Committee on Foreign Affairs, Report on Chinese Immigration, *House Report No. 2915,* August 5, 1890

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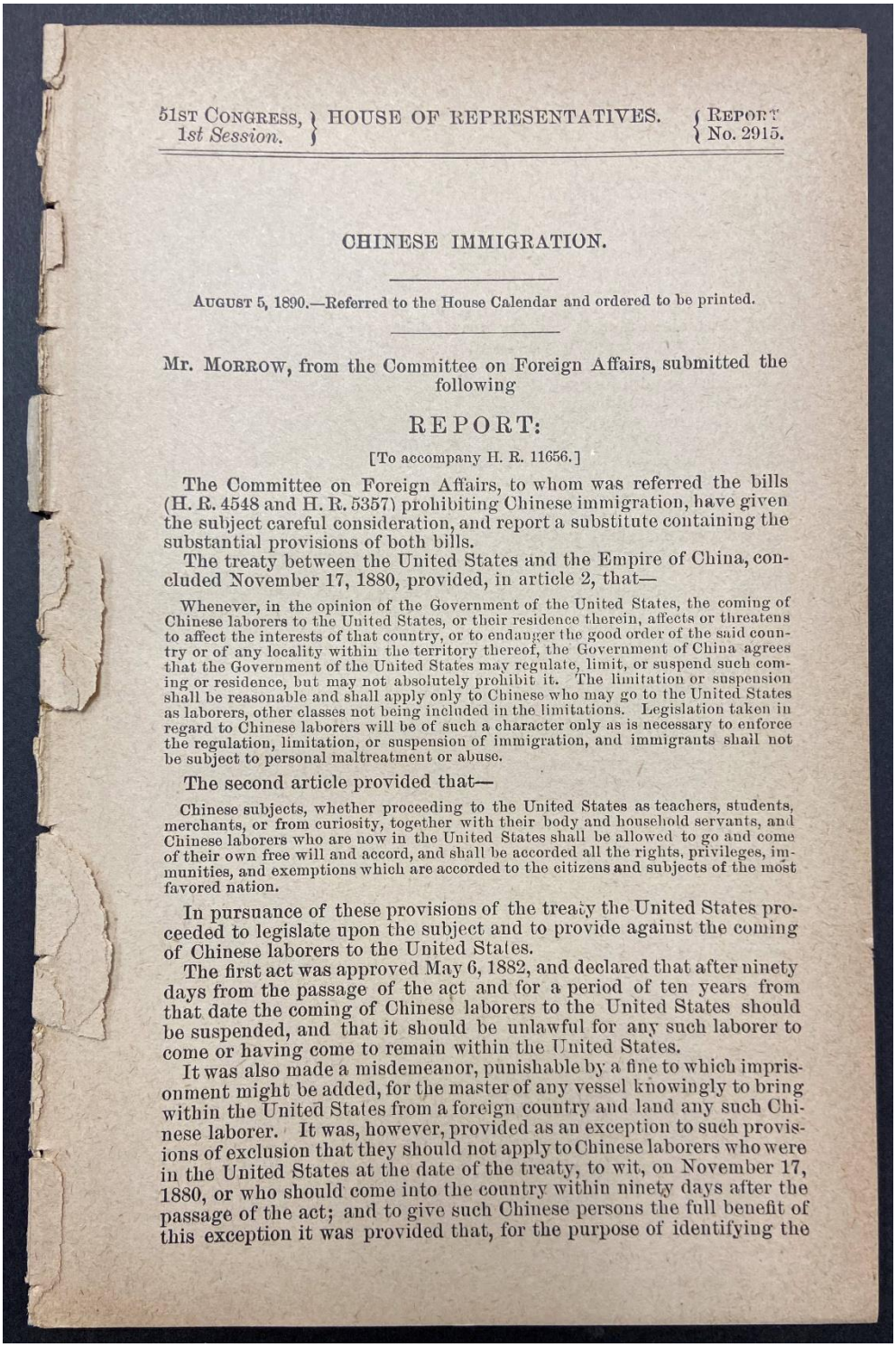

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 2915.

CHINESE IMMIGRATION.

AUGUST 5, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. MORROW, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany H. R. 11656.]

The Committee on Foreign Affairs, to whom was referred the bills (H. R. 4548 and H. R. 5357) prohibiting Chinese immigration, have given the subject careful consideration, and report a substitute containing the substantial provisions of both bills.

The treaty between the United States and the Empire of China, concluded November 17, 1880, provided, in article 2, 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.

The second article provided 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 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.

In pursuance of these provisions of the treaty the United States proceeded to legislate upon the subject and to provide against the coming of Chinese laborers to the United States.

The first act was approved May 6, 1882, and declared that after ninety days from the passage of the act and for a period of ten years from that date the coming of Chinese laborers to the United States should be suspended, and that it should be unlawful for any such laborer to come or having come to remain within the United States.

It was also made a misdemeanor, punishable by a fine to which imprisonment might 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. It was, however, provided as an exception to such provisions of exclusion that they should not apply to Chinese laborers who were in the United States at the date of the treaty, to wit, on November 17, 1880, or who should come into the country within ninety days after the passage of the act; and to give such Chinese persons the full benefit of this exception it was provided that, for the purpose of identifying the

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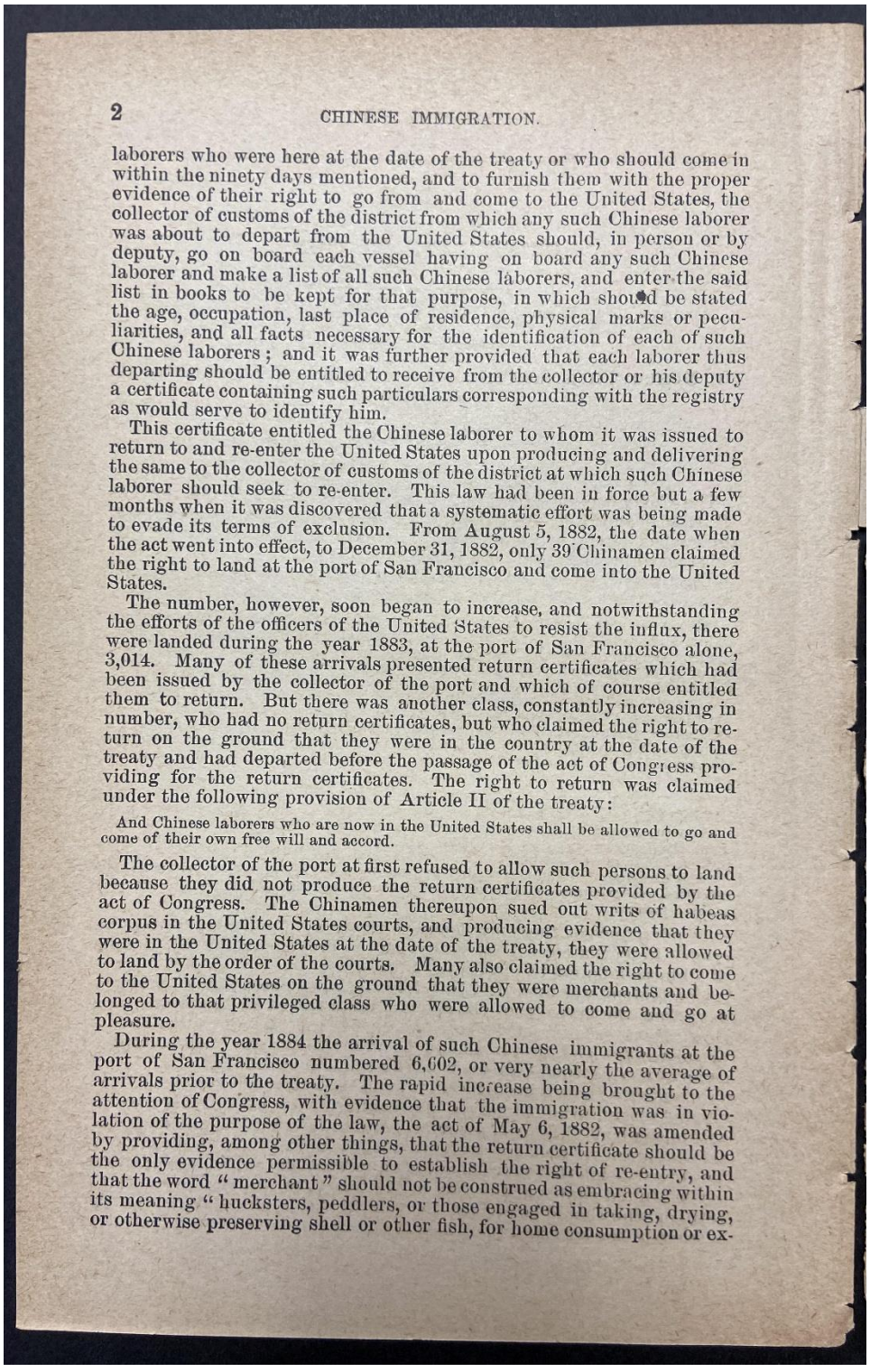

laborers who were here at the date of the treaty or who should come in within the ninety days mentioned, and to furnish them with the proper evidence of their right to go from and come to the United States, the collector of customs of the district from which any such Chinese laborer was about to depart from the United States should, in person or by deputy, go on board each vessel having on board any such Chinese laborer and make a list of all such Chinese laborers, and enter the said list in books to be kept for that purpose, in which should be stated the age, occupation, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each of such Chinese laborers; and it was further provided that each laborer thus departing should be entitled to receive from the collector or his deputy a certificate containing such particulars corresponding with the registry as would serve to identify him.

This certificate entitled the Chinese laborer to whom it was issued to return to and re-enter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer should seek to re-enter. This law had been in force but a few months when it was discovered that a systematic effort was being made to evade its terms of exclusion. From August 5, 1882, the date when the act went into effect, to December 31, 1882, only 39 Chinamen claimed the right to land at the port of San Francisco and come into the United States.

The number, however, soon began to increase, and notwithstanding the efforts of the officers of the United States to resist the influx, there were landed during the year 1883, at the port of San Francisco alone, 3,014. Many of these arrivals presented return certificates which had been issued by the collector of the port and which of course entitled them to return. But there was another class, constantly increasing in number, who had no return certificates, but who claimed the right to return on the ground that they were in the country at the date of the treaty and had departed before the passage of the act of Congress providing for the return certificates. The right to return was claimed under the following provision of Article II of the treaty:

> And Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord.

The collector of the port at first refused to allow such persons to land because they did not produce the return certificates provided by the act of Congress. The Chinamen thereupon sued out writs of habeas corpus in the United States courts, and producing evidence that they were in the United States at the date of the treaty, they were allowed to land by the order of the courts. Many also claimed the right to come to the United States on the ground that they were merchants and belonged to that privileged class who were allowed to come and go at pleasure.

