

## APPENDIX 4

# **Fifteen Passenger Bill (1879) and Veto Message of President Rutherford Hayes of the Fifteen Passenger Bill, March 1, 1879, 1879 Congressional Record– House 2275–2277**

*Transcribed by Yi Ping Caitlin Roberts*

### **VETO OF THE CHINESE IMMIGRATION BILL.**

The SPEAKER laid before the House the following message from the President of the United States:

*To the House of Representatives:*

After a very careful consideration of House bill No. 2423, entitled “An act to re-strict the immigration of Chinese to the United States,” I herewith return it to the House of Representatives, in which it originated, with my objections to its passage.

The bill, as it was sent to the Senate from the House of Representatives, was con-fined in its provisions to the object named in its title, which is that of “An act to restrict the immigration of Chinese to the United States.” The only means adopted to secure the proposed object was the limitation on the number of Chinese passengers which might be brought to this country by any one vessel to fifteen, and as this number was not fixed in any proportion to the size or tonnage of the vessel or by any consideration of the safety or accommodation of these passengers, the simple purpose and effect of the enactment were to repress this immigration to an extent falling but little short of its absolute exclusion.

The bill, as amended in the Senate and now presented to me, includes an independent and additional provision which aims at, and in terms requires, the abrogation by this Government of articles 5 and 6 of the treaty with China, commonly called the Burlingame treaty, through the action of the Executive enjoined by this provision of the act.

The Burlingame treaty, of which the ratifications were exchanged at Peking, November 23, 1869, recites as the occasion and motive of its negotiation by the two governments that “since the conclusion of the treaty between the United States of America and the Ta Tsing Empire (China) of the 18th of June, 1858, circumstances have arisen showing the necessity of additional articles thereto,” and proceeds to an agreement as to said additional articles. These negotiations, therefore, ending by the signature of the additional articles July 28, 1868, had

for their object the completion of our treaty rights and obligations toward the government of China by the incorporation of these new articles as, thenceforth, parts of the principal treaty to which they are made supplemental. Upon the settled rules of interpretation applicable to such supplemental negotiations the text of the principal treaty and of these “additional articles thereto” constitute one treaty, from the conclusion of the new negotiations, in all parts of equal and concurrent force and obligation between the two governments, and to all intents and purposes as if embraced in one instrument.

The principal treaty, of which the ratifications were exchanged August 16, 1859, recites that “the United States of America and the Ta Tsing Empire desiring to maintain firm, lasting, and sincere friendship, have resolved to renew, in a manner, clear and positive, by means of a treaty or general convention of peace, amity, and commerce, the rules of which shall in future be mutually observed in the intercourse of their respective countries,” and proceeds, in its thirty articles, to lay out a careful and comprehensive system for the commercial relations of our people with China. The main substance of all the provisions of this treaty is to define and secure the rights of our people in respect of access to, residence and protection in, and trade with China. The actual provisions in our favor, in these respects, were framed to be, and have been found to be, adequate and appropriate to the interests of our commerce, and by the concluding article we receive the important guarantee, “that should at any time the Ta Tsing Empire grant to any nation, or the merchants or citizens of any nation, any right, privilege, or favor connected either with navigation, commerce, political or other intercourse which is not conferred by this treaty, such right, privilege, and favor shall at once freely inure to the benefit of the United States, its public officers, merchants, and citizens.” Against this body of stipulations in our favor, and this permanent engagement of equality in respect of all future concessions to foreign nations, the general promise of permanent peace and good offices on our part seems to be the only equivalent. For this the first article undertakes as follows: “There shall be, as there have always been, peace and friendship between the United States of America and the Ta Tsing Empire, and between their people respectively. They shall not insult or oppress each other for any trifling cause, so as to produce an estrangement between them; and if any other nation should act unjustly or oppressively, the United States will exert their good offices, on being informed of the case, to bring about an amicable arrangement of the question, thus showing their friendly feelings.”

At the date of the negotiation of this treaty our Pacific possessions had attracted a considerable Chinese emigration, and the advantages and the inconveniences felt or feared therefrom had become more or less manifest, but they dictated no stipulations on the subject to be incorporated in the treaty. The year 1868 was marked by the striking event of a spontaneous embassy from the Chinese Empire, headed by an American citizen, Anson Burlingame, who had relin-

quished his diplomatic representation of his own country in China to assume that of the Chinese Empire to the United States and the European nations. By this time the facts of the Chinese immigration and its nature and influences, present and prospective, had become more noticeable and were more observed by the population immediately affected and by this Government. The principal feature of the Burlingame treaty was its attention to and its treatment of the Chinese immigration and the Chinese as forming, or as they should form, a part of our population. Up to this time our uncovenanted hospitality to immigration, our fearless liberality of citizenship, our equal and comprehensive justice to all inhabitants, whether they abjured their foreign nationality or not, our civil freedom and our religions toleration had made all comers welcome, and under these protections the Chinese in considerable numbers had made their lodgment upon our soil.

The Burlingame treaty undertakes to deal with this situation, and its fifth and sixth articles embrace its most important provisions in this regard and the main stipulations in which the Chinese government has secured an obligatory protection of its subjects within our territory. They read as follows:

**“ARTICLE V.**

“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 the purpose 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.

**“ARTICLE VI.**

“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 citizens of the United States in China, nor upon the subjects of China in the United States.”

