its existence is involved in the right of self-preservation. As to paupers, it makes no difference by whose aid they are brought to the country. As Mr. Fish, when secretary of state, wrote, in a communication under date of December 26, 1872, to Mr. James Moulding, of Liverpool, the government of the United States "is not willing and will not consent to receive the pauper class of any community who may be sent or may be assisted in their immigration at the expense of government or of municipal authorities." As to criminals, the power of exclusion has always been exercised, even in the absence of any statute on the subject. In a dispatch to Mr. Cramer, our minister to Switzerland, in December, 1881, Mr. Blaine, secretary of state under President Arthur, writes: *609 "While, under the constitution and the laws, this country is open to the honest and the industrious immigrant, it has no room outside of its prisons or almshouses for depraved and incorrigible criminals or hopelessly dependent paupers who may have become a pest or burden, or both, to their own country." Whart. International Dig., supra.

The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one. The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract. Whatever license, therefore, Chinese laborers may have obtained, previous to the act of October 1, 1888, to return to the United States after their departure, is held at the will of the government, revocable at any time, at its pleasure. Whether a proper consideration by our government of its previous laws, or a proper respect for the nation whose subjects are affected by its action, ought to have qualified its inhibition, and made it applicable only to persons departing from the country after the passage of the act, are not questions for judicial determination. If there be any just ground of complaint on the part of China, it must be made to the political department of our government, which is alone competent to act upon the subject. The rights and interests created by a treaty, which have become so vested that its expiration or abrogation will not destroy or impair them, are such as are connected with and lie in property capable of sale and transfer, or other disposition, not such as are personal and untransferable in their character. Thus, in the Head-Money Cases, the court speaks of certain rights being in some instances conferred upon the citizens or subjects of one nation residing in the territorial limits of the other, which are "capable of enforcement as between private parties in the courts of *610 the country." "An illustration of this character," it adds, "is found in treaties which regulate the mutual rights of citizens and subjects of the contracting nations in regard to rights of property by descent or inheritance, when the individuals concerned are aliens." 112 U. S. 580, 598, 5 Sup. Ct. Rep. 247. The passage cited by counsel from the language of Mr. Justice WASHINGTON in Society v. New Haven, 8 Wheat. 464, 493, also illustrates this doctrine. There the learned justice observes that, "if real estate be purchased or secured under a treaty, it would be most mischievous to admit that the extinguishment of the treaty extinguished the right to such estate. In truth, it no more affects such rights than the repeal of a municipal law affects rights acquired under it." Of this doctrine there can be no question in this court; 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.

During the argument reference was made by counsel to the alien law of June 25, 1798, and to opinions expressed at the time by men of great ability and learning against its constitutionality. 1 St. 570, c. 58. We do not attach importance to those opinions in their bearing upon this case. The act vested in the president power to order all such aliens as he should judge dangerous to the peace and safety of the United States, or should have reasonable grounds to suspect were concerned in any treasonable or secret machination against the government, to depart out of the territory of the United States within

such time as should be expressed in his order. There were other provisions also distinguishing it from the act under consideration. The act was passed during a period of great political excitement, and it was attacked and defended with great zeal and ability.* It is enough, however, to say that it is entirely different from the act before us, and the validity of its provisions was never brought to the test of judicial decision in the courts of the United States. Order affirmed.

*611

(131 U. S. 31)

ALLMAN v. UNITED STATES.

(May 13, 1889.)

1. MAIL CONTRACTS—COMPENSATION.
Rev. St. U. S. § 3960, provides that "compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service." Section 3961 provides that an allowance for increased expedition "shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution." Act Cong. April 7, 1880, provides that the service under a contract shall not be expedited "to a rate of pay exceeding fifty per centum upon the contract as originally let." *Held* that, where the number of trips per week to be made by the carrier, and the rate of speed, are increased, the compensation for the increased speed will be computed on the allowance for the service, including the additional trips.

2. SAME—FORFEITURE.
Where the contract provides that the postmaster general may impose certain forfeitures on the contractor for failure to carry the mail within the prescribed time, the exercise of such authority is not subject to review.

Appeal from the Court of Claims.

The appellant, George Allman, on the 31st of January, 1885, filed a petition in the court of claims against the United States, asking judgment for the sum of $3,607.13, which he alleged was the balance due for services rendered by him under two contracts for carrying the United States mail from July 1, 1878, to July 1, 1882. It appears from the statements of the petition that the appellant carried the mails for four years over each of two routes, No. 46,210 and No. 46,211, under these contracts, entered into with the postmaster general, and in conformity to the orders subsequently issued by him. While the services were being rendered, the postmaster general, in the exercise of authority expressly reserved in these contracts, by successive orders, increased the number of trips per week on both routes,—on the first, by raising the number from six to seven trips per week, (afterwards reduced back to six,) and on the second, by raising the number from one to seven trips per week. For this increase he allowed the contractor a *pro rata* increase of compensation, raising the pay on the first route to a rate of $5,238.33 per annum for increasing the trips from six to seven a week, and on the second route $4,893 for the increase from one to seven trips a week. This increased compensation was paid by the department, and is not involved in this litigation, except as incidental to another demand hereinafter stated. On both these routes the postmaster general increased the rate of speed by shortening the running time between the termini; on the first, from 36 to 28 hours per trip, and on the second, from 34 to 18 hours per trip. In consideration of this increased expedition additional pay was allowed the contractor,—on the first route, $2,619.16 per annum, and on the second route, $2,446.50 per annum,—for the additional stock and carriers thus rendered necessary. This allowance was computed at the rate of 50 per cent. of the annual sum paid, in accordance with the contract, for the services expedited, and was less than the proportionate increase of the cost of the service demanded by the changes in the schedule, according to the sworn statements of the contractor. On the 1st of August, 1881, the postmaster general promulgated an order reducing all the allowances for the increased expedition heretofore recited, and directed that the 50 per cent. paid to the contractor for such service should be computed upon the service rendered at the time the contracts were entered into before any additional trips had been ordered on either route, and not upon the service as actually expedited. This order making the reduction did not change the number of trips on either of the routes. The contractor was still required to make daily trips on the second route, and to make these trips upon the expedited schedule. The effect of the order was simply to reduce his compensation in the case of the first route to 50 per cent. upon the pay of 6 trips only, instead of seven per week, and in the case of the second route its effect was to allow him the compensation at the rate of 50 per cent. upon the pay for one trip per week, although he continued to make daily trips in accordance with the expedited schedule. The difference between the amounts paid to the claimant under this last order and the amount he would have received under the allowance fixed by the former orders, according to the stipulation of the contracts, constitutes the principal demand in the present suit. A short time after the number of trips was increased on the first route from six to seven per week it was reduced back to six, and one month's extra pay allowed to the contractor as indemnity for the discontinuance. The petition sets up a demand for the 50 per cent. thereon, which has been withheld by the postmaster general.* Another* claim set up in the petition is for the amount deducted as forfeitures, alleged to be wrongfully imposed by the postmaster general, for failures by the contractor to cause the mail to be carried within the time prescribed. The petition was demurred to, and this appeal is from the judgment of the court sustaining the demurrer.

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Samuel M. Lake and *A. J. Millard*, for appellant. *Asst. Atty. Gen. Howard*, for the United States.