During the year 1884 the arrival of such Chinese immigrants at the port of San Francisco numbered 6,602, or very nearly the average of arrivals prior to the treaty. The rapid increase being brought to the attention of Congress, with evidence that the immigration was in violation of the purpose of the law, the act of May 6, 1882, was amended by providing, among other things, that the return certificate should be the only evidence permissible to establish the right of re-entry, and that the word "merchant" should not be construed as embracing within its meaning "hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish, for home consumption or ex-

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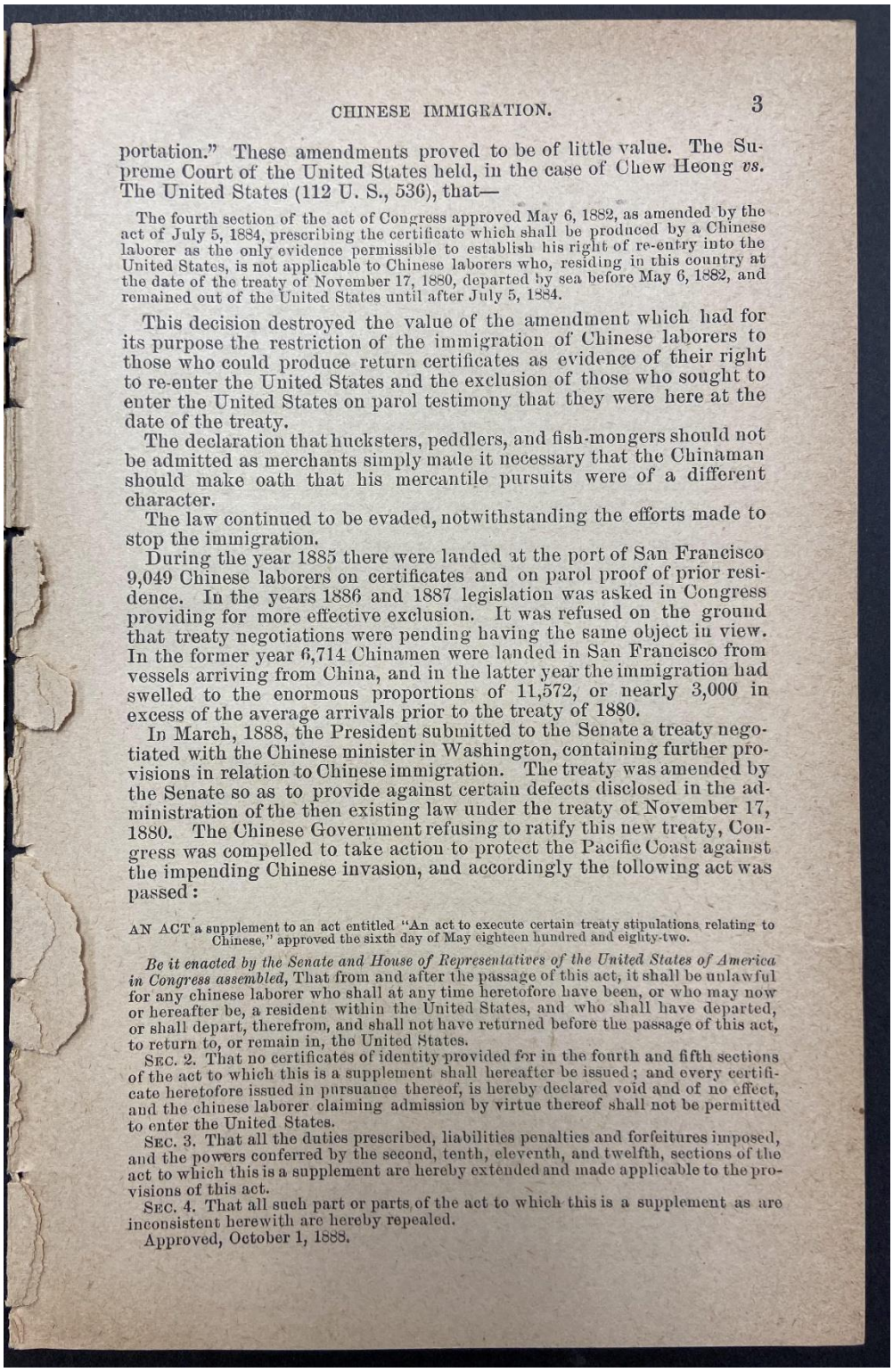

portation." These amendments proved to be of little value. The Supreme Court of the United States held, in the case of Chew Heong *vs.* The United States (112 U. S., 536), that—

> The fourth section of the act of Congress approved May 6, 1882, as amended by the act of July 5, 1884, prescribing the certificate which shall be produced by a Chinese laborer as the only evidence permissible to establish his right of re-entry into the United States, is not applicable to Chinese laborers who, residing in this country at the date of the treaty of November 17, 1880, departed by sea before May 6, 1882, and remained out of the United States until after July 5, 1884.

This decision destroyed the value of the amendment which had for its purpose the restriction of the immigration of Chinese laborers to those who could produce return certificates as evidence of their right to re-enter the United States and the exclusion of those who sought to enter the United States on parol testimony that they were here at the date of the treaty.

The declaration that hucksters, peddlers, and fish-mongers should not be admitted as merchants simply made it necessary that the Chinaman should make oath that his mercantile pursuits were of a different character.

The law continued to be evaded, notwithstanding the efforts made to stop the immigration.

During the year 1885 there were landed at the port of San Francisco 9,049 Chinese laborers on certificates and on parol proof of prior residence. In the years 1886 and 1887 legislation was asked in Congress providing for more effective exclusion. It was refused on the ground that treaty negotiations were pending having the same object in view. In the former year 6,714 Chinamen were landed in San Francisco from vessels arriving from China, and in the latter year the immigration had swelled to the enormous proportions of 11,572, or nearly 3,000 in excess of the average arrivals prior to the treaty of 1880.

In March, 1888, the President submitted to the Senate a treaty negotiated with the Chinese minister in Washington, containing further provisions in relation to Chinese immigration. The treaty was amended by the Senate so as to provide against certain defects disclosed in the administration of the then existing law under the treaty of November 17, 1880. The Chinese Government refusing to ratify this new treaty, Congress was compelled to take action to protect the Pacific Coast against the impending Chinese invasion, and accordingly the following act was passed:

> AN ACT a supplement to an act entitled "An act to execute certain treaty stipulations relating to Chinese," approved the sixth day of May eighteen hundred and eighty-two.
>
> *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.

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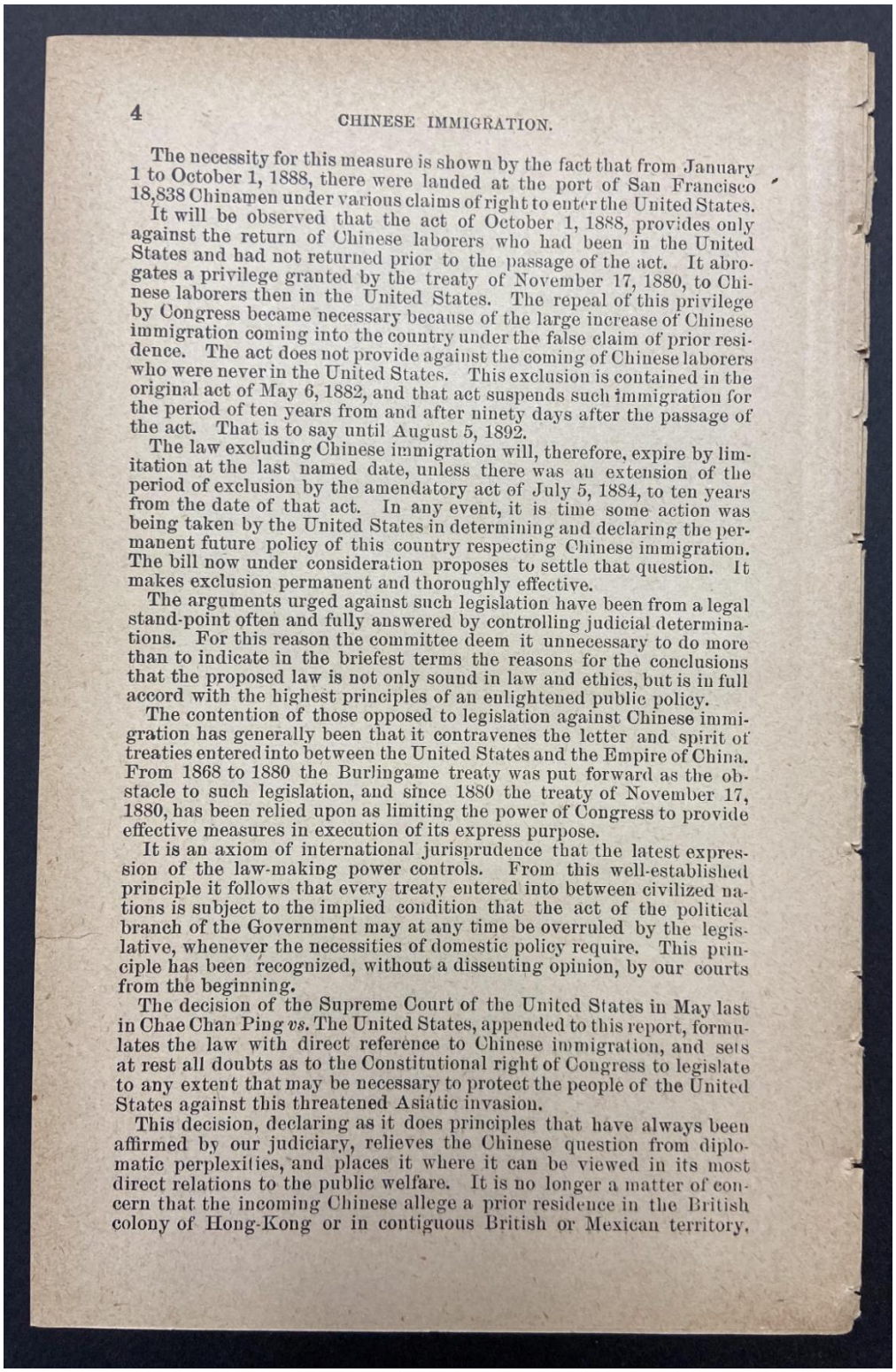

The necessity for this measure is shown by the fact that from January 1 to October 1, 1888, there were landed at the port of San Francisco 18,838 Chinamen under various claims of right to enter the United States.

It will be observed that the act of October 1, 1888, provides only against the return of Chinese laborers who had been in the United States and had not returned prior to the passage of the act. It abrogates a privilege granted by the treaty of November 17, 1880, to Chinese laborers then in the United States. The repeal of this privilege by Congress became necessary because of the large increase of Chinese immigration coming into the country under the false claim of prior residence. The act does not provide against the coming of Chinese laborers who were never in the United States. This exclusion is contained in the original act of May 6, 1882, and that act suspends such immigration for the period of ten years from and after ninety days after the passage of the act. That is to say until August 5, 1892.

The law excluding Chinese immigration will, therefore, expire by limitation at the last named date, unless there was an extension of the period of exclusion by the amendatory act of July 5, 1884, to ten years from the date of that act. In any event, it is time some action was being taken by the United States in determining and declaring the permanent future policy of this country respecting Chinese immigration. The bill now under consideration proposes to settle that question. It makes exclusion permanent and thoroughly effective.

The arguments urged against such legislation have been from a legal stand-point often and fully answered by controlling judicial determinations. For this reason the committee deem it unnecessary to do more than to indicate in the briefest terms the reasons for the conclusions that the proposed law is not only sound in law and ethics, but is in full accord with the highest principles of an enlightened public policy.

