Chew Heong v. United States:
Chinese Exclusion and the Federal Courts

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Prepared for inclusion in the project
Federal Trials and Great Debates in United States History

Federal Judicial Center
Federal Judicial History Office
2006

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Chew Heong v. United States: A Short Narrative

On September 27, 1884, the U.S. Circuit Court in San Francisco convened to hear the case of Chew Heong, a Chinese laborer petitioning to be readmitted into the United States. Like many of the so-called "Chinese habeas corpus" cases, *Chew Heong v. United States* attracted considerable public attention. Chinese spectators crowded into the courtroom and the hallways, and the local press covered the hearings in detail. Both sides—the Chinese immigrant Chew Heong and the U.S. government—were represented by a bevy of well-known lawyers. As the Supreme Court justice serving the Ninth Circuit, Stephen J. Field had arrived from Washington, D.C., to preside over the hearing, and he sat on the bench with U.S. Circuit Court Judge Lorenzo Sawyer. U.S. District Court Judges Ogden Hoffman and George Sabin, who presided over many similar hearings, sat in the unusual capacity of "consulting judges."

Chew Heong attracted public attention less because of the constitutional and legal issues it raised than because it reflected the broader struggle over Chinese immigration to the United States in the nineteenth century. In 1882, the Congress had adopted the Chinese Exclusion Act—the most restrictive immigration policy the country had known to that point. The heated debate over Chinese immigration embroiled the federal courts in the inflammatory issue, as Chinese mounted a sophisticated and often successful litigation strategy to defeat the harshest aspects of the exclusion law. Federal judges struggled to reconcile the anti-Chinese policies and sentiment with the requirements of other law, including U.S. treaty obligations with China and the Fourteenth Amendment's guarantee of due process and equal protection. The *Chew Heong* case thus provides fascinating insight into the Chinese strategic use of litigation in the federal courts and the often difficult role of the federal courts in enforcing federal policies in times of political turmoil.

The Chinese Exclusion Act of 1882

In 1882, Congress adopted the first Chinese Exclusion Act and, in doing so, took a giant step away from its previous "open door" immigration policy. The act forbade the immigration of Chinese laborers for ten years. It marked the beginning of the U.S. government's embrace of restrictive immigration policies and highlighted the different treatment immigrants received depending on their race and nationality. The act was not the first to target Chinese for discriminatory treatment. Congress had passed the Page Act in 1875, prohibiting the immigration of Asian contract laborers and Asian women suspected of prostitution—a clause that was interpreted broadly to prevent the immigration of Chinese women and the formation of Chinese-American families. Even earlier, beginning with the Chinese immigration to California during

the Gold Rush, towns and states on the West Coast had devised numerous laws to deprive Chinese of their livelihoods, to segregate them in schools and neighborhoods, and generally to make their lives in the United States so miserable that they would leave. But the Chinese Exclusion Act of 1882 raised anti-Chinese fervor to the level of federal policy. Congress endorsed exclusionists' arguments that American workers could not compete with Chinese and that Chinese were fundamentally different as a race, unable to assimilate and posing a danger to American institutions and culture. In passing the Exclusion Act, Congress rejected the spirit behind the 1868 Burlingame Treaty with China that declared a person had an "inherent and unalienable right to change his home and allegiance."

Chinese resistance to the exclusion laws

When Congress passed the 1882 law, many anti-Chinese forces celebrated, believing their fight to force Chinese out of the United States had finally succeeded. Within a year, however, their hopes turned to frustration as they renamed the Chinese Exclusion Act, the "Chinese Evasion Act." Chinese in the United States did not meekly accept their exclusion from the United States. The Chinese immigrant community had a strong internal organizational network that provided an institutional basis for their resistance to the policy. The Chinese Six Companies, known to Chinese as the Zhonghua Huiguan, was composed of leaders from different huiguan or district associations to which all Chinese immigrants belonged depending upon their region of origin. The Chinese consulate in San Francisco was the official representative of the Chinese government. Both the Chinese Six Companies and the Chinese consulate provided crucial leadership and financial support for the fight against discriminatory treatment of Chinese immigrants.

When the Exclusion Act was passed, the Chinese organizations turned naturally to the federal courts in California to test the act's reach. Litigation had been one of the few avenues open to Chinese immigrants to resist discriminatory actions in the nineteenth century. Few Chinese managed to become American citizens because of U.S. law reserving naturalization to those who were "white" or of African descent. Lacking political power, Chinese found that the Burlingame Treaty of 1868, which guaranteed Chinese residents "the same privileges, immunities, and exemptions" extended to natives of other countries, and the Fourteenth Amendment, which prohibited states from denying any person due process or equal protection of the laws, to be potent weapons in the federal courts. Federal judges struck down many of the discriminatory state laws on the grounds that they violated the treaty rights of the Chinese or their right to equal protection under the Fourteenth Amendment. Litigation proved so fruitful that the Chinese Six Companies and Chinese consulate kept American attorneys on retainers to represent them whenever the need should arise. When exclusion went into effect, attorneys for the Chinese were kept busy as Chinese arriving at ports sought to prove their right to enter the United States.

Contesting exclusion in the federal courts

The litigation regarding the 1882 act resulted from disagreements over the reach of the new exclusion law and how it would be enforced. The law had been passed only after the United States obtained a new treaty with China in 1880. In the Angell Treaty, China agreed that the United States could limit, though not absolutely prohibit, the immigration of Chinese laborers. The treaty specified that Chinese laborers already residing in the United States remained free to come and go as before. Furthermore, the law did not apply to nonlaborers, such as merchants, students, professionals, and diplomats. The 1882 act conformed to the treaty in restricting new immigration only of Chinese laborers for a period of ten years. While detailed, the law could not anticipate the various circumstances that would arise, and Chinese, federal administrators, and the federal courts soon became enmeshed in bitter conflicts over individual cases.

A crucial disagreement arose over what evidence Chinese needed to prove their right to enter the United States. The 1882 law provided a system to identify Chinese who remained exempt from exclusion. Resident Chinese laborers, for example, received a certificate of identity—known as a "return" certificate—before they left the United States and presented the certificate for readmission upon their return. Chinese merchants and other nonlaborers were to obtain certificates from the Chinese government verifying their occupations, physical descriptions, and exemption from exclusion. These so-called "section 6 certificates" were to constitute "prima facie evidence" that a Chinese immigrant was exempt from exclusion, and these certificates provided the foundation for the Chinese right to enter, though the collector of the port could still deny entry based on contradictory evidence.

Problems soon arose when many Chinese entitled to enter the United States did not have the required certificates. Some resident Chinese laborers, for example, had left the United States before the certificates became available. Chinese merchants arrived in the United States from ports outside China and did not have the section 6 certificates required to establish their exemption. The collector of the port at San Francisco, a political appointee responsible for enforcing the exclusion laws, insisted upon strict compliance with the law and denied entry to Chinese without the required certificates. At a time when political parties vied for the anti-Chinese vote and local newspapers covered every aspect of the law's enforcement, the collector of the port (also called the collector of customs) felt pressure to demonstrate his office's dedication to exclusion. If denied entry, Chinese often filed writs of habeas corpus in federal court, arguing that they were being detained illegally on board ship and denied their right to land.

The habeas corpus cases pitted the collector of the port against the federal judges and put the federal courts in a bind. All of the federal judges—Judge Ogden Hoffman in the district court, Judge Lorenzo Sawyer in the circuit court, and Justice Stephen

Field as circuit justice—professed support for the exclusion policy. But the judges also believed that the treaty, as the United States' explicit promise to the Chinese government, must be upheld to preserve the nation's honor. Further, the Constitution mandated that treaties and federal statutes were both the "supreme law of the land." Whenever possible, the judges argued, legislation should be interpreted to conform to the nation's treaties. The collector, in the opinion of the judges, had disregarded the treaty in his zealous requirement for certificates in all cases. In a succession of cases, federal judges ruled that the Exclusion Act had to be interpreted reasonably and in accordance with the Treaty of 1880. The collector could not require certificates as the only evidence of admission if they had been impossible or unreasonably difficult to obtain. The federal courts allowed "parol evidence," that is oral testimony, or written records to establish Chinese petitioners' right to land.

The result of the courts' rulings, critics argued, was the creation of a "habeas corpus mill" as Chinese flocked to the federal courts to challenge the collector's decisions denying them entry. The test cases, carefully selected by attorneys for Chinese, had widespread effects; one case could establish the law governing hundreds of Chinese in the same circumstances. Local newspapers and the collector of the port denounced the courts for creating gaping loopholes in the exclusion law and accused Chinese of widespread perjury and fraud in concocting testimony before the courts. Of the 2,652 Chinese allowed to land in the first fourteen months after the act's passage, the collector claimed that one third were admitted under the court's rulings and often without proper documentation. While attempting to deflect public criticism of their rulings, the federal judges also struggled to keep up with the demanding pace of the exclusion litigation. In his opinion in *In re Chow Goo Pooi,* Judge Hoffman complained that he had 190 Chinese habeas corpus cases on his docket and had been unable to make a dent in them, despite weeks of hearings and night sessions. All other work in the court had come to a near halt.