An examination of these two articles in the light of the experience then influential in suggesting their “necessity” will show that the fifth article was framed

in hostility to what seemed the principal mischief to be guarded against, to wit, the introduction of Chinese laborers by methods which should have the character of a forced and servile importation, and not of a voluntary emigration of freemen seeking our shores upon motives and in a manner consonant with the system of our institutions and approved by the experience of the nation. Unquestionably the adhesion of the government of China to these liberal principles of freedom in emigration, with which we were so familiar and with which we were so well satisfied, was a great advance toward opening that empire to our civilization and religion, and gave promise in the future of greater and greater practical results in the diffusion throughout that great population of our arts and industries, our manufactures, our material improvements, and the sentiments of government and religion which seem to us so important to the welfare of mankind. The first clause of this article secures this acceptance by China of the American doctrines of free migration to and fro among the peoples and races of the earth.

The second clause, however, in its reprobation of “any other than entirely voluntary emigration” by both the high contracting parties, and in the reciprocal obligations whereby we secured the solemn and unqualified engagement on the part of the government of China “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 without their free and voluntary consent” constitutes the great force and value of this article. Its importance both in principle and in its practical service toward our protection against servile importation in the guise of immigration cannot be overestimated. It commits the Chinese government to active and efficient measures to suppress this iniquitous system where those measures are most necessary and can be most effectual. It gives to this Government the footing of a treaty right to such measures and the means and opportunity of insisting upon their adoption and of complaint and resentment at their neglect. The fifth article, therefore, if it fall short of what the pressure of the later experience of our Pacific States may urge upon the attention of this Government as essential to the public welfare seems to be in the right direction and to contain important advantages which once relinquished cannot be easily recovered.

The second topic which interested the two governments under the actual condition of things which prompted the Burlingame treaty was adequate protection under the solemn and definite guarantees of a treaty of the Chinese already in this country and those who should seek our shores. This was the object and forms the subject of the sixth article, by whose reciprocal engagement the citizens and subjects of the two governments, respectively, visiting or residing in the country of the other are secured the same privileges, immunities, or exemptions there enjoyed by the citizens or subjects of the most favored nations. The treaty of 1858, to which these articles are made supplemental, provides for a great amount of privilege and protection, both of person and property, to Ameri-

can citizens in China, but it is upon this sixth article that the main body of the treaty rights and securities of the Chinese already in this country depends. Its abrogation, were the rest of the treaty left in force, would leave them to such treatment as we should voluntarily accord them by our laws and customs. Any treaty obligation would be wanting to restrain our liberty of action toward them, or to measure or sustain the right of the Chinese government to complaint or redress in their behalf.

The lapse of ten years since the negotiation of the Burlingame treaty has exhibited to the notice of the Chinese government, as well as to our own people, the working of this experiment of immigration in great numbers of Chinese laborers to this country, and their maintenance here of all the traits of race, religion, manners and customs, habitations, mode of life, and segregation here, and the keeping up of the ties of their original home, which stamp them as strangers and sojourners, and not as incorporated elements of our national life and growth. This experience may naturally suggest the reconsideration of the subject, as dealt with by the Burlingame treaty, and may properly become the occasion of more direct and circumspect recognition, in renewed negotiations, of the difficulties surrounding this political and social problem. It may well be that, to the apprehension of the Chinese government no less than our own the simple provisions of the Burlingame treaty may need to be replaced by more careful methods, securing the Chinese and our-selves against a larger and more rapid infusion of this foreign race than our system of industry and society can take up and assimilate with ease and safety. This ancient government, ruling a polite and sensitive people, distinguished by a high sense of national pride, may properly desire an adjustment of their relations with us, which would in all things confirm, and in no degree endanger, the permanent peace and amity and the growing commerce and prosperity, which it has been the object and the effect of our existing treaties to cherish and perpetuate.

I regard the very grave discontents of the people of the Pacific States with the present working of the Chinese immigration, and their still graver apprehensions therefrom in the future, as deserving the most serious attention of the people of the whole country and a solicitous interest on the part of Congress and the Executive. If this were not my own judgment, the passage of this bill by both Houses of Congress would impress upon me the seriousness of the situation, when a majority of the representatives of the people of the whole country had thought fit to justify so serious a measure of relief.

The authority of Congress to terminate a treaty with a foreign power by expressing the will of the nation no longer to adhere to it, is as free from controversy under our Constitution as is the further proposition that the power of making new treaties or modifying existing treaties is not lodged by the Constitution in Congress, but in the President, by and with the advice and consent of the Senate, as shown by the concurrence of two-thirds of that body. A denunciation

of a treaty by any Government is, confessedly, justifiable only upon some reason both of the highest justice and of the highest necessity. The action of Congress in the matter of the French treaties, in 1798, if it be regarded as an abrogation by this nation of a subsisting treaty, strongly illustrates the character and degree of justification which was then thought suitable to such a proceeding. The preamble of the act recites that "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 that "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."

The enactment, as a logical consequence of these recited facts, declares "that the United State 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."

The history of the Government shows no other instance of an abrogation of a treaty by Congress.

Instances have sometimes occurred where the ordinary legislation of Congress has, by its conflict with some treaty obligation of the Government toward a foreign power, taken effect as an infraction of the treaty, and been judicially declared to be operative to that result. But neither such legislation nor such judicial sanction of the same has been regarded as an abrogation, even for the moment, of the treaty. On the contrary, the treaty in such case still subsists between the Governments, and the casual infraction is repaired by appropriate satisfaction in maintenance of the treaty.

The bill before me does not enjoin upon the President the abrogation of the entire Burlingame treaty, much less of the principal treaty of which it is made the supplement. As the power of modifying an existing treaty, whether by adding or striking out provisions, is a part of the treaty-making power under the Constitution, its exercise is not competent for Congress, nor would the assent of China to this partial abrogation of the treaty make the action of Congress, in thus procuring an amendment of a treaty, a competent exercise of authority under the Constitution. The importance, however, of this special consideration seems superseded by the principle that a denunciation of a part of a treaty, not made by the terms of the treaty itself separable from the rest, is a denunciation of the whole treaty. As the other high contracting party has entered into no treaty obligations except such as include the part denounced, the denunciation by one party of the part necessarily liberates the other party from the whole treaty.