The contention of those opposed to legislation against Chinese immigration has generally been that it contravenes the letter and spirit of treaties entered into between the United States and the Empire of China. From 1868 to 1880 the Burlingame treaty was put forward as the obstacle to such legislation, and since 1880 the treaty of November 17, 1880, has been relied upon as limiting the power of Congress to provide effective measures in execution of its express purpose.

It is an axiom of international jurisprudence that the latest expression of the law-making power controls. From this well-established principle it follows that every treaty entered into between civilized nations is subject to the implied condition that the act of the political branch of the Government may at any time be overruled by the legislative, whenever the necessities of domestic policy require. This principle has been recognized, without a dissenting opinion, by our courts from the beginning.

The decision of the Supreme Court of the United States in May last in Chae Chan Ping *vs.* The United States, appended to this report, formulates the law with direct reference to Chinese immigration, and sets at rest all doubts as to the Constitutional right of Congress to legislate to any extent that may be necessary to protect the people of the United States against this threatened Asiatic invasion.

This decision, declaring as it does principles that have always been affirmed by our judiciary, relieves the Chinese question from diplomatic perplexities, and places it where it can be viewed in its most direct relations to the public welfare. It is no longer a matter of concern that the incoming Chinese allege a prior residence in the British colony of Hong-Kong or in contiguous British or Mexican territory,

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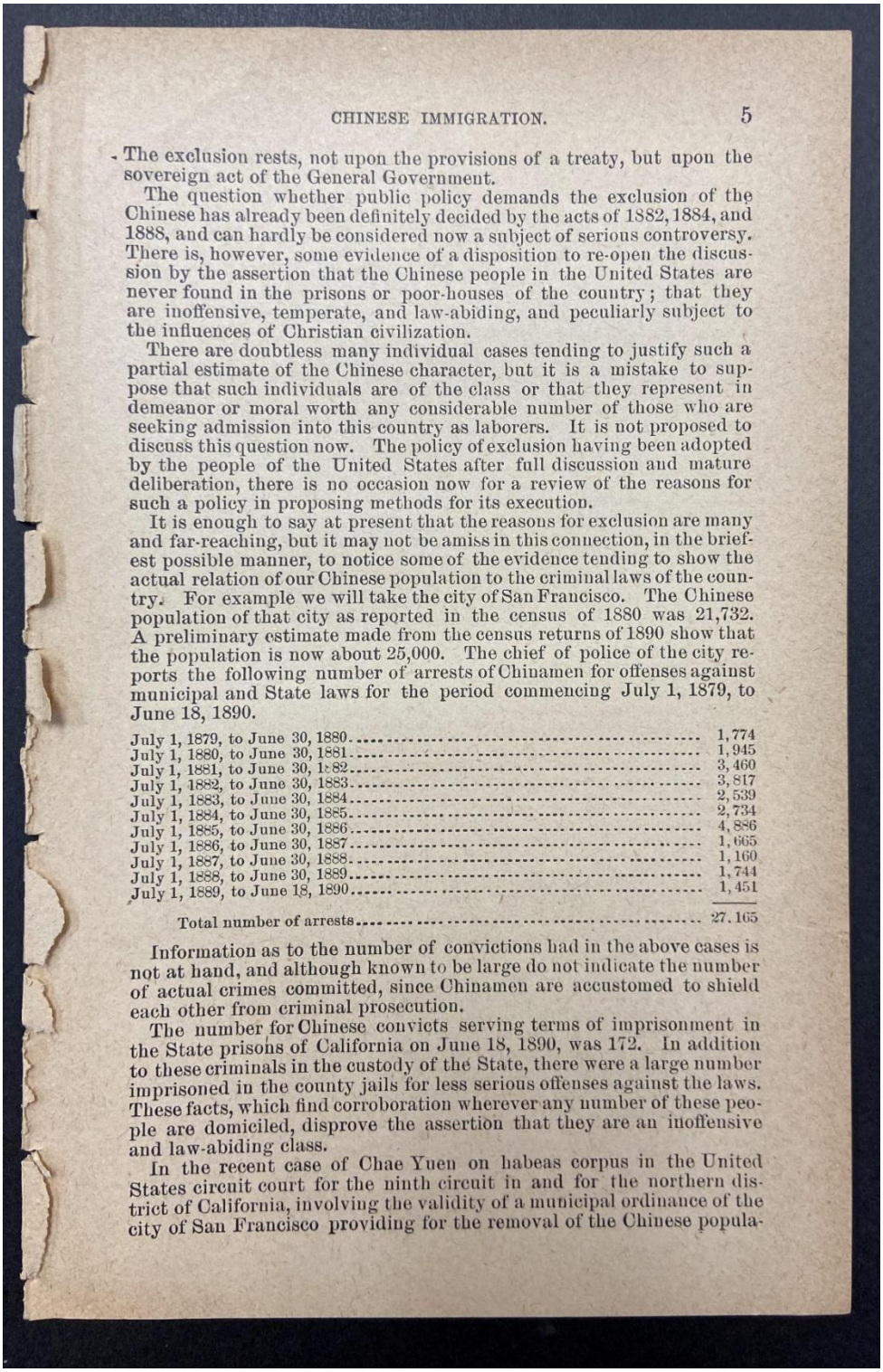

The exclusion rests, not upon the provisions of a treaty, but upon the sovereign act of the General Government.

The question whether public policy demands the exclusion of the Chinese has already been definitely decided by the acts of 1882, 1884, and 1888, and can hardly be considered now a subject of serious controversy. There is, however, some evidence of a disposition to re-open the discussion by the assertion that the Chinese people in the United States are never found in the prisons or poor-houses of the country; that they are inoffensive, temperate, and law-abiding, and peculiarly subject to the influences of Christian civilization.

There are doubtless many individual cases tending to justify such a partial estimate of the Chinese character, but it is a mistake to suppose that such individuals are of the class or that they represent in demeanor or moral worth any considerable number of those who are seeking admission into this country as laborers. It is not proposed to discuss this question now. The policy of exclusion having been adopted by the people of the United States after full discussion and mature deliberation, there is no occasion now for a review of the reasons for such a policy in proposing methods for its execution.

It is enough to say at present that the reasons for exclusion are many and far-reaching, but it may not be amiss in this connection, in the briefest possible manner, to notice some of the evidence tending to show the actual relation of our Chinese population to the criminal laws of the country. For example we will take the city of San Francisco. The Chinese population of that city as reported in the census of 1880 was 21,732. A preliminary estimate made from the census returns of 1890 show that the population is now about 25,000. The chief of police of the city reports the following number of arrests of Chinamen for offenses against municipal and State laws for the period commencing July 1, 1879, to June 18, 1890.

July 1, 1879, to June 30, 1880	1,774
July 1, 1880, to June 30, 1881	1,945
July 1, 1881, to June 30, 1882	3,460
July 1, 1882, to June 30, 1883	3,817
July 1, 1883, to June 30, 1884	2,539
July 1, 1884, to June 30, 1885	2,734
July 1, 1885, to June 30, 1886	4,886
July 1, 1886, to June 30, 1887	1,665
July 1, 1887, to June 30, 1888	1,160
July 1, 1888, to June 30, 1889	1,744
July 1, 1889, to June 18, 1890	1,451
Total number of arrests	27,165

Information as to the number of convictions had in the above cases is not at hand, and although known to be large do not indicate the number of actual crimes committed, since Chinamen are accustomed to shield each other from criminal prosecution.

The number for Chinese convicts serving terms of imprisonment in the State prisons of California on June 18, 1890, was 172. In addition to these criminals in the custody of the State, there were a large number imprisoned in the county jails for less serious offenses against the laws. These facts, which find corroboration wherever any number of these people are domiciled, disprove the assertion that they are an inoffensive and law-abiding class.

In the recent case of Chae Yuen on habeas corpus in the United States circuit court for the ninth circuit in and for the northern district of California, involving the validity of a municipal ordinance of the city of San Francisco providing for the removal of the Chinese popula-

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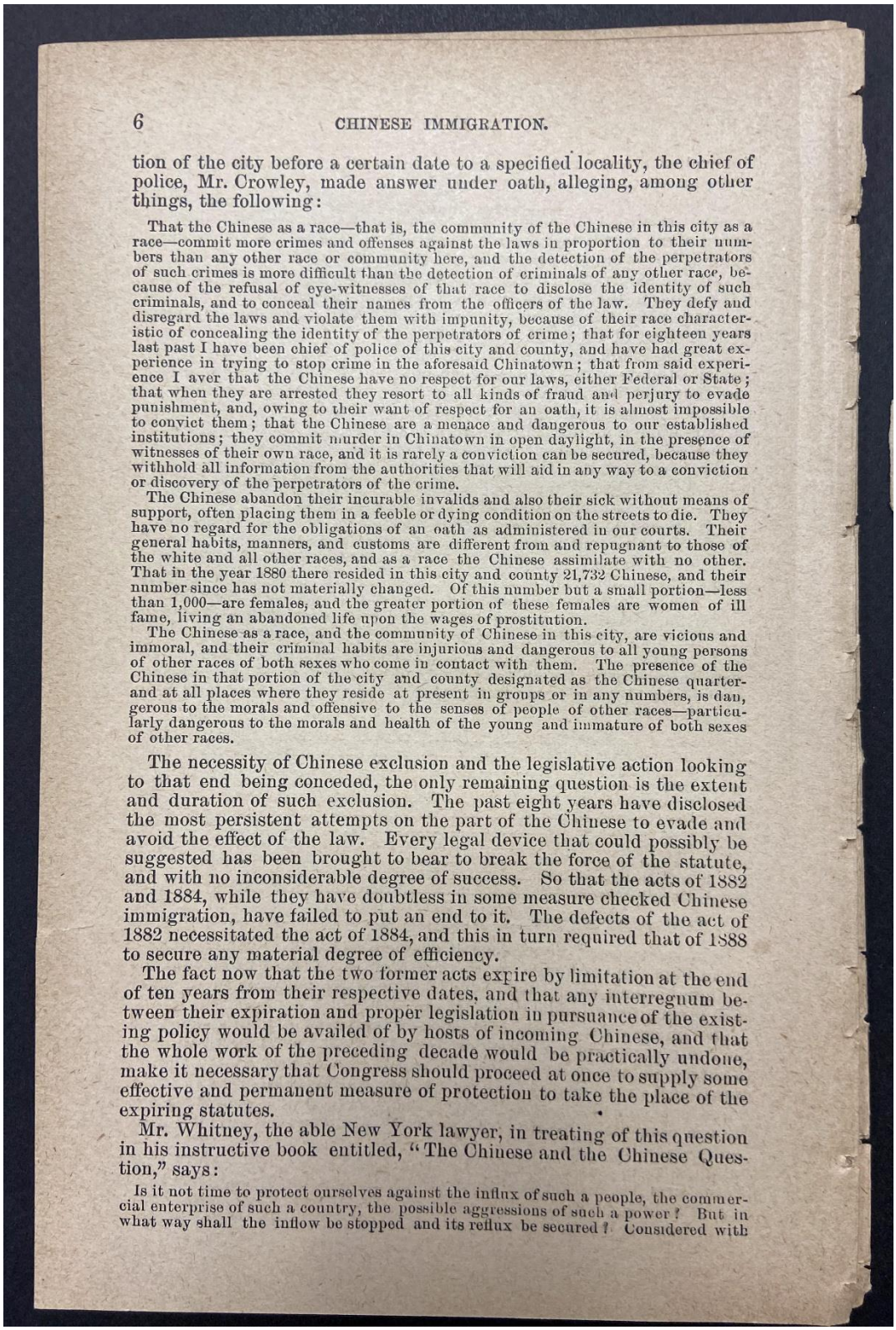

tion of the city before a certain date to a specified locality, the chief of police, Mr. Crowley, made answer under oath, alleging, among other things, the following:

That the Chinese as a race—that is, the community of the Chinese in this city as a race—commit more crimes and offenses against the laws in proportion to their numbers than any other race or community here, and the detection of the perpetrators of such crimes is more difficult than the detection of criminals of any other race, because of the refusal of eye-witnesses of that race to disclose the identity of such criminals, and to conceal their names from the officers of the law. They defy and disregard the laws and violate them with impunity, because of their race characteristic of concealing the identity of the perpetrators of crime; that for eighteen years last past I have been chief of police of this city and county, and have had great experience in trying to stop crime in the aforesaid Chinatown; that from said experience I aver that the Chinese have no respect for our laws, either Federal or State; that when they are arrested they resort to all kinds of fraud and perjury to evade punishment, and, owing to their want of respect for an oath, it is almost impossible to convict them; that the Chinese are a menace and dangerous to our established institutions; they commit murder in Chinatown in open daylight, in the presence of witnesses of their own race, and it is rarely a conviction can be secured, because they withhold all information from the authorities that will aid in any way to a conviction or discovery of the perpetrators of the crime.