The Chinese Exclusion Act of 1884 and the case of Chew Heong

Frustrated by the failure of the 1882 act to meet their expectations, exclusionists in Congress amended the law in 1884 in an attempt to close the perceived loopholes. The 1884 law specified that the return certificates were to be "the only evidence permissible" of a Chinese laborer's right to enter the United States. All eyes were on the federal courts in San Francisco to see how the judges would respond to this new provision. The potential consequences for Chinese were significant. Attorney Thomas Riordan estimated that approximately 12,000 Chinese resident laborers had left the United States before the certificates had become available and would lose their right to return if the act was strictly enforced.

The 1884 act soon came before an unusual panel of four judges in the circuit court for a hearing in the case of *Chew Heong,* selected by the Chinese consul's attorney, Thomas Riordan, as the test case. Chew Heong had come to the United States sometime before November 1880, when the Angell Treaty went into effect, but had left San Francisco for Honolulu in June 1881, before the Exclusion Act was passed and before return certificates became available. He returned to San Francisco on September 22, 1884, and applied for admission as a prior resident. Within five days, Chew Heong appeared before Justice Stephen J. Field sitting in the U.S. Circuit Court for the District of California. The importance of the case for both sides was evident in the array of lawyers present. Chinese vice consul Frederick Bee, and lawyers Thomas Riordan, W.H. Cook, Harvey Brown, and Lyman Mowry appeared on behalf of Chew Heong. The government was represented by U.S. Attorney Samuel Greeley Hilborn, his assistant Carroll Cook, and the surveyor and deputy surveyor of the Port of San Francisco.

Although Field had issued earlier decisions asserting the importance of upholding the laborers' treaty rights of free migration, he now abruptly changed his mind, citing both the clear language of the law and the intent of Congress to forestall resort to the courts. Field declared that the 1884 statute clearly allowed entry only to laborers who had return certificates. If the law worked hardships for men like Chew Heong, it was up to the legislature or the executive, not the courts, to remedy the situation. Field had clearly run out of patience with the Chinese habeas corpus cases that had flooded the federal courts and that may have foiled his presidential ambitions. During Chew Heong's hearing, Field rhetorically questioned attorney Riordan: ". . . what shall the Courts do with [the Chinese laborers]? Can it give each one of them a separate trial? Can it let each of them produce evidence of former residence? No; it was because the Courts were overcrowded that the second Act was passed. . . . Besides, Congress never supposed that Chinamen intended to go back to China and stay several years. If they do not come back at once they should not be allowed to come at all."

The three other judges on the panel, Sawyer, Hoffman, and Sabin, disagreed with Field. As the judges who heard the bulk of the Chinese cases, they shared his concern about their crushing caseloads, but they continued to uphold the authority of the 1880 treaty and interpreted the 1884 act in light of their earlier precedents. The clause making return certificates the only acceptable evidence applied only to Chinese laborers who left after the certificates were available, they argued. The law could not require the impossible and nor should it be allowed to defeat the treaty rights of laborers like Chew Heong. Resident Chinese laborers who left before the certificates were available should still be allowed to prove prior residence through other evidence.

Chew Heong before the Supreme Court of the United States

The law provided that the opinion of the presiding justice prevailed in the circuit court, although a divided opinion could be appealed to the Supreme Court, and Chew Heong filed an appeal. Field's decision was approved in the court of popular opinion as one San Francisco newspaper declared that the decision showed "how unjustly the people of California have judged Mr. Justice Field with reference to the Chinese question." But when the Supreme Court heard the case, Field found himself reversed in a 7–2 decision.

Justice John Marshall Harlan, writing for the majority, began by stressing the importance of treaties in securing commerce and trust among nations. Harlan refused to believe that Congress intended to "disregard the plighted faith of the government" so recently pledged in the 1880 treaty. Unless Congress clearly and unmistakably expressed its intent to violate the treaty, the Court was obliged under the Constitution and rules of construction to try to reconcile the statute with the treaty. This could easily be done, said Harlan. Echoing Sawyer's dissenting opinion in the circuit court, Harlan thought it clear that Chew Heong did not have to present a certificate if it had been impossible for him to obtain one.

Field rendered a bitter dissent, joined by Justice Joseph P. Bradley, accusing the majority of willfully misreading the clear language of the statute and ignoring the intent of Congress. He reminded the majority of the strong sentiment behind the exclusion policy among "all classes . . . from the whole Pacific Coast" who "saw . . . the certainty, at no distant day, that from the unnumbered millions on the opposite shores of the Pacific, vast hordes [of Chinese] would pour in upon us, overrunning our coast and controlling its institutions." Field acknowledged the authority of treaties but stressed they were no more binding than federal statutes. Congress clearly intended in the act of 1884 to close a door opened by the federal courts in their earlier decisions. It was the duty of the Supreme Court, he admonished, to be "the servant of the law, bound to obey, not to evade or make it." Field ended with a dire prediction that "all the bitterness which has heretofore existed on the Pacific Coast on the subject of the immigration of Chinese laborers will be renewed and intensified, and our courts there will be crowded with applicants to land."

The aftermath of Chew Heong

If Field failed to sway his Supreme Court brethren, he was right that the battle over Chinese exclusion would intensify after *Chew Heong.* On the day after the circuit court's decision in *Chew Heong*, Field authored another opinion—this time unanimous—holding that children born in the United States of Chinese parents were American citizens and exempt from the exclusion law. This decision, as well as the

Chew Heong opinion, provided another opening for Chinese and expanded litigation in the federal courts as both Chinese claiming birthright citizenship and laborers asserting prior residency sought to establish their right to enter the United States. The federal courts' caseload continued to mushroom until, by the end of the 1880s, over 7,000 habeas corpus petitions had been filed just in the U.S. district court for California. The courts innovated by appointing examiners and referees to assist with the petitions in expedited hearings, but they still strained to keep up. In 1888, Judge Hoffman complained "it would be hard to convince one who has never been in these Courts how great is the physical distress and mental strain caused by a day's conscientious attention to these Chinese cases."

The federal judges received little sympathy from the local press, which continued to blame the courts for unnecessarily frustrating the enforcement of Chinese exclusion. The U.S. attorney general fielded complaints that, because of the federal courts' intervention, the exclusion acts had made no impact in reducing Chinese immigration. The U.S. attorney at San Francisco, Samuel Hilborn, reported that the people in California had lost respect for the courts because of the "unseemly spectacle" of the courts devoting a large part of their time to the Chinese cases. The federal courts' jurisdiction over the Chinese exclusion and general immigration cases would be gradually curtailed by statute and Supreme Court decisions.

While Chinese continued to resort to the federal courts for protection, exclusionists turned again to Congress and to vigilante action in their determination to force Chinese out of the United States. Anti-Chinese violence crested throughout the West in 1885 and 1886, with the worst incident being the Rock Springs, Wyoming, massacre in which twenty-eight Chinese were killed and hundreds more fled for their lives. In 1888, Congress passed the most stringent exclusion act thus far, the Scott Act, which explicitly rejected the 1880 treaty, cancelled all return certificates, and stipulated that once Chinese laborers left the United States, they could never return. While the 1882 act forbade Chinese immigration for ten years, the 1888 act made the exclusion policy permanent.

When Chae Chan Ping, armed with his return certificate, petitioned U.S. Circuit Court Judge Lorenzo Sawyer for entry after the act's passage, he found his way barred. Sawyer conceded that there was no doubt that Congress had reneged on the treaty and, given the evident conflict between the act of 1888 and the treaty, the federal statute must govern as the most recent expression of its will. Justice Field had the satisfaction of writing the opinion for the unanimous Supreme Court decision upholding the act of 1888. His dissent in *Chew Heong* now became the basis for a landmark decision that granted sweeping power to Congress to deny entry to any aliens it chose.