I am convinced that, whatever urgency might in any quarter or by any inter-



est be supposed to require an instant suppression of further immigration from China, no reasons can require the immediate withdrawal of our treaty protection of the Chinese already in this country, and no circumstances can tolerate an exposure of our citizens in China, merchants or missionaries, to the consequences of so sudden an abrogation of their treaty protections. Fortunately, however, the actual recession in the flow of the emigration from China to the Pacific coast, shown by trustworthy statistics, relieves us from any apprehension that the treatment of the subject in the proper course of diplomatic negotiations will introduce any new features of discontent or disturbance among the communities directly affected. Were such delay fraught with more inconveniences than have ever been suggested by the interests most earnest in promoting this legislation, I cannot but regard the summary disturbance of our existing treaties with China as greatly more inconvenient to much wider and more permanent interests of the country.

I have no occasion to insist upon the more general considerations of interest and duty which sacredly guard the faith of the nation in whatever form of obligation it may have been given. These sentiments animate the deliberations of Congress and pervade the minds of our whole people. Our history gives little occasion for any reproach in this regard, and in asking the renewed attention of Congress to this bill I am persuaded that their action will maintain the public duty and the public honor.

R. B. HAYES.

EXECUTIVE MANSION, March 1, 1879.

An act to restrict the immigration of Chinese to the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no master of any vessel owned in whole or in part by a citizen of the United States or by a citizen of any foreign country, shall take on board such vessel, at any port or place within the Chinese Empire, or at any other foreign port or place whatever, any number exceeding fifteen Chinese passengers, whether male or female, with the intent to bring such passengers to the United States, and leave such port or place and bring such passengers to any number exceeding fifteen on one voyage within the jurisdiction of the United States: *Provided,* That this section shall not apply to any master of a vessel seeking a harbor in stress of weather.

SEC. 2. That whenever the master or other person in charge of any such vessel takes on board the same, at any foreign port or place, any greater number of Chinese passengers than is prescribed in the first section of this act, with intent to bring such passengers to the United States, and leave such port or place and brings such passengers to any number exceeding fifteen on one voyage within the jurisdiction of the United States, he shall be deemed guilty of a misdemeanor, and shall, for each passenger so taken on board and brought within the

jurisdiction of the United States exceeding the number of fifteen, be fined one hundred dollars, and may also be imprisoned for not exceeding six months.

SEC. 3. That the master of any vessel arriving in the United States, or any of the Territories thereof, from any foreign place whatever, at the same time that he delivers a manifest of the cargo, and if there be no cargo, then at the time of making report or entry of the vessel pursuant to law, shall, in addition to the other matters required to be reported by law, deliver and report to the collector of the district in which such vessel shall arrive a separate list of all Chinese passengers taken on board the vessel at any foreign port or place, and of all such passengers on board the vessel at that time; such list shall be sworn to by the master in the same manner as directed by law in relation to the manifest of the cargo; and the refusal or neglect of the master to comply with the provisions of this section shall receive the same penalties, disabilities, and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo.

SEC. 4. That the amount of the several penalties imposed by the foregoing provisions shall be in liens on the vessels violating those provisions; and such vessels shall be libeled therefor in any circuit or district court of the United States where such vessel shall arrive.

SEC. 5. That nothing herein contained shall be held to repeal or modify any law forbidding the importation of coolies, or of females for immoral purposes, into the United States: *Provided*, That no consul or consular agent of the United States residing at any port from which any vessel taking Chinese passengers may take her departure shall grant the certificate provided for in section twenty-one hundred and sixty-two of the Revised Statutes for more than fifteen Chinese passengers on any one vessel.

SEC. 6. That this act shall not apply to persons officially connected with the Chinese government, or any embassy thereof, or to persons rescued from shipwreck during the voyage of and by the vessel bringing the same within the jurisdiction of the United States, or to persons who may only seek a temporary residence for educational purposes, and who shall have a certificate from the Chinese government for that purpose.

SEC. 7. That this act shall take effect from and after the first day of July, eighteen hundred and seventy-nine. And the President of the United States shall immediately on the approval of this act give notice to the government of China of the abrogation of articles five and six of the additional articles to the treaty of June eighteenth, eighteen hundred and fifty-eight, between the United States and China, proclaimed February fifth, eighteen hundred and seventy, commonly called the Burlingame treaty.

SAM. J. RANDALL,

*Speaker of the House of Representatives.*

W. A. WHEELER,

*Vice-President of the United States and President of the Senate.*



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The result of the vote was then announced as above stated. Mr. CONGER. I move to reconsider the vote just taken; and also to lay that motion upon the table. Mr. SPRINGER. If the gentleman makes that motion I shall call for the yeas and nays on it. Mr. CONGER. I withdraw the motion.

BUSINESS ON THE SPEAKER'S TABLE.

Mr. HARRIS, of Virginia. I now move to suspend the rules in order to proceed to business on the Speaker's table, under Rule 54. Mr. EWING. I desire to inquire of the Chair how the gentleman from Virginia [Mr. HARRIS] gets the floor to move a suspension of the rules?

The SPEAKER. He gets the floor by the recognition of the Chair. [Laughter.] Mr. EWING. I am first on the list.

The SPEAKER. The gentleman from Ohio [Mr. EWING] is first on the list of individual members. But the gentleman will notice that to-day the Chair has recognized only such members as were authorized by their committees to submit motions to suspend the rules.

Mr. EWING. The object of my inquiry was to ascertain whether the gentleman from Virginia [Mr. HARRIS] was authorized by any committee to make that motion.