The Chinese abandon their incurable invalids and also their sick without means of support, often placing them in a feeble or dying condition on the streets to die. They have no regard for the obligations of an oath as administered in our courts. Their general habits, manners, and customs are different from and repugnant to those of the white and all other races, and as a race the Chinese assimilate with no other. That in the year 1880 there resided in this city and county 21,732 Chinese, and their number since has not materially changed. Of this number but a small portion—less than 1,000—are females, and the greater portion of these females are women of ill fame, living an abandoned life upon the wages of prostitution.

The Chinese as a race, and the community of Chinese in this city, are vicious and immoral, and their criminal habits are injurious and dangerous to all young persons of other races of both sexes who come in contact with them. The presence of the Chinese in that portion of the city and county designated as the Chinese quarter and at all places where they reside at present in groups or in any numbers, is dangerous to the morals and offensive to the senses of people of other races—particularly dangerous to the morals and health of the young and immature of both sexes of other races.

The necessity of Chinese exclusion and the legislative action looking to that end being conceded, the only remaining question is the extent and duration of such exclusion. The past eight years have disclosed the most persistent attempts on the part of the Chinese to evade and avoid the effect of the law. Every legal device that could possibly be suggested has been brought to bear to break the force of the statute, and with no inconsiderable degree of success. So that the acts of 1882 and 1884, while they have doubtless in some measure checked Chinese immigration, have failed to put an end to it. The defects of the act of 1882 necessitated the act of 1884, and this in turn required that of 1888 to secure any material degree of efficiency.

The fact now that the two former acts expire by limitation at the end of ten years from their respective dates, and that any interregnum between their expiration and proper legislation in pursuance of the existing policy would be availed of by hosts of incoming Chinese, and that the whole work of the preceding decade would be practically undone, make it necessary that Congress should proceed at once to supply some effective and permanent measure of protection to take the place of the expiring statutes.

Mr. Whitney, the able New York lawyer, in treating of this question in his instructive book entitled, "The Chinese and the Chinese Question," says:

Is it not time to protect ourselves against the influx of such a people, the commercial enterprise of such a country, the possible aggressions of such a power? But in what way shall the inflow be stopped and its reflux be secured? Considered with

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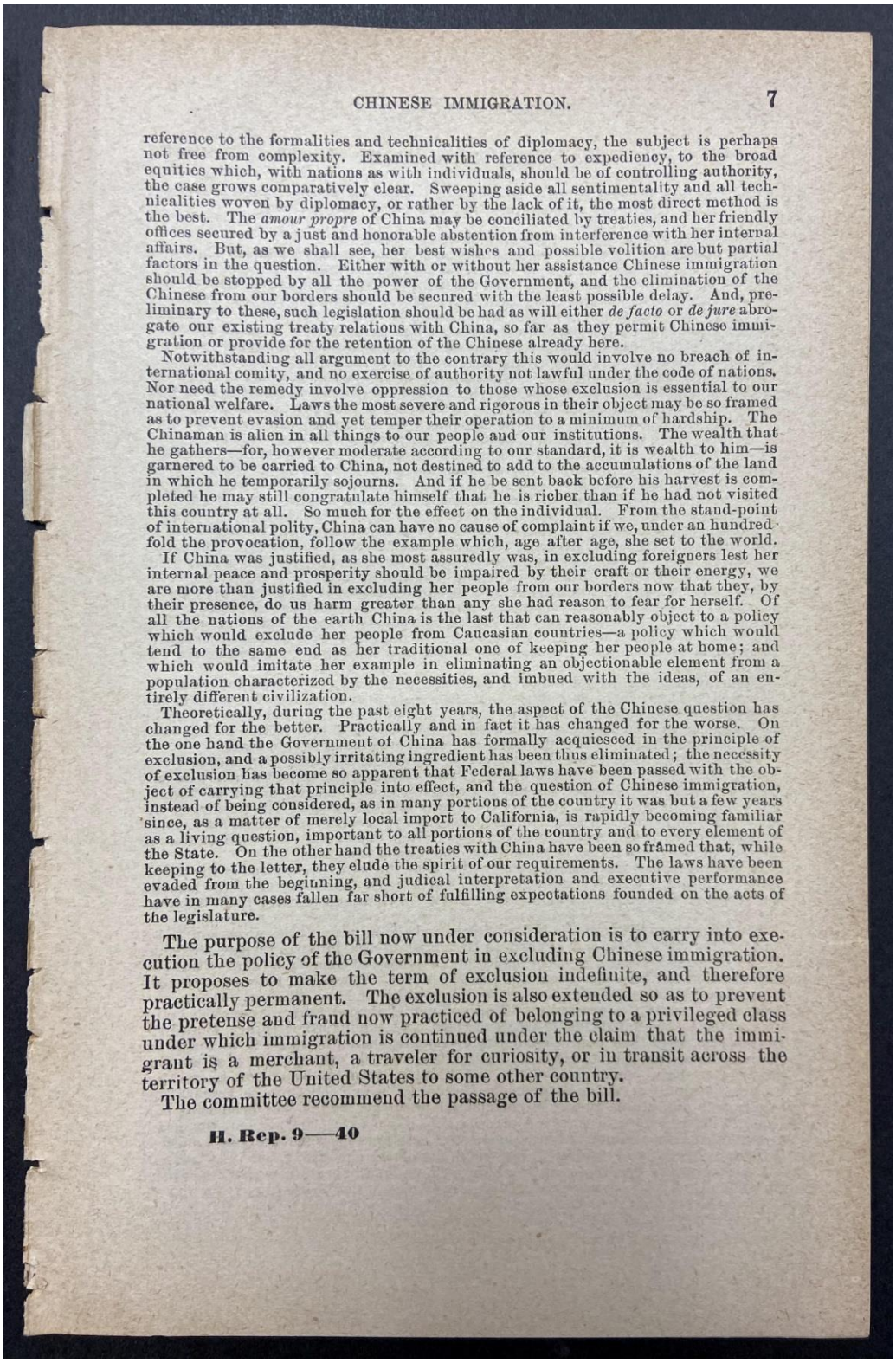

reference to the formalities and technicalities of diplomacy, the subject is perhaps not free from complexity. Examined with reference to expediency, to the broad equities which, with nations as with individuals, should be of controlling authority, the case grows comparatively clear. Sweeping aside all sentimentality and all technicalities woven by diplomacy, or rather by the lack of it, the most direct method is the best. The *amour propre* of China may be conciliated by treaties, and her friendly offices secured by a just and honorable abstention from interference with her internal affairs. But, as we shall see, her best wishes and possible volition are but partial factors in the question. Either with or without her assistance Chinese immigration should be stopped by all the power of the Government, and the elimination of the Chinese from our borders should be secured with the least possible delay. And, preliminary to these, such legislation should be had as will either *de facto* or *de jure* abrogate our existing treaty relations with China, so far as they permit Chinese immigration or provide for the retention of the Chinese already here.

Notwithstanding all argument to the contrary this would involve no breach of international comity, and no exercise of authority not lawful under the code of nations. Nor need the remedy involve oppression to those whose exclusion is essential to our national welfare. Laws the most severe and rigorous in their object may be so framed as to prevent evasion and yet temper their operation to a minimum of hardship. The Chinaman is alien in all things to our people and our institutions. The wealth that he gathers—for, however moderate according to our standard, it is wealth to him—is garnered to be carried to China, not destined to add to the accumulations of the land in which he temporarily sojourns. And if he be sent back before his harvest is completed he may still congratulate himself that he is richer than if he had not visited this country at all. So much for the effect on the individual. From the stand-point of international polity, China can have no cause of complaint if we, under an hundred-fold the provocation, follow the example which, age after age, she set to the world.

If China was justified, as she most assuredly was, in excluding foreigners lest her internal peace and prosperity should be impaired by their craft or their energy, we are more than justified in excluding her people from our borders now that they, by their presence, do us harm greater than any she had reason to fear for herself. Of all the nations of the earth China is the last that can reasonably object to a policy which would exclude her people from Caucasian countries—a policy which would tend to the same end as her traditional one of keeping her people at home; and which would imitate her example in eliminating an objectionable element from a population characterized by the necessities, and imbued with the ideas, of an entirely different civilization.

Theoretically, during the past eight years, the aspect of the Chinese question has changed for the better. Practically and in fact it has changed for the worse. On the one hand the Government of China has formally acquiesced in the principle of exclusion, and a possibly irritating ingredient has been thus eliminated; the necessity of exclusion has become so apparent that Federal laws have been passed with the object of carrying that principle into effect, and the question of Chinese immigration, instead of being considered, as in many portions of the country it was but a few years since, as a matter of merely local import to California, is rapidly becoming familiar as a living question, important to all portions of the country and to every element of the State. On the other hand the treaties with China have been so framed that, while keeping to the letter, they elude the spirit of our requirements. The laws have been evaded from the beginning, and judical interpretation and executive performance have in many cases fallen far short of fulfilling expectations founded on the acts of the legislature.

The purpose of the bill now under consideration is to carry into execution the policy of the Government in excluding Chinese immigration. It proposes to make the term of exclusion indefinite, and therefore practically permanent. The exclusion is also extended so as to prevent the pretense and fraud now practiced of belonging to a privileged class under which immigration is continued under the claim that the immigrant is a merchant, a traveler for curiosity, or in transit across the territory of the United States to some other country.

The committee recommend the passage of the bill.