The legacy of exclusion

The battle over exclusion was not over, despite Field's resounding decision in *Chae Chan Ping v. United States* in 1889. Buoyed by their successes in cases like *Chew Heong*, Chinese in the United States continued to see the federal courts as potential allies, however reluctant. They and their attorneys persistently and creatively employed litigation to keep the gates of the United States ajar. They forced federal judges to consider the extent of government power and the reach of due process for aliens and citizens alike at a time when public opinion cared little for immigrants' rights. The tenure of federal judges was constitutionally protected, but the judges were not insulated from the local communities in which they lived and worked. Distressed by vocal public criticism of the courts' decisions, Judge Sawyer expressed the hope that, in the long term, the judges' adherence to the law and treaties would be vindicated. Most immediately, the federal courts' decisions resulted in a determined campaign in Congress to remove federal court jurisdiction over Chinese exclusion and general immigration cases, which, by 1905, had largely succeeded.

The Federal Courts and Their Jurisdiction

The U.S. Circuit Court for the District of California

The case of Chew Heong was first heard in the U.S. Circuit Court for the District of California. The U.S. circuit courts had served since 1789 as one of the two types of trial courts in the federal judiciary and were convened regularly in most judicial districts. Circuit courts had jurisdiction over all suits above a certain monetary value, most federal crimes, and suits between citizens of different states (so-called diversity jurisdiction). In 1875, Congress significantly expanded the jurisdiction of the circuit courts, giving them authority to hear any case involving a "federal question," that is, concerning a federal statute, the Constitution, or a treaty. District courts had jurisdiction over admiralty cases, suits of a lesser monetary value, and all noncapital crimes. The circuit courts had appellate jurisdiction over some decisions of the district courts, although all appellate jurisdiction would be transferred to the U.S. circuit courts of appeals when they were established in 1891. Congress abolished the old circuit courts in 1911 and transferred their remaining jurisdiction to the district courts.

Before 1869, circuit courts had no judges of their own but were convened by the district judge and the Supreme Court justice assigned to the geographical circuit in which the districts were organized. Congress in 1869 provided for the appointment of circuit judges to serve on the circuit courts within each of the nine geographical circuits. Circuit courts could also be convened by the circuit's Supreme Court justice or the district judge or by a panel of two of the authorized judges. Lorenzo Sawyer became the circuit court judge in California and the rest of the Ninth Circuit soon after the act's passage.

As in several other Chinese habeas cases, the usual two-judge panel hearing the case of Chew Heong was expanded to include Judge Ogden Hoffman of the California district court and Judge George M. Sabin of the Nevada district court, who served as "consulting judges" along with Justice Field and Judge Sawyer. Sabin, like Judge Matthew Deady of the District of Oregon, frequently assisted the California federal courts in processing the overwhelming number of habeas cases brought in response to the Chinese exclusion acts.

Habeas corpus petitions could be filed in either district or circuit courts, and both types of courts in California routinely granted petitions for habeas corpus in Chinese exclusion cases. The courts proceeded to hear the cases *de novo*, that is, they heard evidence and came to their own decision upon the Chinese immigrant's right to land, independent of the collector of the port's findings. Eventually, however, the Department of Justice and immigration officials mounted a systematic campaign to curb federal courts' jurisdiction over immigration cases and, by 1905, had succeeded in limiting the federal courts' review to questions of law and procedure.

Supreme Court of the United States

The Supreme Court of the United States stood at the top of the federal judicial hierarchy. The Constitution granted the high court limited "original jurisdiction" to hear and decide certain first-time cases. Primarily, however, the Supreme Court heard appeals from the federal circuit courts as well as the state supreme courts. The Constitution also granted Congress wide authority to determine the jurisdiction of the Supreme Court. In 1884, when *Chew Heong* came before it, the Supreme Court considered two types of appeals from the federal courts. When a party seeking appeal filed a "writ of error" and the Court found that it had jurisdiction over the case, the Court was obliged to hear the appeal. In other cases, the Court had discretion to decide whether to decide the appeal, and, if it chose to proceed, it would issue a "writ of certiorari." Today, almost all of the appeals are heard on writs of certiorari as the Court's discretion over which appeals to take has vastly expanded.

In 1884, the Supreme Court's jurisdiction to hear appeals in habeas corpus cases was limited. The act of 1867 had expanded the federal courts' power to issue habeas corpus petitions to any person confined illegally, in violation of the Constitution or federal laws, and allowed appeals to the Supreme Court if the lower court denied the writ. The Congress, fearing that its Reconstruction reforms would be invalidated by the Supreme Court in appeals of habeas corpus decisions, took away the Court's appellate jurisdiction in habeas corpus cases a year later. In 1885, the Supreme Court would finally regain the power to review decisions in habeas corpus cases.

While the Supreme Court's jurisdiction over habeas corpus was still limited in 1884, some habeas corpus cases did come before it through other procedural means. The government's appeal in *Chew Heong* was brought by a writ of error. By law, if the circuit court judges disagreed in their opinions, either party could appeal to the Supreme Court by obtaining a "certificate of division of opinion" from the lower court. Given the division of opinion in the circuit court, with the presiding circuit court justice denying the writ and Judge Sawyer believing it should be issued, the Supreme Court had jurisdiction to hear the appeal.

The Judicial Process: A Chronology

September 25, 1884

Chew Heong, through his attorneys William Hoff Cook and Thomas D. Riordan, filed a petition for a writ of habeas corpus in the U.S. Circuit Court of California. The petition asked the court to determine if Captain Hayward, master of the steamship *Mariposa*, had unlawfully detained Chew Heong on board the ship and refused to allow him to land in San Francisco.

Circuit Court Judge Lorenzo Sawyer issued the writ of habeas corpus on the same day and ordered Captain Hayward to produce "the body of said Chew Heong" on September 26 for a hearing to determine whether he was illegally imprisoned.

September 26, 1884

Captain Hayward of the *Mariposa* filed a return to the writ, confirming that he had Chew Heong in custody under orders of the collector of the port at San Francisco. U.S. Attorney Samuel G. Hilborn, who assumed direction of the government's case, filed an intervention, claiming that the public had a substantial interest in the proceedings, which he was obligated to protect. The intervention was a common procedure in such cases since the federal government, not the master of the steamship, was the true party, represented by the federal collector of the port.

On the same day, both parties filed an "Agreed Statement of Facts," allowing the court to focus on the question of the type of proof required of Chinese to be exempt from the exclusion law.

The full panel of the circuit court conducted the hearing in Chew Heong's case.

September 29, 1884

Justice Field issued his decision, holding that Chew Heong was not entitled to land in the United States unless he had the required certificate. Lorenzo Sawyer, with consulting judges Hoffman and Sabin, dissented, but Field's decision prevailed since he was the presiding Supreme Court justice.

Justice Field discharged the writ of habeas corpus, meaning the court had completed its review of the alleged illegal imprisonment. He remanded Chew Heong to Captain Hayward's custody for return to Honolulu, the port of origin for his trip to San Francisco.

Because of the dissenting opinions of the other judges, the court issued a certificate of a division of opinion, which allowed Chew Heong's attorneys to appeal Field's decision to the Supreme Court.

September 30, 1884

The circuit court issued a stay of its previous order remanding Chew Heong to Captain Hayward's custody, to allow Chew Heong to remain in the United States while his appeal was decided by the Supreme Court. The court also allowed Chew Heong to be released on bail during the appeal, allowing him to leave the ship.

October 1, 1884

Attorneys for Chew Heong filed a writ of error for review by the Supreme Court, arguing that the circuit court was mistaken in its interpretation of the 1884 law.

October 30, 1884

The case was argued before the Supreme Court. The Court used its discretion to advance the case on the docket, responding to the government's request to have a determinative ruling on the reach of the new law as soon as possible.

December 8, 1884

In a 7–2 decision, the Supreme Court overruled Justice Field's decision in the circuit court. Justice John Marshall Harlan wrote the majority opinion and Justices Field and Bradley dissented. Chew Heong was free to stay in the United States.

Legal Questions Before the Federal Courts

Did the 1884 amendment to the Chinese Exclusion Act, which specified that certificates of residence were the "only evidence permissible" to prove a right to reenter the United States, apply to Chew Heong and others who left the United States before the certificates were available?

No, said the majority in the Supreme Court, thus overruling the decision of Justice Stephen J. Field in the U.S. Circuit Court for the District of California.

The Chinese Exclusion Act of 1882 established a system of identification to help the collector of customs decide which Chinese qualified for the exemptions specified in the act. According to the statute, Chinese laborers already residing in the United States had to obtain "return certificates" from the collector of customs before leaving the United States for travel. The Chinese laborers were to present the certificates upon their return to the United States to prove they were prior residents and eligible to reenter. But the return certificates had not been issued until after the passage of the 1882 act. Chew Heong had left before the act was passed and thus could not have obtained a certificate to prove his right of reentry. The U.S. district and circuit courts had allowed resident Chinese laborers in such cases to present other evidence to establish their right to reenter, but Congress, in an 1884 amendment to the act, specified that the return certificates were to be "the only permissible evidence to establish his right of re-entry." The case of Chew Heong presented the courts with the question of whether the 1884 amendment applied to resident Chinese laborers who had been unable to obtain certificates.