Mr. HARRIS, of Virginia. The gentleman has no right to catechise the Speaker as to what authority he has to recognize any member he chooses.

Mr. EWING. I am not catechising the Speaker. The SPEAKER. The Chair recognizes the gentleman from Virginia [Mr. HARRIS] because he submits a motion to suspend the rules in order to proceed to the consideration of business on the Speaker's table, where there rests a large number of bills of a public character.

Mr. EWING. The Chair announced that he would recognize— [Cries of "Regular order!"]

The SPEAKER. The Chair would prefer that the gentleman be allowed to make his statement.

Mr. EWING. The Chair announced that he would recognize gentlemen in the order in which they came on the book, unless a committee should instruct some gentleman to move a suspension of the rules.

The SPEAKER. The Chair has always reserved the right to recognize any motion to proceed to the consideration of public business.

Mr. EWING. The Chair did not make that reservation when he made the statement the other day.

The SPEAKER. The Chair has never made any other statement since he has been in the chair.

Mr. EWING. The Chair did not make that statement the other day.

The SPEAKER. The question is on the motion of the gentleman from Virginia, [Mr. HARRIS], to suspend the rules for the purpose of proceeding to the consideration of business on the Speaker's table.

Mr. TOWNSHEND, of Illinois. Is it in order now to move that the House take a recess until to-morrow morning at ten o'clock?

The SPEAKER. Not pending a motion to suspend the rules.

Mr. TOWNSHEND, of Illinois. But before the motion is put to the House?

The SPEAKER. The Chair thinks not.

The question was taken upon the motion to suspend the rules; and upon a division there were—ayeas 151, nays 20.

Mr. EDEN. Before the result of the vote is announced I desire to make a parliamentary inquiry.

The SPEAKER. The gentleman will state it. Mr. EDEN. I desire to inquire if we proceed to business on the Speaker's table at this time under a suspension of the rules, will we proceed to that business with all the rights that are given us under the rules?

The SPEAKER. The motion is to proceed to the business under Rule 54, and all other rules applicable are reserved. It is a motion to suspend the rules in order to get to the Speaker's table; and every bill is subject to the other rules of the House.

Mr. COX, of New York. All points of order being reserved? The SPEAKER. They are. Two-thirds having voted in favor thereof, the rules are suspended and the House will now proceed to the consideration of business upon the Speaker's table.

VETO OF THE CHINESE IMMIGRATION BILL.

The SPEAKER laid before the House the following message from the President of the United States:

To the House of Representatives:

After a very careful consideration of House bill No. 2423, entitled "An act to restrict the immigration of Chinese to the United States," I herewith return it to the House of Representatives, in which it originated, with my objections to its passage.

The bill, as it was sent to the Senate from the House of Representatives, was confined in its provisions to its title, which is that of "An act to restrict the immigration of Chinese to the United States." The only means adopted to secure the proposed object was the limitation on the number of Chinese passengers which might be brought to this country by any one vessel to fifteen, and as this number was not fixed in any proportion to the size or tonnage of the vessel or by any consideration of the safety or accommodation of these passengers, the obligation and effect of the enactment were to repress this immigration to an extent falling but little short of its absolute exclusion.

The bill, as amended in the Senate and now presented to me, includes an independent and additional provision which, in terms requires, the abrogation by this Government of articles 5 and 6 of the treaty with China, commonly called the Burlingame treaty, through the action of the Executive enjoined by this provision of the act.

The Burlingame treaty, of which the ratifications were exchanged at Peking, November 23, 1869, recites as the occasion and motive of its negotiation by the two governments that "since the conclusion of the treaty between the United States of America and the Ta Tsing Empire (China) of the 18th of June, 1858, circumstances have arisen showing the necessity of additional articles thereto," and proceeds to an agreement as to said additional articles. These negotiations, therefore, ending by the signature of the additional articles July 28, 1868, had for their object the completion of our treaty rights and obligations toward the government of China by the incorporation of these new articles as, henceforth, parts of the principal treaty by which they are made supplemental. Upon the settled rules of interpretation applicable to such supplemental negotiations the text of the principal treaty and of these "additional articles thereto" constitute one treaty, from the conclusion of the new negotiations, in all parts of equal and concurrent force and obligation to the two governments, and to all intents and purposes as if embraced in one instrument.

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At the date of the negotiation of this treaty our Pacific possessions had attracted a considerable Chinese emigration, and the advantages and the inconveniences felt or feared therefrom had become more or less manifest, but they dictated no stipulations on the subject to be incorporated in the treaty. The year 1868 was marked by the striking event of a spontaneous embassy from the Chinese Empire, headed by an American citizen, Amson Beringiano, who had relinquished his diplomatic representation of his own country in China to assume that of the Chinese Empire to the United States and the European nations. By this time the facts of the Chinese immigration and its nature and influences, present and prospective, had become more noticeable and were more observed by the population generally affected and by this Government. The principal feature of the Burlingame treaty was its attention to and its treatment of the Chinese immigration and the Chinese as forming, or as they should form, a part of our population. By its unaccustomed hospitality to immigration, our fearless liberality of citizenship, our equal and comprehensive justice to all inhabitants, whether they abjured their foreign homes or not, our civil freedom and our religious toleration had made all comers welcome, and under those protections the Chinese in considerable numbers had made their lodgment upon our soil.

The Burlingame treaty undertakes to deal with this situation, and its fifth and sixth articles embrace its most important provisions in this regard and the main stipulations in which the Chinese government has secured an obligatory protection of its subjects within our territory. They read as follows:

"ARTICLE V.

"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 the purpose of curiosity, of trade, or as permanent residents. The high contracting parties, therefore, join in republishing 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.