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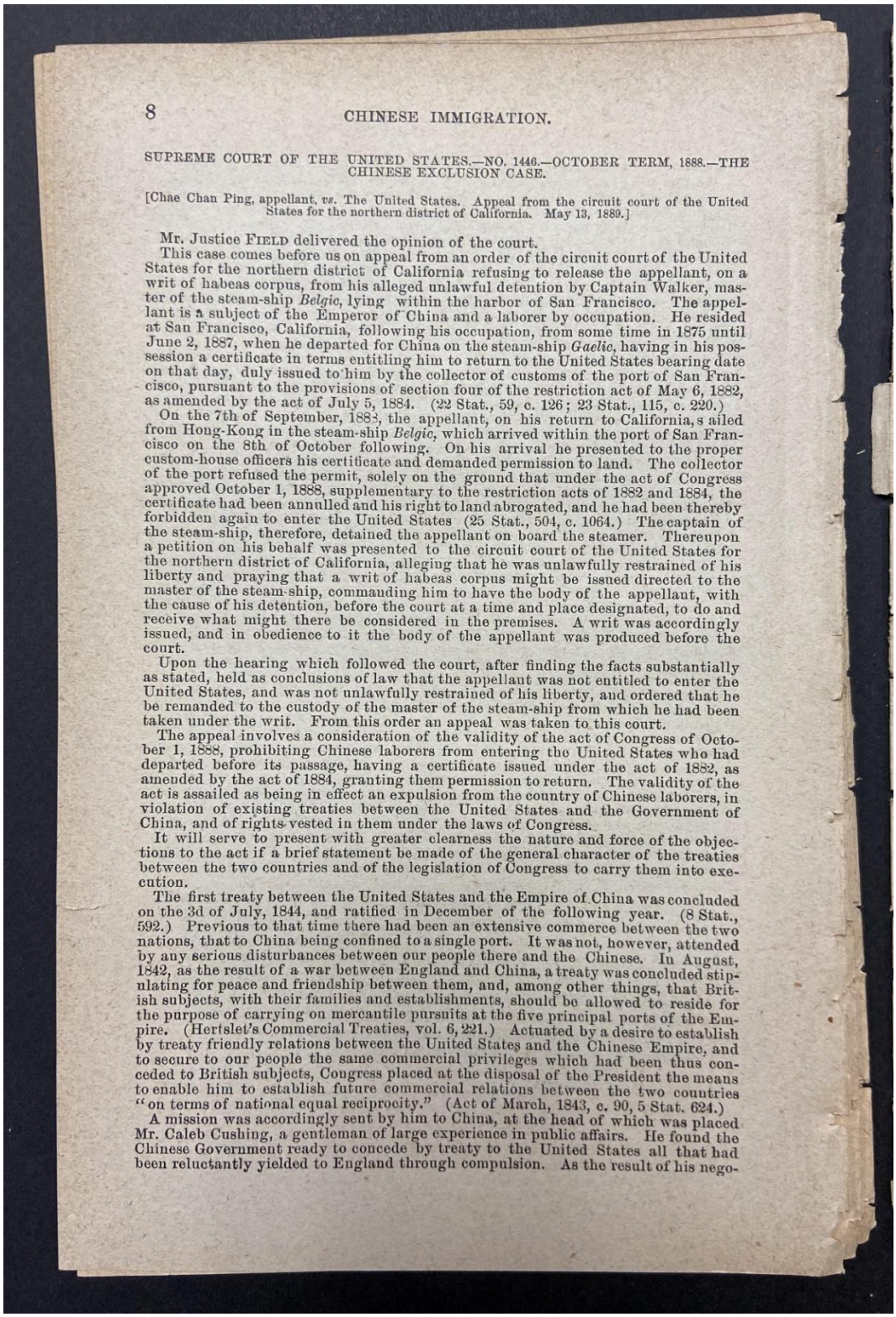

SUPREME COURT OF THE UNITED STATES.—NO. 1446.—OCTOBER TERM, 1888.—THE CHINESE EXCLUSION CASE.

[Chae Chan Ping, appellant, *vs.* The United States. Appeal from the circuit court of the United States for the northern district of California. May 13, 1889.]

Mr. Justice FIELD delivered the opinion of the court.

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 Captain Walker, 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, California, following his occupation, from some time in 1875 until June 2, 1887, when he departed 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 four of the restriction act of May 6, 1882, as amended by the act of July 5, 1884. (22 Stat., 59, c. 126; 23 Stat., 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 Stat., 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.

The appeal involves a consideration of the validity of the act of Congress of October 1, 1888, prohibiting Chinese laborers from entering 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.

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 Stat., 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. (Hertslet's Commercial Treaties, vol. 6, 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 of March, 1843, c. 90, 5 Stat. 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 nego-

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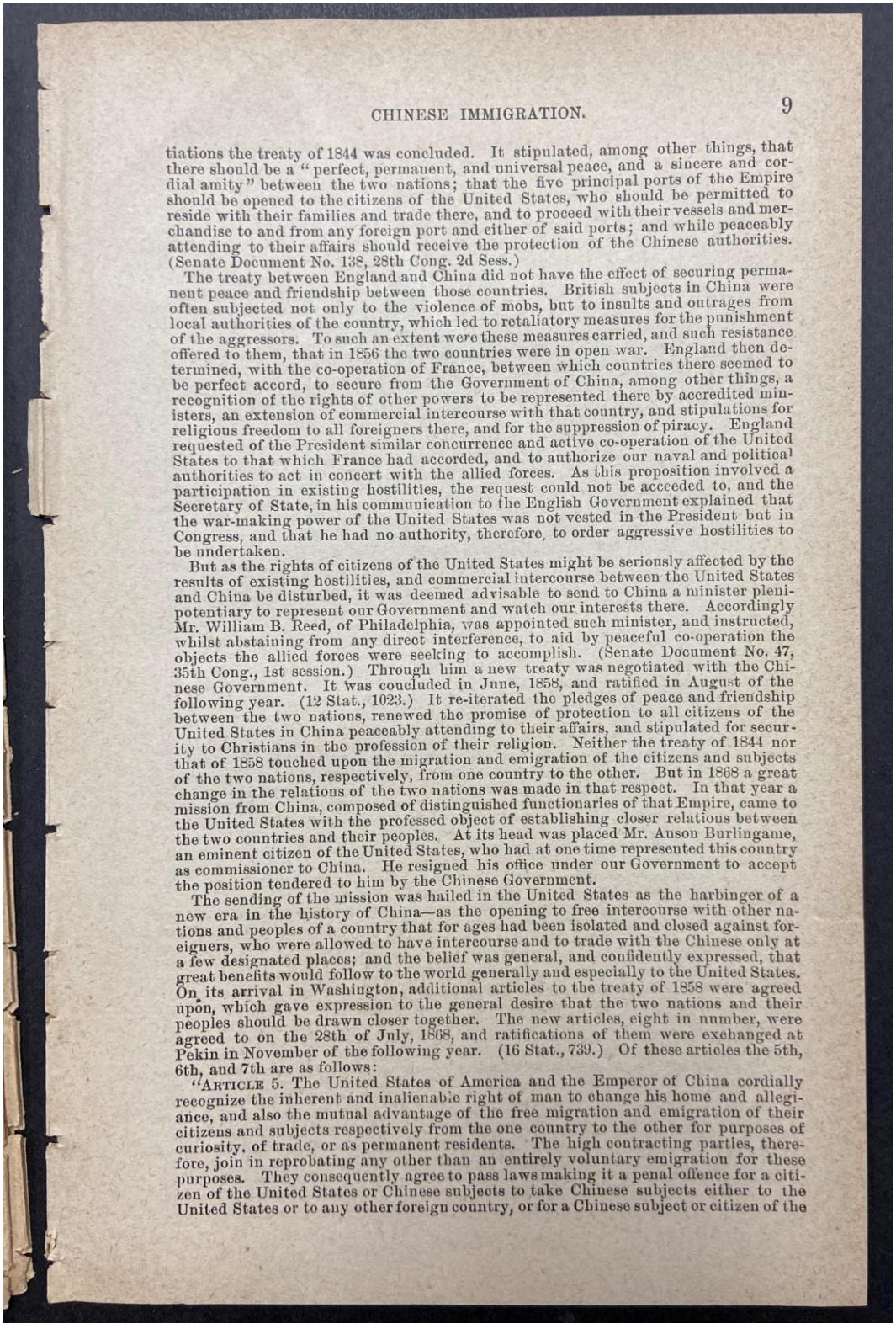

tiations the treaty of 1844 was concluded. It stipulated, among other things, that there should be a "perfect, permanent, and universal peace, and a sincere and cordial amity" between the two nations; that the five principal ports of the Empire should be opened to the citizens of the United States, who 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 ports; and while peaceably attending to their affairs should receive the protection of the Chinese authorities. (Senate Document No. 138, 28th Cong. 2d Sess.)

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 rights 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 similar concurrence and active co-operation of the United States 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, whilst abstaining from any direct interference, to aid by peaceful co-operation the objects the allied forces were seeking to accomplish. (Senate Document No. 47, 35th Cong., 1st session.) 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 Stat., 1023.) It re-iterated the pledges 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 sending of the mission was hailed in the United States as the harbinger of a new era in the history of China—as the opening to free intercourse with other nations and peoples of 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 Stat., 739.) Of these articles the 5th, 6th, and 7th are as follows:

"ARTICLE 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 offence 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

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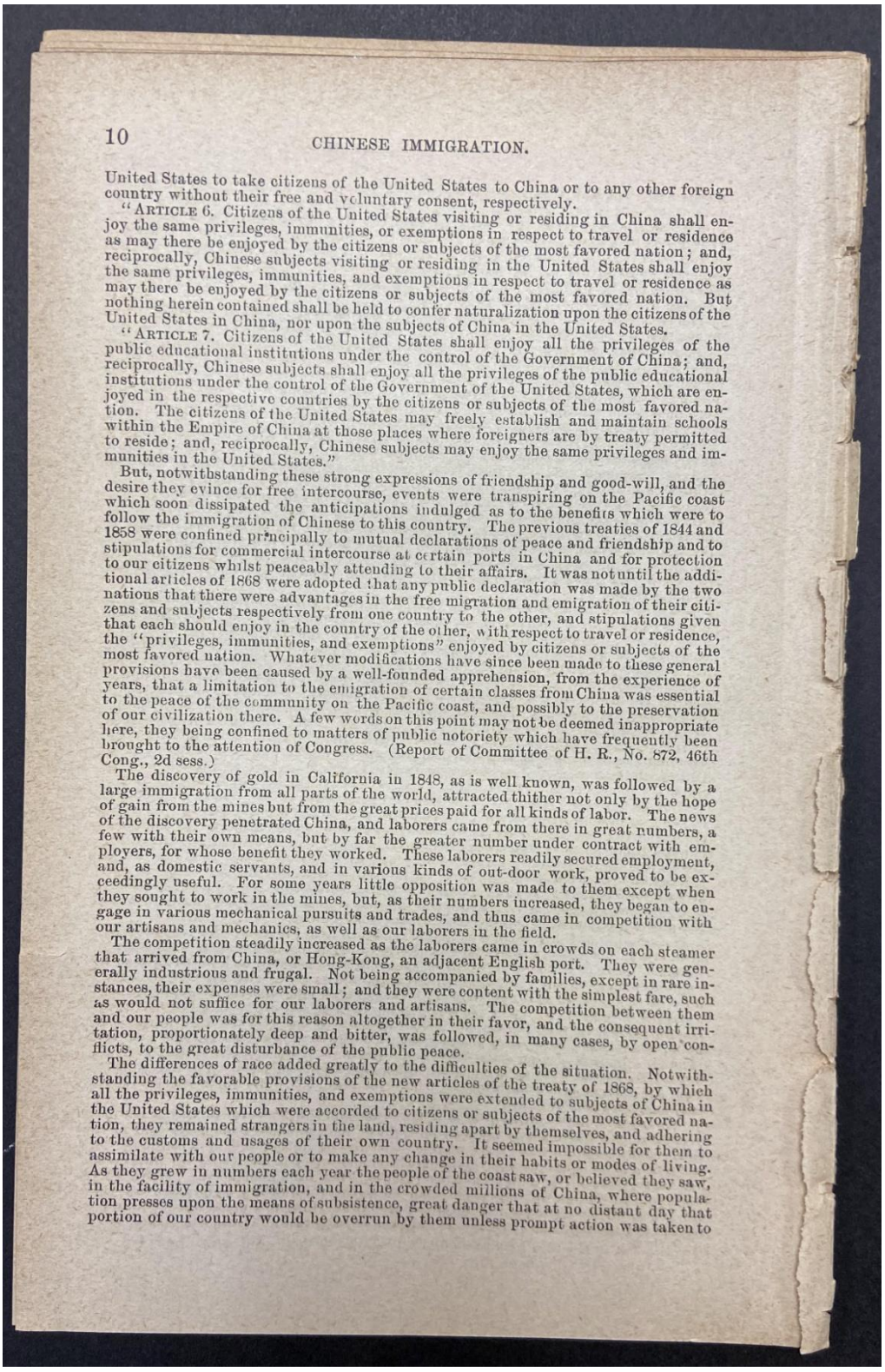