Although Justice Field in earlier cases had upheld the right of Chinese laborers to present other evidence, he now held in the U.S. Circuit Court at San Francisco that the language of the 1884 act clearly applied to Chew Heong and other laborers in the same situation. Field focused on the "direct language" of the law, which he argued made no exceptions for laborers like Chew Heong. He also stressed the intent of Congress to close the gap in the law opened up by the federal courts' previous interpretations of the Exclusion Act that had resulted in the courts being flooded by Chinese habeas corpus cases. Field cited public opinion as well, noting that the general public had become impatient with judicial interference in the exclusion policy, and he admonished judges to enforce the clear congressional intent to make the exclusion law more restrictive.

Judge Lorenzo Sawyer dissented from Field's opinion in the circuit court, stressing the importance of interpreting the 1882 and 1884 acts in light of the 1880 treaty with

China that clearly protected the right of Chew Heong and other resident laborers to come and go at will. Sawyer pointed out that the Chinese Exclusion Acts of 1882 and 1884 explicitly stated their purpose was to fulfill the treaty, not to abrogate it. Emphasizing that the honor of the nation was at stake, Sawyer argued that the statute should be construed, if at all possible, to conform to the treaty unless Congress explicitly declared its intention to negate the treaty. Since no such intent was evident, Sawyer believed that Chew Heong should be allowed to present other evidence to establish his prior residency.

The Supreme Court overruled Field's circuit court decision, adopting the reasoning laid out in Sawyer's dissent. Justice John Marshall Harlan, writing for the majority, asserted that legislation, whenever possible, should be interpreted to conform to treaties. Harlan also cited the maxims that laws should not be interpreted as applying retroactively and that a law could not require evidence that was impossible to obtain.

Justice Field delivered a lengthy and passionate dissent, reiterating that the plain language of the law made certificates the *only* permissible evidence for all Chinese residents. Field argued further that the treaty and the Exclusion Act, in exempting resident Chinese laborers, were intended to allow temporary visits abroad, but did not grant those such as Chew Heong, who resided only briefly in the United States, an unrestricted right to come and go at will.

In interpreting the Chinese Exclusion Acts of 1882 and 1884, what authority should the courts give to the 1880 treaty between China and the United States?

In the "Supremacy Clause" in Article VI, the U.S. Constitution specifies that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." Thus, treaties *and* federal statutes were seen as binding law.

In litigation arising under the Chinese exclusion laws, judges initially tried to interpret the statutes to conform to the relevant treaties. The Angell Treaty of 1880 specified that the United States could restrict, but not absolutely prohibit, the immigration of Chinese laborers and could pass legislation that was "necessary to enforce" the restriction. The treaty reiterated that Chinese subjects would have "most favored nation" status, meaning that they would retain the rights and privileges accorded by the United States to the citizens of the most favored nation. The treaty also specified that neither Chinese laborers residing in the United States at the time the treaty was signed, nor nonlaborers, would be subject to immigration restriction.

Chew Heong prevailed, in large part, because the Supreme Court majority believed the courts must interpret statutes to conform to the treaty. Drawing on a doctrine established by the Supreme Court in 1804 and on decisions in previous Chinese exclusion cases, Justice Harlan declared that, whenever possible, judges should respect the legal authority of treaties as the Constitution explicitly made treaties part of the "supreme law of the land." Justice Harlan also argued that something more was at stake: "the honor of the government and people of the United States." While protecting the honor of the government in upholding its "plighted faith" was not strictly a legal consideration, judges in California's federal courts repeatedly used such language when they made their controversial decisions tempering the harshest aspects of the exclusion laws to conform to the treaty. The nation had made an agreement with China and, these judges believed, compromising the nation's honor by imposing a more stringent exclusion of Chinese than the treaty allowed was, in Judge Sawyer's words, "a price too high to be paid, without absolute necessity."[1]

Field's decision in the circuit court and his dissent in the Supreme Court relied on another line of cases that argued for the "later-in-time" rule. Justice Benjamin Curtis, in a circuit court case of 1855 (*Taylor v. Morton*, 23 F. 784, C.C.D. Mass 1855), asserted that if statutes and treaties conflicted, judges should follow the one most recently adopted. Thus, if the Exclusion Acts of 1882 and 1884 conflict with the treaty, the statutes would trump the treaty since they were the most recent legal authority. While Field's position would not prevail in *Chew Heong*, it would gain sway in the *Chinese Exclusion Case* of 1889.

What had the federal courts decided in related cases?

Chinese civil rights

Long before the decision in *Chew Heong*, Chinese had resorted to the federal courts to challenge discriminatory state legislation. These cases established certain legal principles that set the stage for *Chew Heong.* Most importantly, federal courts had recognized that Chinese residents had rights, both under treaties between the United States and China and under the Fourteenth Amendment Equal Protection Clause, which states could not violate. The Chinese success not only set valuable legal precedents, but also encouraged Chinese to turn to the federal courts again when the Chinese Exclusion Acts were passed. Litigation, they had learned, could be a valuable strategy, especially for those without viable political recourse. The cases also made the federal courts unpopular among certain groups on the West Coast, even before the "habeas corpus" cases involving Chinese exclusion, as they were seen as the allies of Chinese and the corporations that hired them. Of the early Chinese civil rights litigation, the most important included:

1. *In re* Cheen Hong, 21 F. 791, 808 (1884).

In re Ah Fong (1874) and Chy Lung v. Freeman (1875)

In the 1870s, anti-Chinese sentiment began to flourish in California, leading the California legislature in 1874 to pass an immigration law requiring that steamships post a $500 bond for the landing of any "lewd or debauched woman." While the statute spoke generally, it aimed particularly to prevent the immigration of Chinese prostitutes, and the state commissioner of immigration refused to land twenty-two Chinese women whom he believed to be "lewd or debauched." In *In re Ah Fong*, the California Supreme Court upheld the law as a valid exercise of the state's "police power" to protect public safety and order, but Justice Field in the U.S. circuit court for California found the law unconstitutional. He held that Congress, not the states, had authority to regulate commerce between the United States and other nations, and that authority extended to immigration. More importantly for later Chinese litigation, Field found the law violated the Burlingame Treaty of 1868, in which Chinese were explicitly granted the right of free migration and all of the rights and privileges of subjects of other nations. He also ruled it violated the Fourteenth Amendment, which stated "no state . . . shall deny *any person* equal protection of the laws." Field ruled that the Equal Protection Clause applied to all people in the United States, citizens and foreign residents alike. Since the California law singled out Chinese, it treated them unequally and thus trampled on both treaty and constitutional rights. The Supreme Court agreed with Field's decision when, in a separate appeal of the California Supreme Court's decision in *Chy Lung v. Freeman*, it held the California law unconstitutional on the grounds that Congress had exclusive power to regulate foreign commerce and immigration. The cases were important in establishing the importance of the treaties and the Fourteenth Amendment as barriers to discrimination against Chinese.

Ho Ah Kow v. Nunan

In addition to its attempts to bar Chinese immigration, California passed several laws to harass Chinese residents and discourage their presence. This was especially true in the late 1870s when the Workingman's Party rose to prominence under the slogan "The Chinese Must Go!" In 1876, the California legislature passed the "cubic air law," specifying the size of living quarters for every tenant: lodgings had to provide at least 500 cubic feet of air for each adult. Justified as a measure to prevent overcrowding and unsanitary living conditions, the act again targeted Chinese who often lived in cramped quarters. When arrested for violating the law, Chinese chose to resist the law by refusing to pay the fine, thereby filling the local jails. The San Francisco Board of Supervisors responded with the "queue ordinance" specifying that all prisoners should have their hair cut to one inch from the scalp. Again, though the law was general in its language, the obvious intent was to demean Chinese men as they wore their hair in a long braid or "queue," and cutting it was seen as an act of disgrace. When Ho Ah

Kow protested against such treatment, Justice Field struck down the queue ordinance as, among other things, a violation of the Fourteenth Amendment's Equal Protection Clause. While expressing sympathy for anti-Chinese views, Field condemned the law for singling out Chinese in what was obviously a "hostile and spiteful" action. Field's decision sparked anger and derision in the local press, which usually portrayed him as pro-Chinese, despite his repeated statements that he understood and supported calls to restrict Chinese immigration.