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A examination of these two articles in the light of the experience then imminent and now before us, will show that the fifth article was intended to ward off the hostility to what seemed the principal mischief to be guarded against, to wit, the introduction of Chinese laborers by methods which should have the character of a forced and servile importation, and not that of voluntary emigration of freemen seeking our shores upon motives and in a manner consonant with the system of our institutions and approved by the experience of the nation. Unquestionably the admission of the government of China to these liberal principles of freeman immigration, with which we were so familiar and with which we were so well satisfied, was a great advance toward opening that empire to our civilization and religion, and gave promise in the future of greater and greater practical results in the diffusion throughout that great population of our arts and industries, our manufactures, our material improvements, and the sentiments of government and religion which were to be written upon its face. The first clause of the fifth article secures this acceptance by China of the American doctrine of freeman immigration to and from among the peoples and races of the earth.

The second in its repudiation of "any other than entirely voluntary emigration" by both the high contracting parties, and in its reciprocal obligations whereby we secured the solemn and unqualified engagement on the part of the United States "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 without their free and voluntary consent," secures the great force and value of this article. Its importance both in principle and in its practical service toward our people against servile immigration in the guise of immigration cannot be overestimated. It commits the Chinese government to active and efficient measures to suppress the iniquitous system

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where those measures are most necessary and can be most effectual. It gives to this Government the footing of a treaty right to such measures and the means and opportunity of insisting upon their adoption and of complaint and reclamation at their neglect. The fifth article, therefore, if it fall short of what the pressure of the later experience of our Pacific States may urge upon the attention of this Government as essential to the public welfare seems to be in the right direction and to contain important advantages which once relinquished cannot be easily recovered.

The second topic which interested the two governments under the actual condition of things which prompted the Burlingame treaty was adequate protection under the solemn and definite guarantee of a treaty of the Chinese already in this country and those who seek our shores. This was the object mainly of the subject of the sixth article, by whose reciprocal engagement the citizens and subjects of the two governments, respectively, visiting or residing in the country of the other are secured the same rights, franchises, or exemptions as are enjoyed by the citizens or subjects of the most favored nation. The treaty of 1858, to which these articles are made supplemental, provides for a great amount of privilege and protection, both of person and property, to American citizens in China, but it is upon this sixth article that the main body of the treaty rights and securities of the Chinese already in this country depends. Its abrogation, were the rest of the treaty left in force, would leave them to such treatment as we should voluntarily accord them by our laws and customs. Any treaty obligation would be wanting to restrain our liberty of action toward them, or to measure or sustain the right of the Chinese government to complain or redress in their behalf.

The lapse of ten years since the negotiation of the Burlingame treaty has exhibited to the notice of the Chinese government, as well as to our own people, the working of this experiment of immigration in great numbers of Chinese laborers to this country, and their maintenance hereof all the state of race, religion, manners and customs, habits, mode of life, and segregation here, and the keeping up of the ties of their original home, which stamp them as strangers and sojourners, and not as incorporated citizens of our land and growth. This condition of things may naturally suggest the reconsideration of the subject, as dealt with by the Burlingame treaty, and may properly become the occasion of more direct and circum-spect recognition of the rights and franchises surrounding this subject from a political and social position. It may well be that, to the apprehension of the Chinese government, no less than our own the simple provisions of the Burlingame treaty may need to be replaced by more radical methods, securing the Chinese and ourselves against a larger and more rapid influx of this foreign race than our system of industry and society can take up and assimilate with ease and safety. This ancient government, ruling a politic and sensitive people, distinguished by a high sense of national pride, may properly desire an adjustment of their relations with us, which would in all things confirm, and in no degree endanger, the permanent peace and unity and the growing commerce and prosperity, which it has been the object and the effect of our existing treaties to cherish and perpetuate.

I regard the very grave discontents of the people of the Pacific States with the present working of the Chinese immigration, and their still greater apprehensions therefrom in the future, as deserving the most serious attention of the people of the whole country and a solicited interest on the part of Congress and the Executive. If this were not my own judgment, the passage of this bill by both Houses of Congress would impose upon the seriousness of the situation, which is shown as above by the concurrence of two-thirds of that body. A denunciation of a treaty by any Government is, confessedly, justifiable only upon some reason both of the highest justice and of the highest necessity. The action of Congress in this respect of the French treaties, in 1793, if it be regarded as an abrogation by this nation of a subsisting treaty, strongly illustrates the character and degree of justification which was then thought suitable to such a proceeding. The preamble of the Senate recites that "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 repudiated with indignity;" and that "under authority of the French government there is yet pursued in the United States a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation."

The enactment, as a logical consequence of these recited facts, declares "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 hereafter be regarded as legally obligatory on the Government or citizens of the United States."

The history of the Government shows no other instance of an abrogation of a treaty by Congress.

Instances have sometimes occurred where the ordinary legislation of Congress has, by its conflict with some treaty obligation of the Government toward a foreign power, taken effect as an infraction of the treaty, and been judicially declared to be operative to that result. But neither such legislation nor such judicial sanction of the same has been regarded as an abrogation, even for the moment, of the treaty. On the contrary, the treaty in such case still subsists between the Governments, and the casual infraction is repaired by appropriate satisfaction in maintenance of the treaty.

The bill before me does not enjoin upon the President the abrogation of the entire Burlingame treaty, much less of the principal part of which it is made the supplement. As the power of modifying an existing treaty, whether by adding or striking out provisions, is a part of the treaty-making power under the Constitution, its exercise is not competent for Congress, nor would the assent of China to this partial abrogation of the treaty make the action of Congress, in this respect, an amendment of a treaty, a competent exercise of authority under the Constitution. The importance, however, of this special consideration seems suggested by the principle that a denunciation of a part of a treaty, not by the terms of the treaty itself separable from the rest, is a denunciation of the whole treaty. As the other high contracting party has entered into no treaty obligations except and as included in the part denounced, the denunciation of one part of the part necessarily liberates the other party from the whole treaty.