United States to take citizens of the United States to China or to any other foreign country without their free and voluntary consent, respectively.

"ARTICLE 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 States shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon the citizens of the United States in China, nor upon the subjects of China in the United States.

"ARTICLE 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 which were 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 whilst 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 emigration 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 from all parts of the world, attracted thither 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 out-door 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 English 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

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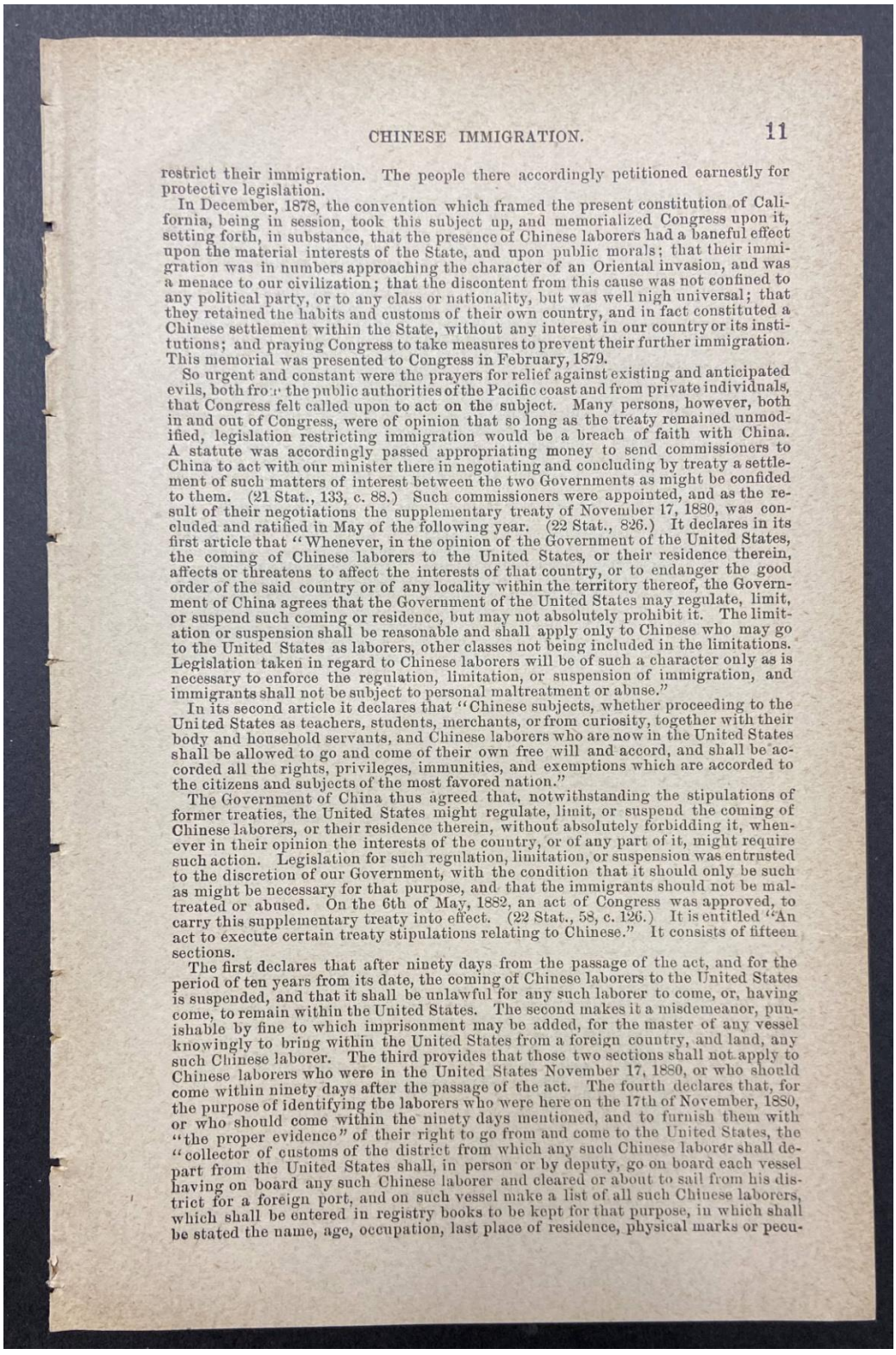

restrict their immigration. The people there accordingly petitioned earnestly for protective legislation.

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 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 felt called upon 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 Stat., 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 Stat., 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 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 entrusted 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 Stat., 58, c. 126.) It is entitled "An act to execute certain treaty stipulations relating to Chinese." It consists of fifteen sections.

The first declares that after ninety days from the passage of the act, and for the period of ten 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 should come within ninety 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 ninety 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 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 pecu-

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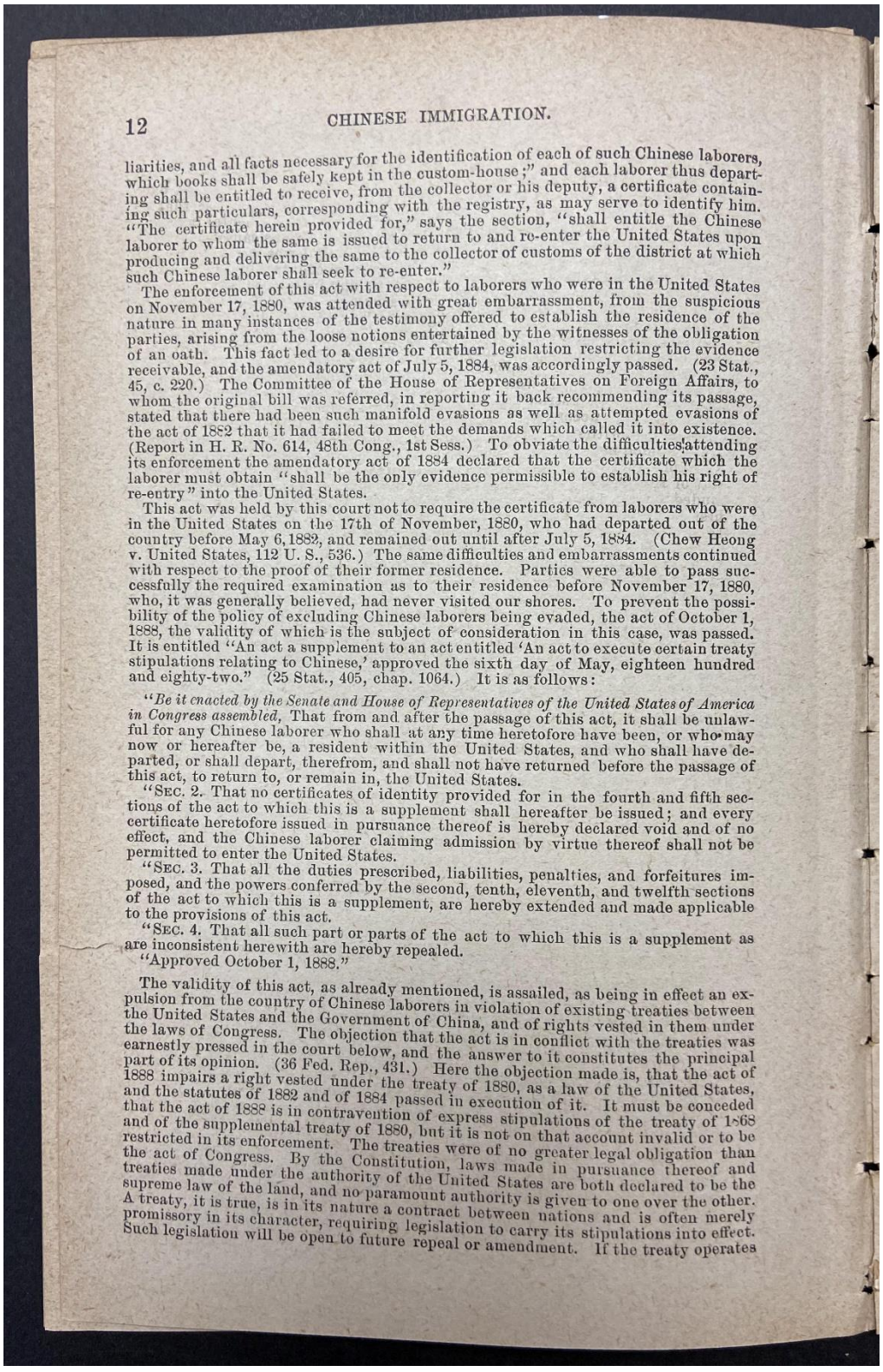

liarities, and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the custom-house;" and each laborer thus departing shall be entitled to receive, from the collector or his deputy, a certificate containing such particulars, corresponding with 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 re-enter 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 Stat., 45, c. 220.) The Committee of the House of Representatives on Foreign Affairs, to whom the original bill was referred, in reporting it back 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 re-entry" 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. United States, 112 U. S., 536.) 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 sixth day of May, eighteen hundred and eighty-two." (25 Stat., 405, chap. 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 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. 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 thereof 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

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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.) This doctrine was affirmed and followed in Whitney v. Robertson (124 U. S., 190, 195). 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 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 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 Stat. 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 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, whilst sitting at the circuit, in Taylor *v.* Morton (2 Curtis, 454, 459), and he held that whilst it would always be a matter of the utm st 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 re-asserted and fully adopted by this court in Whitney *v.* Robertson (124 U. S. 190, 195).