In re Tiburcio Parrott

Californians amended their constitution in 1879 and included several provisions targeting both Chinese and big business, linking the two groups as undesirable forces responsible for the oppression of the working man. Article XIX of the new constitution forbade corporations from hiring Chinese, reflecting the views that Chinese laborers competed unfairly with white American labor by stealing their jobs and driving down wages. Tiburcio Parrott, the president of a quicksilver mining company, was prosecuted for hiring Chinese workers, and he filed a writ of habeas corpus before the U.S. circuit court in San Francisco, challenging his incarceration under the law. Judges Ogden Hoffman and Lorenzo Sawyer struck down the law as a clear violation of the Burlingame Treaty, which provided Chinese residents with all of the "privileges, immunities and exemptions" extended to other foreigners. Since treaties, under the Constitution, were part of the "supreme law of the land," state acts that conflicted with them were not valid. Judge Sawyer also held the law violated the Fourteenth Amendment's Equal Protection Clause, following Justice Field's reasoning in *Ho Ah Kow* that the clause protected all persons, not just citizens, from discriminatory treatment. Corporations had the right to hire whomever they wished, ruled the court, and Chinese residents had the right to pursue any lawful occupation. This interpretation of the Equal Protection Clause would gain the approval of the Supreme Court in *Yick Wo v. Hopkins,* decided in 1885, a year after the *Chew Heong* case.

Other Chinese exclusion laws cases

Case of the Chinese Cabin Waiter

This was the first case to be litigated in response to the Chinese Exclusion Act of 1882. Ah Sing was a Chinese seaman who had lived in California at the time the 1880 treaty was signed but had left to serve on board a ship before the Exclusion Act was passed. The collector of customs at San Francisco refused to allow Ah Sing and other Chinese crewmen to dock, arguing that they did not have the return certificates required under the Exclusion Act. Justice Field ruled the collector's actions were unreasonable and illegal. Field held that since the Chinese seamen had been aboard a ship sailing under the American flag, they had never left American territory. More importantly, Field

insisted that the treaty with China must be respected. Field warned that the collector's zealous enforcement of the law not only threatened amicable relations with China, but also could lead to the repeal of the Exclusion Act as unjust and too harsh.

In re Low Yam Chow, The Case of the Chinese Merchant

Low Yam Chow was a Chinese merchant who had lived in San Francisco and applied for reentry in 1882 after a voyage to Panama. The collector denied him entry because he did not have the required "section 6" certificate from the Chinese government, identifying him as a Chinese merchant exempt from the Chinese Exclusion Act. Low Yam Chow protested that the requirement was unreasonable, as he would have to travel to China to obtain the certificate. Justice Field agreed, emphasizing the explicit guarantee in the 1880 treaty with China that Chinese merchants could continue to come to the United States. The purpose of the act, Field noted, was to restrict the immigration of Chinese laborers; the government desired to improve, not hamper, commerce with China. While Chinese merchants traveling from China should have section 6 certificates, Justice Field ruled it was only fair that merchants already in the United States or traveling from other foreign ports be allowed to establish their merchant status with other evidence.

United States v. Douglas and In re Ah Lung

These two conflicting decisions concerned the questions: Who was "Chinese" under the Chinese Exclusion Act? Did the act restrict only those who were subjects of China? Or did it also exclude any person of Chinese descent who came from other countries? The U.S. circuit court in Massachusetts held that Ah Shong, a laborer from Hong Kong (a possession of Great Britain), did not fall under the Chinese Exclusion Act because he was a subject of Great Britain, not China. The court reasoned that the act sought to execute the treaty between China and the United States, and could not be extended to subjects of nations who had not been parties of the treaty. Justice Field in the U.S. circuit court in California sharply disagreed in the case of Pong Ah Lung, another laborer from Hong Kong. Field emphasized that Ah Lung was "a Chinese by race, language and color," and that Congress had intended to enact a racial exclusion, aiming at *all* Chinese laborers, regardless of their country of origin. No treaty with European nations to allow Chinese exclusion had been necessary, said Field, because they were not likely to care about the exclusion policy, sharing the United States' antipathy for the Chinese. The conflicting opinions in these cases contributed to support for the 1884 amendment of the Exclusion Act, which specified that exclusion applied to all "Chinese" laborers, whether or not they were subjects of China.

In re Chin Ah On

This case was closest to *Chew Heong* in the facts and legal issues it presented. Chin Ah On and several other petitioners were Chinese laborers who had lived in the United States at the time of the 1880 treaty, but left for China before the 1882 act was passed. They applied for admission based on their prior residence, but did not have "return certificates" as required under the act because they had left before the certificates became available. Judge Ogden Hoffman held that they could be admitted using other evidence. The collector's insistence that they present return certificates was unreasonable and violated the rights of the resident laborers under the 1880 treaty. Unless Congress had clearly specified its intent to negate the treaty, said Hoffman, the court must interpret the statute to conform to the treaty.

The *Chin Ah On* case led to an upsurge in habeas corpus petitions, as a growing number of Chinese claimed to be prior residents who had left before the Exclusion Act was in place. The court's decision contributed to public dissatisfaction in California with the judges' decisions and increased support for an amendment that would close the "loopholes" in the 1882 act.

Lawyers' Arguments and Strategies

Attorneys for Chew Heong

The attorneys for Chew Heong, led by Thomas Riordan, argued that the Exclusion Act of 1884 did not override the previous judicial decisions allowing exempt Chinese to present other evidence when it proved impossible for them to obtain the required certificate. Riordan emphasized that not only the federal courts but also the Secretary of the Treasury had consistently ruled that a rigid interpretation of the requirement for a certificate violated the Treaty of 1880 and basic principles of justice. The law could not require the impossible, Riordan said. In his appeal to the Supreme Court, Riordan quoted Justice Stephen Field's earlier opinions about the need to abide by the treaty and to interpret laws reasonably.

If precedent and the treaty were in his favor, Riordan had a bit more difficulty in confronting congressional intent and the language of the law, both of which appeared to lend support to the government's case. Riordan emphasized that Congress had not expressly overruled the federal courts' decisions nor had it intended to nullify the 1880 treaty. In fact, Riordan emphasized, the statute's supporters had explicitly affirmed their support of the treaty. Riordan relied on a close and rather technical reading of the 1884 law to avoid the language regarding certificates as the "only evidence permissible" to establish prior residence with a close and rather technical reading of the law's wording. He argued the law acknowledged two classes of exempt laborers, those who had lived in the United States at the time of the treaty but had no certificates and those who were prior residents and had return certificates. The clause making the certificate the only acceptable evidence only applied to the latter, he argued.

The government's attorneys

U.S. Attorney Samuel Hilborn before the circuit court and Assistant Attorney General William A. Maury before the Supreme Court downplayed the importance of the Treaty of 1880. If two interpretations of a statute were possible, the government conceded that judges should choose the one that conformed to the treaty, but in this case, argued Maury, only one interpretation was possible. Both the plain language of the statute of 1884 and the purpose of the law indicated that Congress intended to apply the certificate requirement to *all* Chinese laborers. In recommending the bill, the congressional committee insisted that the country needed more stringent procedures to combat widespread evasion of the law and the congestion of the courts' dockets with the Chinese habeas corpus cases. The final wording of the act was clear and explicit, argued Maury, allowing no other reasonable interpretation: every Chi-

nese laborer must have a certificate, regardless of the circumstances. The law might work a hardship for certain individuals, conceded Maury, but it was not up to the courts to alleviate that problem. So, too, the law might violate the treaty, but that did not make it any less binding. Maury believed the law could be interpreted to be in harmony with the treaty but insisted that if the 1884 law conflicted with the treaty, the statute must be upheld as the most recent indication of the will of the sovereign legislature. The government portrayed the circuit and district court judges who dissented from Field's opinion as "carried away by . . . sentiment" and unduly swayed by a "misguided solicitude for the honor of the Government." While seeming to express admiration for the "noble manner in which [the judges] stand up for these Chinese against an inflamed public opinion," the government attorneys left no doubt that the judges' concerns were ill placed as "the alien has no constitutional right to set foot on our shore except on the terms Congress has prescribed." It was the country, not the Chinese, that the courts should protect.

Biographies

Judges

Stephen J. Field (1816–1899)

Justice Stephen J. Field

Brady-Handy Photograph Collection, Library of Congress, Prints and Photographs Division [reproduction number LC-DIG-cwpbh-00821].

Born in Haddam, Connecticut, Field studied law in the office of his brother, David Dudley Field, a prominent New York attorney and legal reformer. As a young lawyer, Stephen Field joined the rush to the California mines in 1849, quickly becoming the alcalde (mayor and judge) of Marysville, California, and establishing a reputation for his legal skill as well as his forceful and often irascible character. After a brief stint in the state legislature, he was elected to the California Supreme Court in 1857 where, as chief justice, he took a leading and occasionally controversial role in adapting the common and civil law to the unique needs of California's mining frontier. President Abraham Lincoln appointed Field to the Supreme Court of the United States in 1863. Field was a Democrat but the Republican administration welcomed him as a supporter of the Union and as a needed representative of the growing western region. Stephen J. Field served until 1897, the longest tenure of any Supreme Court justice in the nineteenth century, and sat on the Court in an era in which it struggled to come to terms with the significance of the Civil War, Reconstruction, and rapid industrialization.