I am convinced that, whatever urgency might in any quarter or by any interest be supposed to require an instant expression of favor on the part of China, no reasons can require the immediate withdrawal of our treaty protection of the Chinese already in this country, and no circumstances can tolerate an exposure of our citizens in China, merchants or missionaries, to the denunciations and persecutions of an abrogation of their treaty protections. Fortunately, however, the actual recession in the flow of the emigration from China to the Pacific coast, shown by trustworthy statistics, relieves us from any apprehension that the treatment of the subject in the proper course of diplomatic negotiations will introduce any new features of discontent or disturbance among the communities directly affected. Were such delay fraught with more inconveniences than have ever been suggested, by the increase most earnest in promoting this legislation, I cannot but regard the summary disturbance of our existing treaties with China as greatly more inconvenient to much wider and more permanent interests of the country.

I have no occasion to insist upon the more general considerations of interest and

duty which sacredly guard the faith of the nation in whatever form of obligation it may have been given. These sentiments animate the deliberations of Congress and pervade the minds of our whole people. Our history gives little occasion for any reproach in this regard, and in asking the renewed attention of Congress to this bill I am persuaded that their action will maintain the public duty and the public honor.

EXECUTIVE MANSION, March 1, 1879.

R. B. HAYES.

An Act to restrict the immigration of Chinese to the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no master of any vessel owned in whole or in part by a citizen of the United States or by a citizen of any foreign country, shall take on board such vessel, at any port or place within the Chinese Empire, or at any other foreign port or place whatever, any number exceeding fifteen Chinese passengers, whether male or female, with the intent to bring such passengers to the United States, and leave such port or place and such passengers to a number exceeding fifteen on any voyage within the jurisdiction of the United States: *Provided,* That this section shall not apply to any master of a vessel seeking a harbor in stress of weather.

Sec. 2. That whoever the master or other person in charge of any such vessel takes on board the same, at any foreign port or place, any greater number of Chinese passengers than is prescribed in the first section of this act, with intent to bring such passengers to the United States, and leave such port or place and bring such passengers to any number exceeding fifteen on one voyage within the jurisdiction of the United States, shall be deemed guilty of a misdemeanor, and shall, for each passenger so taken on board and brought within the jurisdiction of the United States exceeding the number of fifteen, be fined one hundred dollars, and may also be imprisoned for not exceeding six months.

Sec. 3. That the master of any vessel arriving in the United States, or any of the Territories thereof, from any foreign place whatever, at the same time that he delivers a manifest of the cargo, and if there be no cargo, then at the time of making report or entry of the vessel pursuant to law, shall, in addition to the other matters required to be reported by law, deliver and report to the collector of the district in which such vessel shall arrive a separate list of all Chinese passengers on board the vessel at that time; such list shall be sworn to by the master in the same manner as directed by law in relation to the manifest of the cargo; and the refusal or neglect of the master to comply with the provisions of this section shall receive the same penalties, disabilities, and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo.

Sec. 4. That the amount of the several penalties imposed by the foregoing provisions shall be in lieu on the vessels holding these provisions; and such vessels shall be liable therefor in any circuit or district court of the United States where such vessel shall arrive.

Sec. 5. That nothing herein contained shall be held to repeal or modify any law forbidding the importation of coolies, or of females for immoral purposes, into the United States: *Provided,* That no consul or consular agent of the United States residing at any port from which any vessel taking Chinese passengers may take her departure shall grant the certificate provided for in section twenty-one hundred and sixty-two of the Revised Statutes for more than fifteen Chinese passengers on any one vessel.

Sec. 6. That this act shall not apply to persons officially connected with the Chinese government, or any embassy thereof, or to persons rescued from shipwreck during the voyage of and by the vessel bringing the same within the jurisdiction of the United States, or to persons who may only seek a temporary residence for educational purposes, and who shall have a certificate from the Chinese government for that purpose.

Sec. 7. That this act shall take effect from and after the first day of July, eight hundred and seventy-nine. And the President of the United States shall immediately on the approval of this act give notice to the government of China of the abrogation of articles six and six of the additional articles to the treaty of June eighteenth, eighteen hundred and fifty-eight, between the United States and China, proclaimed February fifth, eighteen hundred and seventy, commonly called the Burlingame treaty.

SAM. J. RANDALL,

Speaker of the House of Representatives.

W. A. WHEELER,

Vice-President of the United States and President of the Senate.

THE SPEAKER. The question is, Will the House on reconsideration pass this bill, notwithstanding the objections of the President?

Mr. WILLIS, of Kentucky. I move the previous question.

Mr. BULLER. I ask leave to have printed in the RECORD some remarks on this message.

THE SPEAKER. The Chair hears no objection.

Mr. MCKENZIE. I hope that general consent will be given.

Mr. WILLIS, of Kentucky. I ask that general consent be given to print remarks on this subject.

THE SPEAKER. The gentleman from Kentucky asks that such members as may desire it shall have leave to print in the RECORD remarks on the subject of this veto message. The Chair hears no objection.

The previous question was seconded and the main question ordered.

Mr. TOWNSEND, of New York. I call for the yeas and nays.

THE SPEAKER. The Constitution requires that this question be taken by yeas and nays.

The question was taken; and there were—yeas 110, nays 96, not voting 84; as follows:

YEAS—110.