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

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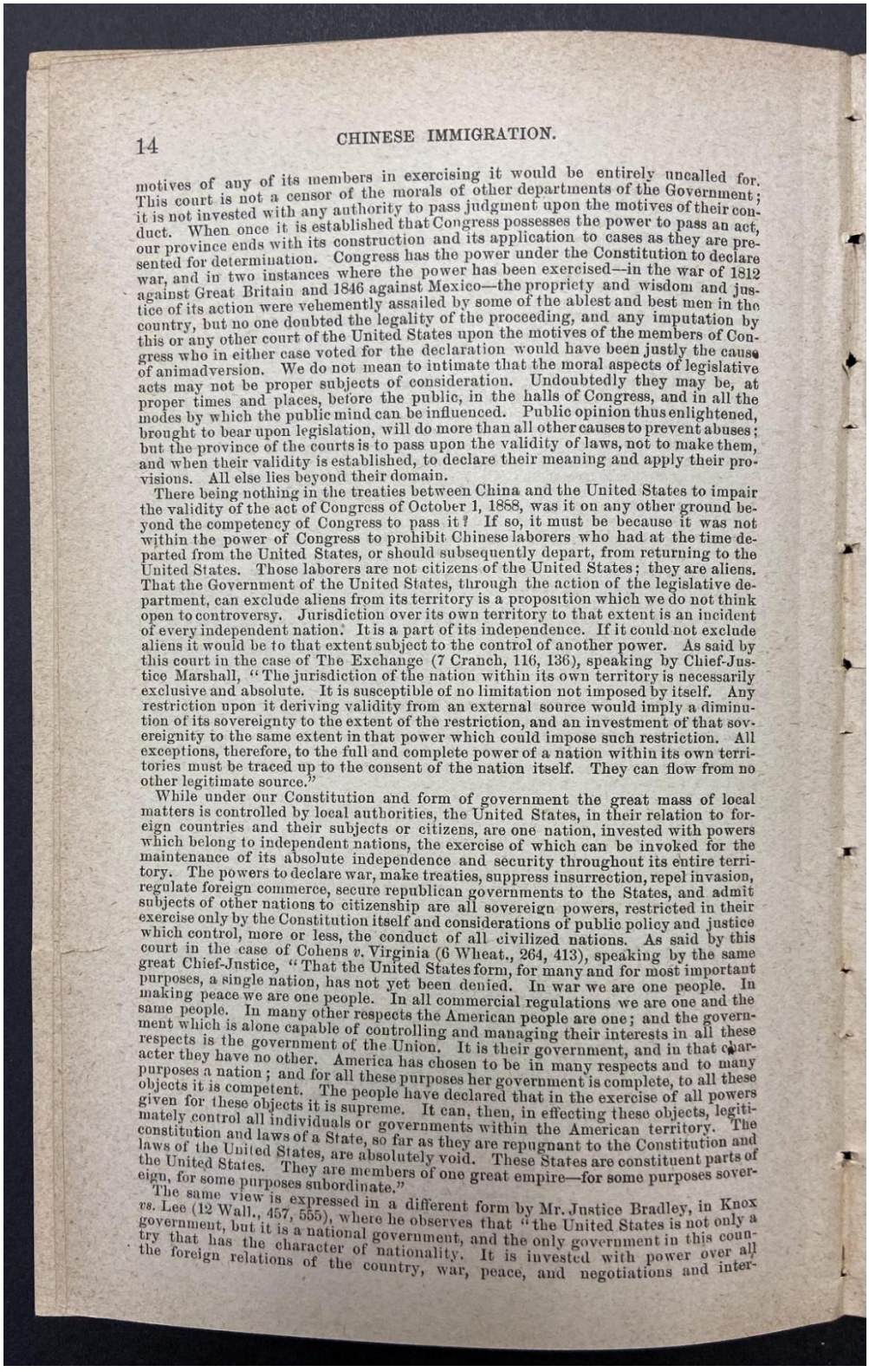

motives of any of its members in exercising it would be entirely uncalled for. This court is not a censor of the morals of other departments of the Government; it is not invested with any authority to pass judgment upon the motives of their conduct. When once it is established that Congress possesses 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 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 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 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 *vs.* 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 inter-

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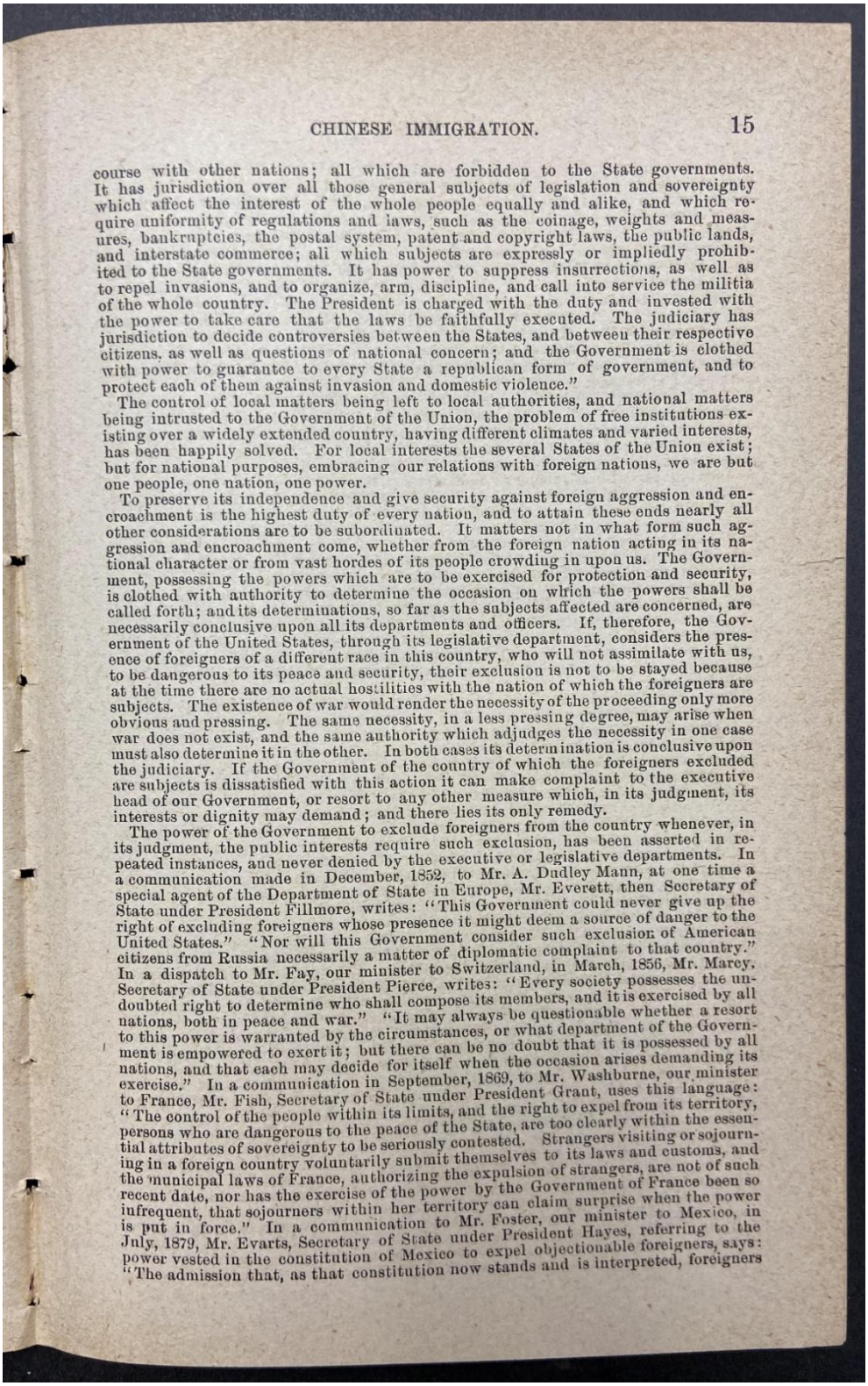

course with other nations; all which are forbidden to the State governments. It has jurisdiction over all those general subjects of legislation and sovereignty which affect the interest of the whole people equally and alike, and which require uniformity of regulations and laws, such as the coinage, weights 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 guarantee to every State a republican form of government, and to protect each of them against invasion and domestic violence."

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 exclusion, has been asserted in repeated instances, 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

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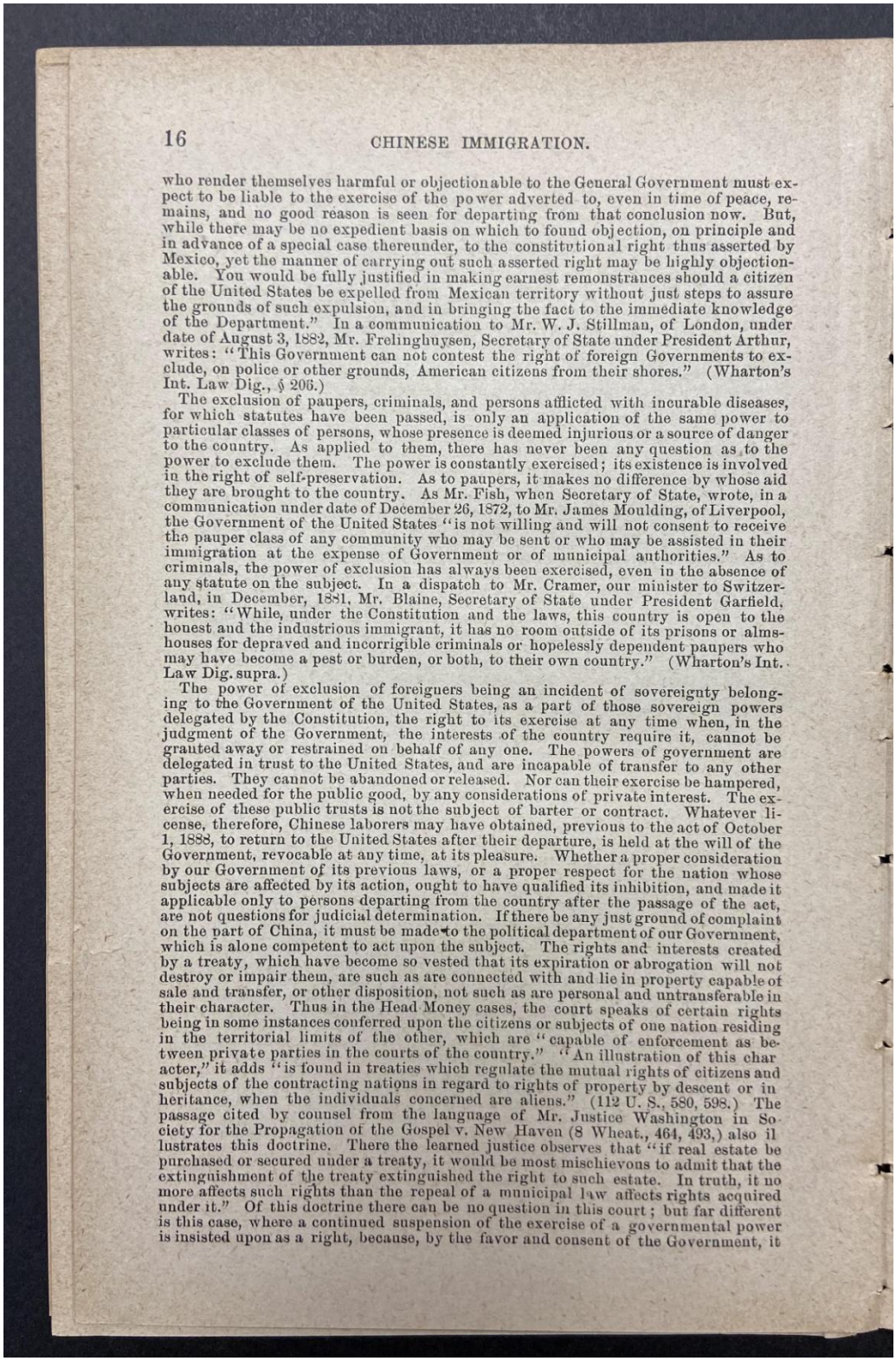

who render themselves harmful or objectionable to the General Government must expect to be liable to the exercise of the power adverted to, even in time of peace, remains, and no good reason is seen for departing from that conclusion now. But, while there may be no expedient basis on which to found objection, 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 citizen 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, of London, under date of August 3, 1882, Mr. Frelinghuysen, Secretary of State under President Arthur, writes: "This Government can not contest the right of foreign Governments to exclude, on police or other grounds, American citizens from their shores." (Wharton's Int. Law 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 who 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 Garfield, writes: "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." (Wharton's Int. Law 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 released. 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 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.) The passage cited by counsel from the language of Mr. Justice Washington in Society for the Propagation of the Gospel 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