Justice Field became particularly influential for his interpretations of the Fourteenth Amendment, ratified in 1868. Drawing on natural rights theories, Jacksonian beliefs in limited government and free labor, and laissez-faire economics, Field viewed the Fourteenth Amendment as a broad protection of individual liberty from undue government interference. He relied on the amendment to strike down government regulations, such as the federal income tax, that he believed interfered too much with private enterprise, sought to redistribute wealth, or created what he thought were

special privileges or class legislation. By the early twentieth century, the Supreme Court had embraced much of his Fourteenth Amendment jurisprudence.

Field also pioneered an expansive interpretation of the Fourteenth Amendment's "Equal Protection Clause," especially in cases involving local and state legislation discriminating against Chinese in his adopted state of California. He ruled that the amendment, in specifying that "no state shall . . . deny *any person* . . . the equal protection of the laws," protected from discrimination anyone living in the United States, not just citizens. Yet, he did not believe the Equal Protection Clause shielded African Americans from infringements of political and social rights, seeing the Fourteenth Amendment's protections as limited to "civil rights," such as the right to own property, to pursue an occupation, and to sue in court.

Justice Field served as the circuit justice for the Ninth Circuit, which then encompassed California, Oregon, and Nevada. Field was supremely confident of his own opinions and could be impatient and even petty when others disagreed with him. While the relationship among the judges was often congenial, tensions arose in cases like *Chew Heong* when the other federal judges failed to follow the lead of Field. Field's opinions and forceful character also put him at odds with the general public, as his decisions were not always popular or well understood.

Field cared deeply about his public image because he harbored presidential ambitions. He campaigned for the Democratic Party nomination in 1880 and again in 1884—an unusual step for a sitting Supreme Court justice that raised questions about the political motivations of his decisions. His decisions earned him the reputation, whether deserved or not, of being a friend of large corporations and the Chinese, a reputation that foiled his political career. The California State Democratic Party explicitly rejected him as a potential candidate in July 1884.

While Field claimed he would never change a word of what he had written in the Chinese cases, Field began to take a more hard-line approach to the Chinese exclusion cases, most evident in his decision in *Chew Heong*. It may be that Field, so thoroughly spurned by the California Democratic Party for his Chinese decisions, decided to heed the political winds despite his previous declarations that he would never let politics determine his judicial opinions. In his opinion, Field explicitly referred to the public's impatience with the federal judiciary's handling of the Chinese cases and urged his colleagues to bow to legislative will. Field's new interpretation may also have stemmed from his own frustration with the difficulty of enforcing the Chinese Exclusion Acts and the burgeoning caseload they had created for his circuit.

Field would not always rule against Chinese. On the same day that *Chew Heong* was decided, he handed down his decision in another controversial case, *In re Look Tin Sing*, holding that children born of Chinese parents living in the United States were American citizens—a decision that would have enormous consequences in allowing the Chinese-American community to grow slowly and in providing an exception to the exclusion laws. So, too, Field would generally continue to rule in favor

of Chinese residents complaining of violations of constitutional rights while living in the United States. But when it came to the congressional right to exclude Chinese from entering the United States, Field would uphold the exclusion laws as broadly as possible, culminating with his landmark decision in *Chae Chan Ping v. United States* in 1889.

John Marshall Harlan (1833–1911)

John Marshall Harlan served as a justice of the Supreme Court of the United States from 1877 until his death in 1911, one of the longest tenures of any justice. Born in 1833 to a Kentucky slave-owning family, Harlan initially supported both slavery and a strong national government. Harlan sided with the Union during the Civil War, and, though he originally opposed emancipation, he became a fervent defender of both broad national power and civil rights as protected by the Thirteenth, Fourteenth, and Fifteenth Amendments. He came to view the Reconstruction Amendments as the flowering of the nation's unique commitment to legal equality embodied in the Declaration of Independence and the Constitution.

Justice John Marshall Harlan

Brady-Handy Photograph Collection, Library of Congress, Prints and Photographs Division [reproduction number LC-DIG-cwpbh-04615].

Harlan's devotion to nationalism and civil equality was not always shared by his brethren on the Supreme Court, and he earned the nickname of "The Great Dissenter" because of the number of passionate dissents he wrote in landmark cases involving such issues as the income tax, antitrust laws, the status of the insular territories, and the civil rights of African Americans. His most famous dissent came in *Plessy v. Ferguson*, in which the majority upheld racial segregation laws on railroads as constitutional. In his dissent, Harlan rendered his best-remembered line that "our constitution is color-blind" and predicted, correctly, that the decision would be "as pernicious as the decision . . . in the *Dred Scott* case."

Harlan was more ambivalent about the place of Chinese in the American republic. While he argued that the nation had an obligation to extend rights to African Americans, Harlan shared many of his contemporaries' views of Chinese as a distinct and foreign race who would not assimilate. In 1898, for example, Harlan joined Chief

Justice Melville Fuller in a dissent from the Supreme Court's decision in *Wong Kim Ark*, ruling that the children born in the United States to Chinese residents were U.S. citizens. Harlan and Fuller rejected that conclusion, in part on the ground that the children of Chinese, "a distinct race and religion, remaining strangers in the land," could become citizens by mere "accident of birth." But, in other cases such as *Chew Heong,* Harlan's primary concern to support national power and honor prevailed. Writing for the majority in *Chew Heong*, Harlan asserted that the nation, to be credible in foreign affairs, must abide by the promises it made in treaties. Any legislation, such as the Chinese Exclusion Act, should be interpreted whenever possible to agree with the treaties binding the country. Harlan also supported the federal criminal prosecution of white vigilantes in Nicolaus, California, who forcibly expelled forty-six Chinese in the middle of the night. Dissenting from the majority of the Court, which held that there was no national law allowing the prosecution of individuals in such cases, Harlan argued that the civil rights legislation passed in the wake of Reconstruction should be construed broadly to allow the national government to punish such acts.

Ogden Hoffman (1822–1891)

Ogden Hoffman served as U.S. district court judge in California from 1851–1891, making him one of the longest serving trial court judges in American history. In pursuing a legal career, he followed a family tradition. He was born in 1822 in New York to a well-known family of distinguished lawyers and political leaders. His father earned a reputation as a criminal trial lawyer and served as the U.S. attorney for the Southern District of New York. Hoffman earned degrees at Columbia University and Harvard Law School and then, like his colleagues Justice Stephen Field and Judge Lorenzo Sawyer, struck out for the Gold Rush of California, arriving in San Francisco in May 1850. Within a year, he had received an appointment from President Millard Fillmore to the new U.S. District Court for the Northern District of California. Only 29 years old and a bachelor at the time, he would devote the remainder of his life to the bench. The court was both literally and figuratively his family; he appointed his half-brother, Southard Hoffman, to serve as the clerk of the court.

In his forty-year tenure on the bench, Judge Hoffman handled many contentious issues as California developed from a frontier outpost to an established state with diverse economic and political interests. Hoffman's court devoted a great deal of time to admiralty cases and the controversial land litigation arising from the Mexican land grants. By the 1880s, litigation involving Chinese immigrants became the most time-consuming and bitterly fought cases coming before Judge Hoffman.

Like the other federal judges in the Ninth Circuit, Judge Hoffman supported the Chinese exclusion policy and shared the prevailing negative views of Chinese. Yet, he consistently upheld the right of individual Chinese to obtain writs of habeas corpus

challenging their exclusion and believed strongly that the Treaty of 1880 constrained what Congress and the courts could do. He upheld the rights of resident Chinese laborers and Chinese merchants to prove their exemption from the exclusion laws by presenting parol evidence, if they had been unable to obtain the certificates required by law. Hoffman's approach brought him into conflict with Justice Field, who by the time of *Chew Heong*, viewed the treaty as no more binding than congressional statutes. Throughout their association on the bench, Hoffman and Field's relationship was often tense, as they remained divided by political party, personality, personal ambition, and judicial style. The Chinese habeas corpus cases only served to weaken a fragile working relationship. Hoffman also endured scathing public criticism for his decisions in the Chinese cases. In more than one judicial opinion and in the press, he tried to justify his decisions and to show he had no option as a judge but to uphold the law. Hoffman frequently complained about the crushing workload and called for relief from the "intolerable nuisance" of the Chinese cases, arguing they clogged the courts and taxed the judges' health. But he did not believe such action should come at the expense of dishonoring the nation's treaty obligations with China.