- |                     |                  |                     |                 |
|---------------------|------------------|---------------------|-----------------|
| Atkins,             | Cook,            | Finley, Ebenezer B. | Herbert,        |
| Banning,            | Covert,          | Finley, Jesse J.    | House,          |
| Bayne,              | Cox, Samuel S.   | Forney,             | Hubbell,        |
| Bell,               | Evans,           | Fort,               | Hous, Frank     |
| Blackburn,          | Crittenden,      | Foster,             | Jones, James T. |
| Bridges,            | Culberson,       | Garth,              | Jorgenson,      |
| Butler,             | Deavis, Horace   | Gause,              | Kane,           |
| Bregantao,          | Devis, Joseph J. | Giddings,           | Kimmel,         |
| Briggs,             | Desiring,        | Glover,             | Knott,          |
| Callwell, John W.   | Dorman,          | Goode,              | Langdon,        |
| Callahan,           | Dickey,          | Gunter,             | Luttrell,       |
| Chalmers,           | Dickhoff,        | Hale,               | Maish,          |
| Clarke of Kentucky, | Ellam,           | Callahan,           | Marshall,       |
| Clark of Missouri,  | Ferrel,          | Hermes,             | Marsh,          |
| Cobb,               | Evins, J. Newton | Hayes,              | Martin,         |
| Cole,               | Evins, John H.   | McClain,            | McKenzie,       |
| Collins,            | Ewing,           | Honry,              | McMahon,        |

## APPENDIX 4

# Fifteen Passenger Bill (1879) and Veto Message of President Rutherford Hayes of the Fifteen Passenger Bill, March 1, 1879, 1879 Congressional Record—House 2275–2277

1879. CONGRESSIONAL RECORD—HOUSE. 2277

Mills,	Reilly,	Simons,	Witherburne,
Morcy,	Rice, America V.	Southard,	Wigginton,
Muldrow,	Robertson,	Sparks,	Williams, Jesse N.
Muller,	Ross,	Steele,	Williams, Richard
Neal,	Saylor,	Steuger,	Willis, Albert S.
Page,	Scales,	Townshend, H. W.	Wright,
Patricson, T. M.	Shallenberger,	Turner,	Yeates.
Rea,	Shelley,	Turney,	
Roagan,	Singleton,	Walkor,	

NAYS—96.

Aldrich,	Dunford,	Killinger,	Sampson,
Bacon,	Dunson,	Lamborn,	Saraden,
Bagley,	Dunham,	Lapham,	Snickeron,
Baker, William H.	Dwight,	Lathrop,	Smalls,
Balou,	Eames,	Lindsay,	Smith, A. Herr
Banks,	Fran, James L.	Locke,	Stain,
Blair,	Frye,	Mitchell,	Stewart,
Blias,	Gardner,	Monroe,	Stone, John W.
Boyd,	Garfield,	Morse,	Ston, Joseph C.
Brewer,	Hardenbergh,	Narcross,	Strait,
Briggs,	Harris, Benj. W.	Oliver,	Thompson,
Browne,	Harris, Henry H.	Overton,	Townsend, Amos
Bundy,	Harris, John T.	Patterson, G. W.	Townsend, M. I.
Burchard,	Henderson,	Peddie,	Waddell,
Burleigh,	Hewitt, Abram S.	Phelps,	Waid,
Camp,	Hunter,	Phillips,	Ward,
Candler,	Humphrey,	Price,	Warner,
Cannon,	Hungerford,	Pringlemore,	Watson,
Casswell,	Itter,	Pugh,	White, Harry
Clark, Rich	James,	Rainey,	White, Michael D.
Conger,	Jones, John S.	Randolph,	Williams, Andrew
Cripe,	Kate, William W.	Rice, William W.	Williams, C. G.
Cummings,	Kelley,	Robinson, G. D.	Williams, James
Cutler,	Ketcham,	Robinson, M. S.	Willis, Benj. A.

NOT VOTING—34.

Achlen,	Clymer,	Huntan,	Roberts,
Aiken,	Cox, Jacob D.	Joyce,	Ryan,
Bailey,	Dason,	Keightley,	Sapp,
Baker, John H.	Ellis,	Knapp,	Smith, William E.
Beale,	Ellsworth,	Leckwood,	Springer,
Benedict,	Felton,	Loring,	Stephens,
Bicknell,	Fleming,	Lynde,	Swann,
Blair,	Frauklin,	Mackey,	Thornburgh,
Blount,	Freeman,	McGowan,	Throckmorton,
Bouck,	Fuller,	McKinley,	Tipton,
Bragg,	Gibson,	Metcalf,	Tucker,
Bright,	Hanna,	Morgan,	Vanco,
Brogden,	Harrison,	Morrison,	Van Vorche,
Buckner,	Hart,	O'Neill,	Yoder,
Cain,	Haskell,	Petler,	Walsh,
Caldwell, W. P.	Hatcher,	Pennell,	Willis,
Calkins,	Hendeb,	Powers,	Wilson,
Campbell,	Hewitt, G. W.	Reed,	Wood,
Chittenden,	Hoeker,	Riddle,	Wran,
Chadlin,		Robbins,	Young, Casey
Clarke, Alvah A.			Young, John S.

During the roll-call the following announcements were made: Mr. CALDWELL, of Tennessee. I am paired with Mr. MCGOWAN. If he were present, he would vote "no" and I would vote "ay."

Mr. ROBBINS. I am paired with Mr. HANNA.

Mr. ROBERTS. I am paired with Mr. WALSH.

Mr. ATKINS. I wish to announce that Mr. BLOUNT, Mr. CLYMER, and Mr. BAKER, of Indiana, are absent on conference committees.

Mr. WILSON. I am paired with Mr. WREN.

Mr. DAVIDSON. I am paired with Mr. KEIGHTLEY. If he were present, I would vote "ay" and I presume he would vote "no."