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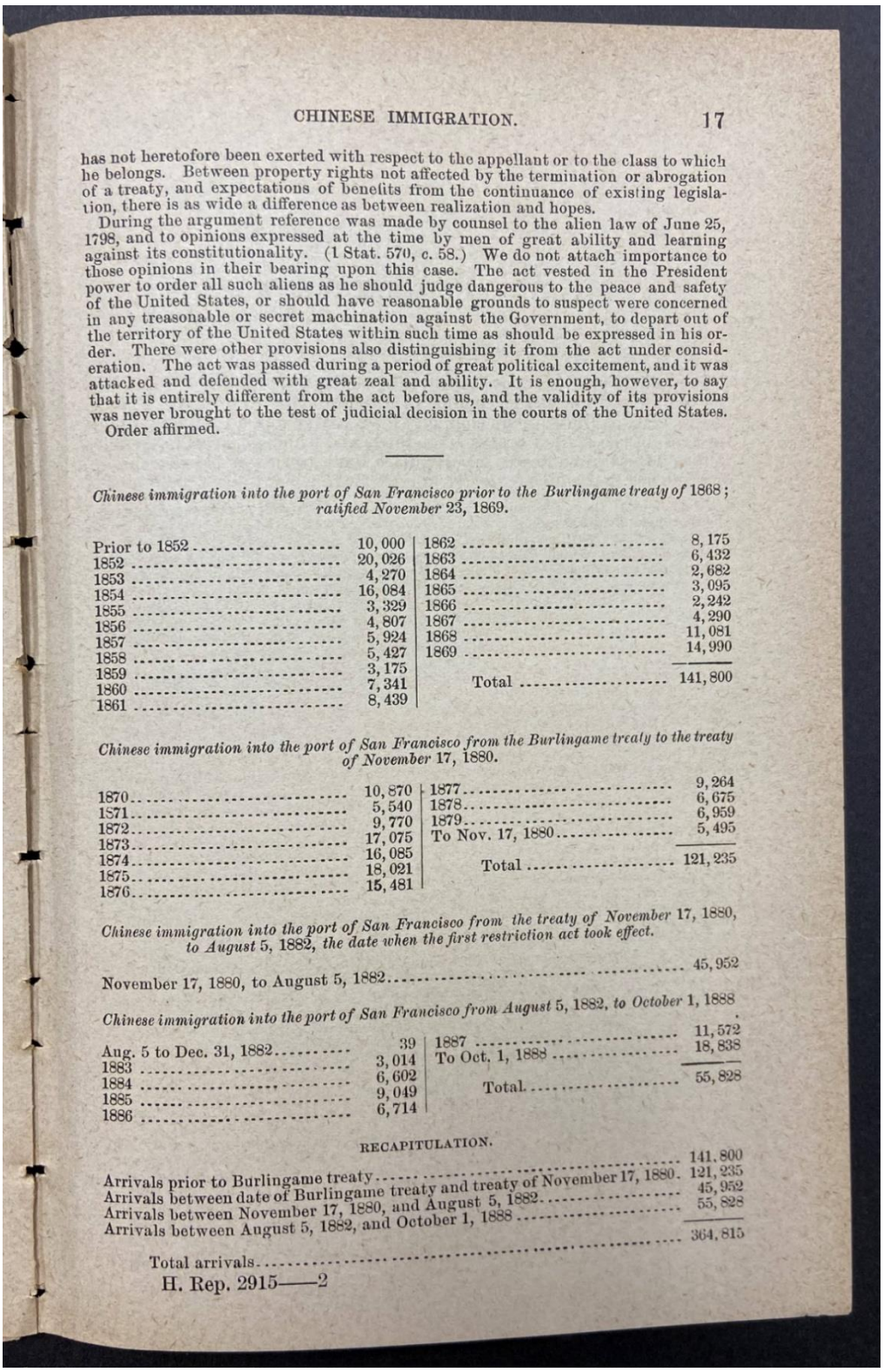

has not heretofore been exerted with respect to the appellant or to the class to which he belongs. Between property rights not affected by the termination or abrogation of a treaty, and expectations of benefits from the continuance of existing legislation, there is as wide a difference as between realization 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 Stat. 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.

Chinese immigration into the port of San Francisco prior to the Burlingame treaty of 1868; *ratified November* 23, 1869.

Prior to 1852	10,000	1862	8,175
1852	20,026	1863	6,432
1853	4,270	1864	2,682
1854	16,084	1865	3,095
1855	3,329	1866	2,242
1856	4,807	1867	4,290
1857	5,924	1868	11,081
1858	5,427	1869	14,990
1859	3,175		
1860	7,341	Total	141,800
1861	8,439		

Chinese immigration into the port of San Francisco from the Burlingame treaty to the treaty of November 17, 1880.

1870	10,870	1877	9,264
1871	5,540	1878	6,675
1872	9,770	1879	6,959
1873	17,075	To Nov. 17, 1880	5,495
1874	16,085		
1875	18,021	Total	121,235
1876	15,481		

Chinese immigration into the port of San Francisco from the treaty of November 17, 1880, *to August* 5, 1882, *the date when the first restriction act took effect.*

November 17, 1880, to August 5, 1882	45,952

Chinese immigration into the port of San Francisco from August 5, 1882, *to October* 1, 1888

Aug. 5 to Dec. 31, 1882	39	1887	11,572
1883	3,014	To Oct. 1, 1888	18,838
1884	6,602		
1885	9,049	Total	55,828
1886	6,714		

RECAPITULATION.

Arrivals prior to Burlingame treaty	141,800
Arrivals between date of Burlingame treaty and treaty of November 17, 1880	121,235
Arrivals between November 17, 1880, and August 5, 1882	45,952
Arrivals between August 5, 1882, and October 1, 1888	55,828
Total arrivals	364,815

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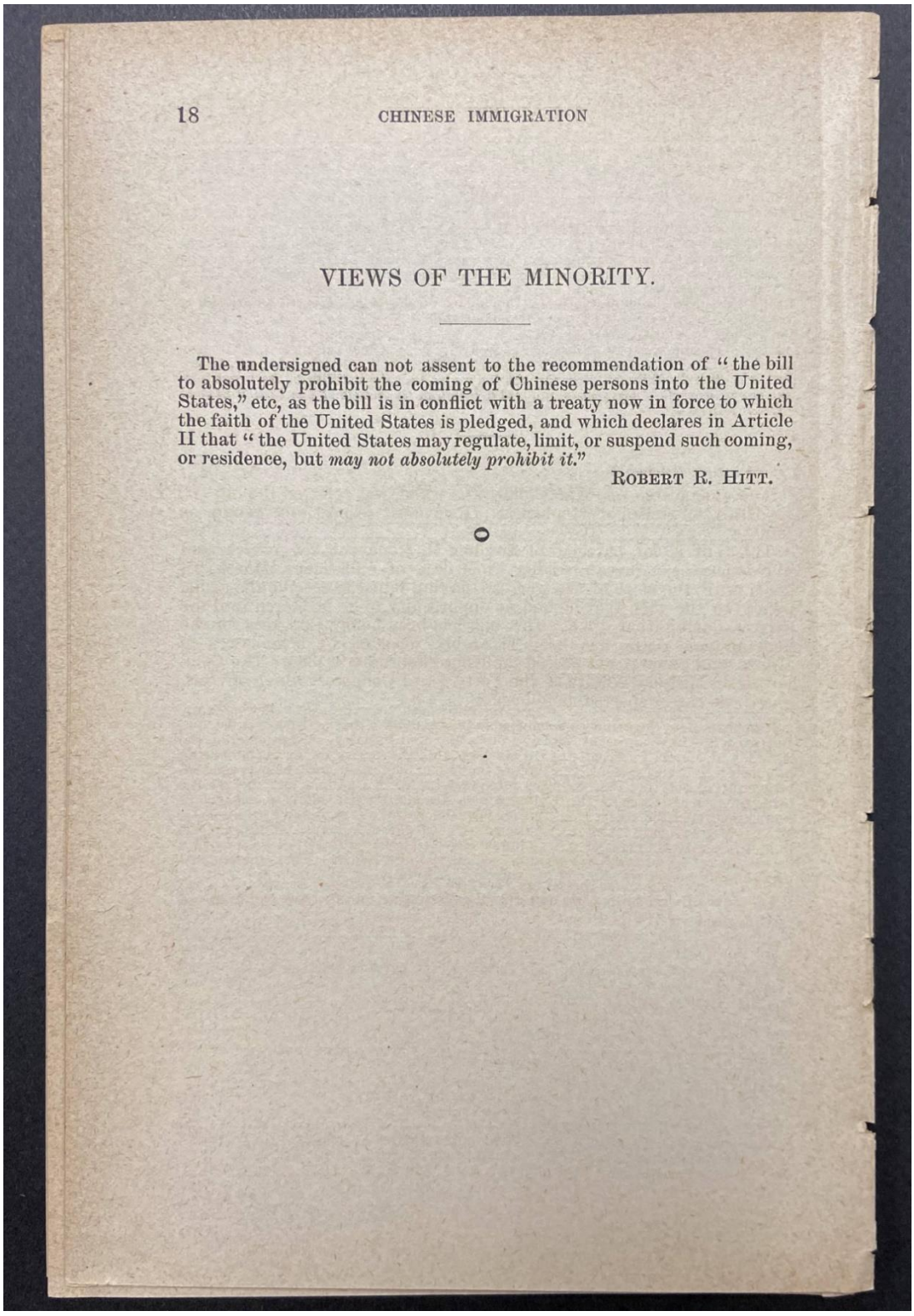

VIEWS OF THE MINORITY.

The undersigned can not assent to the recommendation of "the bill to absolutely prohibit the coming of Chinese persons into the United States," etc, as the bill is in conflict with a treaty now in force to which the faith of the United States is pledged, and which declares in Article II that "the United States may regulate, limit, or suspend such coming, or residence, but *may not absolutely prohibit it.*"

ROBERT R. HITT.

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