George Myron Sabin (1833–1890)

George Sabin was judge of the U.S. District Court in Nevada between 1882 and 1890. Born in Ohio in 1833, Sabin graduated from Western Reserve College and practiced law in Wisconsin until the outbreak of the Civil War. He served in the armed services for the duration of the war, achieving the rank of U.S. Army colonel and sitting as the Judge Advocate of the Military District of Vicksburg. In 1868, Sabin headed for Nevada where he established a lucrative private law practice, first in Treasure Hill (1868–1872), then in Pioche (1872–1877), and Eureka (1877–1881). He continued to serve in a military capacity as well, filling the position of commanding officer of the Second Brigade of the Nevada National Guard. He never married.

In 1882, Sabin was appointed by President Chester A. Arthur to the U.S. District Court in Nevada where he served until his death. He hesitated to accept the appointment to the bench, discouraged by the low salary. He reported he could make at least twice, and sometimes four times as much, in his private legal practice. Yet, Sabin expressed great satisfaction with his career as a judge, enjoying the types of cases he heard and the quality of the lawyers who appeared before him. As a judge in the Ninth Circuit, Sabin was often called by circuit judge Lorenzo Sawyer to assist with the tremendous number of habeas cases in the District of California. Sabin came to San Francisco to hear cases several times a year, staying for as long as two months each visit. There he would sit in both the U.S. district court and the U.S. circuit court. Sabin shared the views of Hoffman and Sawyer in the *Chew Heong* case, believing the exclusion acts had to be interpreted to conform to the treaty with China.

Lorenzo Sawyer (1820–1891)

Lorenzo Sawyer was born in Le Roy, New York. After receiving degrees at Western Reserve and Hamilton Colleges, he studied law with Noah H. Swayne, a future Supreme Court justice. Like the other judges in the Ninth Circuit, Sawyer joined the migration of fortune seekers sparked by the Gold Rush, arriving in California by the overland route in July 1850. His career as a miner was short-lived as his legal services proved to be more lucrative and in demand in the growing frontier communities. After establishing a law practice in Nevada City, he left to become the city attorney in San Francisco in 1854. In 1862, Sawyer accepted a nomination by Republican Governor Leland Stanford as judge of the Twelfth Judicial District in California and was elected to the California Supreme Court a year later. In 1868, he became the court's chief justice. In 1870, he arrived at the pinnacle of his judicial career when President Ulysses S. Grant appointed him to the newly established circuit judgeship for the Ninth Circuit. He would serve in that judgeship until his death.

Judge Sawyer presided over a number of controversial cases arising in California, including the famous "Mining Debris" trial that pitted two of the state's largest industries—hydraulic mining and agriculture—against one another. Sawyer encountered the most heated public opposition to his decisions in Chinese civil rights and exclusion cases. Soon after arriving in California, Sawyer expressed his admiration of Chinese immigrants, describing them as industrious, dignified, and curious about American institutions. As chief justice of the California Supreme Court, Sawyer narrowed a state law forbidding Chinese testimony in criminal cases, finding it a violation of the Due Process Clause of the Fourteenth Amendment. Once on the federal bench, Sawyer continued to check state and federal laws that discriminated against Chinese when he believed they violated treaty rights granted to Chinese, the Fourteenth Amendment's guarantees of due process and equal protection, or the supremacy of the national government. He concurred in Field's opinions in striking down discriminatory laundry regulations and the so-called "queue ordinance" and went further than Field in insisting that the Exclusion Acts of 1882 and 1884 had to be interpreted to conform to the Treaty of 1880.

Sawyer wrote a dissenting opinion in the circuit court decision in *Chew Heong*, emphasizing that the court must protect the national honor by enforcing the agreements the country made with other nations. When Congress amended the Exclusion Act in 1888, explicitly denying the right of resident Chinese laborers to return to the United States and thus rejecting the terms of the treaty, Judge Sawyer felt compelled to uphold the new Exclusion Act. If a treaty and a statute were in direct conflict, he argued, the most recently adopted law prevailed as the latest expression of the nation's sovereign will. So, too, by 1890, it seems that Judge Sawyer had begun to share the anti-Chinese sentiment of other Californians. In contrast to his admiration of the Chinese in 1850, forty years later he suggested that Chinese immigration had been a mistake, given what he perceived to be their vast racial differences.

Judge Sawyer faced scathing public criticism for his decisions in the Chinese cases. He was lampooned in the political cartoons of the day and even targeted for a foiled assassination attempt by a fringe group in the "Anti-Coolie" Club that aimed to eradicate Chinese from California. His close personal and professional ties to railroad magnate Leland Stanford prompted allegations that his pro-Chinese decisions were motivated by economic interests; even in 1890, when Sawyer expressed doubts about Chinese immigration, he praised their contributions to American industry and their signal contributions to the building of the railroads.

Sawyer's personal papers and judicial decisions reveal a man whose opinions were driven also by what he thought the treaties with China and the Fourteenth Amendment's Due Process and Equal Protection Clauses required. In letters to Judge Matthew Deady, Sawyer expressed frustration with the public outcry over the judges' Chinese decisions, but took refuge in an ultimate vindication of their actions, saying, "I guess time will bring us out about right."

Parties in the case

Chew Heong

The historical sources tell us very little about Chew Heong, the petitioner in the case. Even his true name is uncertain. The District Court case files give it alternately as Cheen Heong and the newspapers referred to him as Chin Yeong. The court records reveal only that he was a laborer who came to the United States sometime before November 17, 1880, the date the Angell Treaty of 1880 went into operation. As a Chinese laborer residing in California on that date, he was entitled by the treaty, as he would be by the Chinese Exclusion Act of 1882, to remain in the country and to return if he chose to travel to other countries. Chew Heong left San Francisco on June 18, 1881, for Honolulu, then part of the Kingdom of Hawaii, where he remained for over three years. On September 22, 1884, he returned to San Francisco on the steamship *Mariposa* but was denied entrance by the collector of the port because he did not have a return certificate verifying that he was a resident laborer. Chew Heong's name became known largely from a twist of historical fate: the Chinese vice consul in San Francisco selected his as a representative case to test the application of the new 1884 act to an estimated 12,000 Chinese laborers who left the United States before the return certificates became available.

Lacking specific information on Chew Heong, the best one can offer is a "collective biography," sketching the general characteristics and experiences of Chinese laborers living in the United States in the period. Most male laborers came from agricultural regions in the southern province of Guangdong in China, the most cosmopolitan and market-oriented region in the country. As population and political turmoil in-

creased in the region, many young men sought to improve their families' economic position by emigrating to the United States and other destinations. They landed in San Francisco to fill a variety of jobs, from mining and railroad construction in the 1850s and 1860s to manufacturing and service industries in the 1870s and 1880s. By 1870, Chinese comprised 25% of California's wage-earning workforce. While Chinese laborers' wages remained among the lowest of California workers, the money they sent home to China often allowed their families a modicum of financial security and provided vital funds to sustain their native communities. Young men, like Chew Heong, might also strike out for Hawaii where they could easily find unskilled jobs on the booming sugar plantations. In 1881, when Chew Heong left for Honolulu, an unprecedented number of Chinese arrived in Hawaii in search of work. Most Chinese laborers left the demanding plantation jobs after their contracts had expired and sought better-paying and less-harsh work elsewhere.

Once the exclusion policy was adopted and anti-Chinese sentiment in the United States crested, the position of Chinese laborers became more precarious. Illegal immigration remained the only option for those who wished to come to the United States in search of broader economic opportunities. For those like Chew Heong who retained the legal right to remain in the United States, their movements became increasingly regulated by law. After 1888, Chinese laborers who left the United States could not return, unless they had property worth $1,000 or a wife or child in the United States; but their Chinese wives or children could not legally immigrate to the United States. Such laws created a "bachelor society" dominated by Chinese men forced either to remain single or to endure long separation from their families in China unless they were willing to risk illegal immigration. In 1892, Chinese laborers with the legal right to remain in the United States were required to register with the U.S. government or else face deportation. Just as the laws constricted their physical movement, Chinese laborers had fewer economic options after the 1880s as Chinese manufacturers faced stiff competition and boycotts from American competitors. By the turn of the century, Chinese laborers worked increasingly in American Chinatowns in laundries, restaurants, or stores, in the homes of white Americans as domestic servants, and in the agricultural fields as farm workers in the state's interior.