Mr. CALKINS. I am paired with Mr. HOOKER. If he were present, I would vote "ay."

Mr. CLAYLIN. I am paired with Mr. LORING.

Mr. O'NEILL. I am paired with Mr. ELLIS. If he were present, I would vote "no" and he would vote "ay." I wish also to announce that my colleague, Mr. FREEMAN, is paired with Mr. RIDDLE.

Mr. BUCKNER. I am paired with Mr. CHITTENDEN.

Mr. TOWNSEND, of Ohio. Mr. MCKINLEY is paired with Mr. MORSE on questions generally, but on this question both would vote "no."

Mr. MORSE. I vote "no."

Mr. HASKELL. I am paired with Mr. RYAN. If he were here, I would vote "ay."

Mr. TIPTON. I am paired with my colleague, Mr. KNAPP. If he were present, I would vote "ay."

Mr. HANNA. I am paired with Mr. ROBBINS.

Mr. METCALFE. I am paired with Mr. BRAND.

Mr. BEEBE. My colleague, Mr. LOCKWOOD, is paired with Mr. ELLSWORTH.

Mr. SPRINGER moved by unanimous consent that the reading of the names be dispensed with.

Objection was made.

The vote was then announced as above recorded.

The SPEAKER. As required by the Constitution, two-thirds not having voted in the affirmative, the bill is rejected.

POTTAWATOMIE INDIANS.

The SPEAKER laid before the House a letter from the Secretary of the Interior, relative to certain stocks belonging to the Pottawatomie Indians; which was referred to the Committee on Indian Affairs, and ordered to be printed.

KISKIMINETAS AND CONEMAUGH RIVERS.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting the report of Major William E. Merrill, Corps of Engineers, of the results of the examination of the Kiski-

metas and Conemaugh Rivers, Pennsylvania; which was referred to the Committee on Commerce, and ordered to be printed.

CANBY FORK RIVER, ETC.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting the report of Captain W. R. King, Corps of Engineers, of the results of investigation of Canby Fork River and Obies River, Tennessee, and of the survey of the Cumberland River, Kentucky; which was referred to the Committee on Commerce, and ordered to be printed.

FEES OF DISTRICT ATTORNEYS.

The next business was the bill (H. R. No. 3124) to amend section 324 of the Revised Statutes of the United States, returned from the Senate with amendments; which were read, as follows:

Add at the end of the bill:  
 "Provided, however, That informations shall not be filed in such cases except when the accused has been committed in default of bail, or is under a recognizance for his appearance to answer for crimes charged in the information."  
 Amend the title so as to read:  
 "An act to amend section 324 of the Revised Statutes of the United States relative to fees of district attorneys."

Mr. HERBERT. Mr. Speaker, that bill places indictments and informations upon the same footing. Its effect is to give to district attorneys the same fees for convictions under information as for convictions under indictment. It is an encouragement to the district attorneys to dispense as far as possible with grand juries, to do away with the process which grand juries afford to the citizens, and pay them for resorting to information. In these days when affidavits can be hired to be made for a penny apiece, by the bushel, it seems to me that we ought not to pass such a bill, and I therefore move to lay the bill and amendments on the table.

The motion was agreed to.

Mr. HERBERT moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

SUPERVISORY JURISDICTION OF CIRCUIT COURTS.

The next business on the Speaker's table was the bill (H. R. No. 5063) to give circuit courts supervisory jurisdiction in certain criminal cases, with amendments by the Senate.

The amendments of the Senate were read.

Mr. HANNA. This is a bill which it seems to me every lawyer that practices in circuit courts should take an interest in and favor its passage.

Mr. HARRIS, of Virginia. I move to concur in the Senate amendments.

The motion was agreed to.

Mr. HARRIS, of Virginia, moved to reconsider the vote by which the amendments of the Senate were concurred in; and also moved that the motion to reconsider be laid on the table.

ORDER OF BUSINESS.

Mr. WHITE, of Pennsylvania, (at eleven o'clock and fifty-five minutes p. m.) I move that the House do now adjourn. It is now almost Sunday morning.

The SPEAKER. The Chair would advise the gentleman from Pennsylvania that it is desirable that the House, before adjourning or taking a recess, should receive from the Senate the sundry civil bill.

Mr. WHITE, of Pennsylvania. I withdraw the motion.

ACKNOWLEDGMENT OF DEEDS, ETC.

The next business on the Speaker's table was the bill (H. R. No. 1651) to validate and confirm certain acknowledgments of deeds and other instruments of writing under seal, made in a foreign country, for lands lying in the District of Columbia, and the records thereof, with amendments by the Senate.

The amendments of the Senate were read.

Mr. FRYE. This bill was unanimously reported by the Judiciary Committee of the House, and unanimously passed the House, went to the Senate, and has been amended by the Senate in certain particulars.

I have examined the amendments the bill having been under my charge when it passed the House, and I find they are only put in for the protection of innocent parties. The bill simply provides to make valid certain acknowledgments of deeds made in foreign countries. The amendments are all right. I move that they be concurred in.

The amendments of the Senate were concurred in.

Mr. FRYE moved to reconsider the vote by which the amendments of the Senate were concurred in; and also moved that the motion to reconsider be laid on the table.

ENROLLED BILLS SIGNED.

Mr. SAMPSON, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

- An act (S. No. 362) granting a pension to A. G. Ege;
- An act (S. No. 393) granting a pension to Abigail S. Tilton;
- An act (S. No. 663) granting a pension to William H. H. Buck;
- An act (S. No. 687) granting a pension to William H. Bagley;
- An act (S. No. 801) to amend section 2403 of the Revised Statutes of the United States, in relation to deposits for surveys;