The final fate of Chew Heong is unknown but the federal census records from 1910 provide one possible clue. In the census, a 48-year-old man by the name of Chew Heong is listed as living on Roberts Island in the San Joaquin Delta and working with seven Chinese partners on a farm. Typically, Chinese obtained "developmental leases" from large land corporations, doing the hard work of cultivating reclaimed delta land. Chew Heong reported immigrating to the United States in 1880 when he was about 18. All of his partners were single and middle-aged, typical of the "bachelor society." Most, including Chew Heong, said they could read, write, and speak English, abilities probably picked up by their long residence in the United States. While one cannot be certain that he was the same man who gained brief notoriety in the test case of

1884, the census provides an entirely plausible story of Chew Heong's life trajectory, in keeping with the life histories of Chinese laborers of the era.

The Chinese consul in San Francisco

In 1878, the Chinese government created a consulate in San Francisco in response to repeated requests of Chinese in that city for an official agency to protect them from growing hostility in California and to provide leadership for the Chinese-American community. The Chinese consul did not always share the perspectives of Chinese immigrants, but he did exercise significant political power in the immigrant communities. For example, the consulate attempted to mediate internal conflicts within San Francisco's Chinatown and also sought to improve social services by, for example, building a Chinese hospital in the city. The Chinese consul also proved to be an ardent advocate of Chinese rights, protesting eloquently against discriminatory laws and demanding investigations and reparations when Chinese became victims of violent white mobs.

Along with the Chinese Six Companies, the Chinese consul played a key role in developing the litigation strategy to challenge discriminatory laws, including the exclusion policy, and providing the funding for the legal battles. Anticipating the importance of good legal advice, the consulate hired an American lawyer, Frederick A. Bee, to serve as vice consul. The consulate also kept other attorneys on retainer, including Thomas Riordan, one of Chew Heong's lawyers, to represent Chinese when the need arose. With the surge in anti-Chinese legislation by the 1880s, that need arose frequently. Through its American attorneys, the Chinese consulate challenged, among other acts, the segregation of Chinese children in San Francisco schools, laws prohibiting Chinese from working in particular jobs, and the stringent enforcement of the exclusion laws adopted by the collector of the port. In 1884, the consulate sponsored the test case in *Chew Heong*, seeing it as crucial to determining the rights of approximately 12,000 Chinese laborers under the Angell Treaty of 1880.

Chinese Six Companies (Zhonghua Huiguan)

The Zhonghua Huiguan, known to white Americans as the Chinese Six Companies, was a key organization for Chinese Americans in the nineteenth century, made up of representatives from smaller huiguan or district associations. Chinese immigrants joined one of several huiguan, depending on the region they came from in China. Each huiguan had its own building and staff and provided an array of social and economic services for Chinese immigrants. Huiguan could help their members find jobs and mediate internal disputes as well as provide a social outlet in an often hostile environment. Members paid dues to support a wide range of social services such as medical care, support for the indigent, and funeral expenses. Huiguan allotted a portion of the dues to retain the services of American lawyers in immigration

and other civil and criminal cases. The huiguan were led by Chinese scholars, from the members' home districts, who had successfully mastered the civil service exams traditionally required of administrators.

Each huiguan sent its president to serve on the central governing body, the Chinese Six Companies, also known in English as the Chinese Consolidated Benevolent Association. The Chinese Six Companies performed many of the same benevolent services offered by the individual huiguan but also allowed for unified action among the Chinese. The organization became the best known advocate of Chinese immigrants in the United States and played an important role in defending Chinese from discriminatory practices and legislation. It hired American attorneys—often very distinguished and able lawyers—to represent Chinese in state and federal courts. When Congress passed the Geary Act of 1892, requiring all Chinese laborers in the United States to register with the government or face deportation, the Chinese Six Companies organized a campaign of massive noncompliance that ended only after the Supreme Court upheld the act's constitutionality. The Chinese Six Companies, in conjunction with the Chinese consulate, were instrumental in providing the organizational network and the leadership to develop the litigation strategy that led to such cases as *Chew Heong*.

William H. Sears

William Sears was the collector of the port at San Francisco, responsible for overseeing the enforcement of the Chinese exclusion laws when Chew Heong's case came before the federal courts. Sears was born in Portland, Connecticut, in 1830 and arrived in California in 1851. For several years he was involved in the mining business before moving to San Francisco in 1865 and becoming a lawyer. A staunch Republican, Sears served several terms in the state assembly and the state senate, where he was a leading proponent of a bill to repeal a state law that prohibited African Americans from testifying in court. The California Supreme Court had ruled that the law also applied to Asians.

President Chester Arthur appointed Sears as collector of the port at San Francisco on May 15, 1884, shortly before the Act of 1884 was adopted. The position of collector was one of the most lucrative and desirable political appointments in the federal government. The collector operated in the public eye, and the local newspapers saw the collector's policies as indicative of the presidential administration's effectiveness. Thus, in the anti-Chinese environment of California in the 1880s, the collectors had a stake in proving themselves and the administration as a whole as fervent supporters of restriction. Sears followed the precedent of the earlier collector by adopting a strict interpretation of the law, to the point that the federal judges accused the collectors of being unreasonably zealous in their rigid enforcement.

Sears served less than two years as collector, losing his position to John Hager when the Democratic President Grover Cleveland took office in 1885. Sears became collector of internal revenue in San Francisco in 1890 and served in that position until his death on February 27, 1891.

Attorneys

Frederick A. Bee

Frederick Bee was a lawyer appointed by the Chinese government to serve as vice-consul in the Chinese consulate in San Francisco in 1878. He was born in New York around 1825 and came to California's gold fields to seek his fortune, first in mining and then as a merchant. The entrepreneurial Bee became involved with efforts to establish a transcontinental telegraph line and the Pony Express. After the opening of the Civil War, President Abraham Lincoln appointed Bee to be the provost marshal of the Central and Northern Districts of California. At the end of the war, he resumed his entrepreneurial activities, including involvement in the construction of the San Francisco and Northern Pacific Railroad.

Bee's association with Chinese immigrants began as early as 1855 when he defended Chinese miners who were being harassed by white neighbors in El Dorado County. In 1876, he took on a more official role as a public advocate of Chinese immigrants. In response to a request by Senator Oliver P. Morton, serving as chair of a congressional committee appointed to investigate Chinese immigration in 1876, Bee agreed to serve as the attorney for the Chinese Six Companies when the committee held hearings in San Francisco. Two years later, he accepted the position as vice consul for the Chinese government and worked for the consulate until his death in 1892.

As an officer in the Chinese consulate, Bee served as an intermediary between the Chinese immigrant community and American society. Bee acted in an official capacity to represent Chinese interests before the U.S. government, appearing before congressional committees, writing letters to officials, and investigating and demanding reparations for anti-Chinese violence. He was also a publicist for the Chinese, seeking through newspaper interviews and public letters to educate the American public about Chinese immigrants and refute popular racial stereotypes. As an attorney, he played an important role in the litigation sponsored by Chinese organizations. He probably helped to select the test cases brought in response to the Chinese Exclusion Act and to find other attorneys to represent the petitioners. He frequently appeared in federal court in important Chinese cases and was one of the several lawyers present at Chew Heong's hearing.

Harvey Brown

Harvey Brown was one of several attorneys appearing on behalf of Chew Heong, though he represented the interests of the Oriental and Occidental Steamship Company and the Southern Pacific Railroad Company. The Oriental and Occidental Steamship Company owned the *Mariposa*, the ship that Chew Heong sailed on from Honolulu. When Chew Heong filed his petition for a writ of habeas corpus, he named the ship's master as the one detaining him illegally. Hence, the steamship company had a lawyer representing its interests. But the company was more an ally than an adversary of the Chinese. The petitions typically alleged that the master of the ship detained Chinese illegally, but that was a technical matter, as the steamship companies were required by law to keep Chinese on board and return them to their port of origin if the collector denied them entry. The real adversary in the Chinese habeas corpus cases was the collector of the port, represented by the U.S. attorney. As commercial enterprises making their money from the trans-Pacific passenger traffic, the steamship companies clearly had a stake in keeping the gates to the United States open. Brown appeared in the *Chew Heong* and other Chinese exclusion cases to argue on behalf of a liberal interpretation of the law and preserve, as far as possible, continued Chinese immigration.

Brown was born in July 1824 in New York. He served as district attorney for San Francisco, resigning from that position in 1861. Brown appears to have had a long association with Leland Stanford, railroad magnate and former governor of California. The steamship company and the railroads were closely connected. The Oriental and Occidental Steamship Company was formed in 1874 by the Central Pacific and Union Pacific Railroad companies. Stanford was president of the Central Pacific and later of the Southern Pacific Railroad, which Harvey Brown represented as an attorney. Brown's connection with Stanford became a family affair. In 1880, his son, Harvey, Jr., worked as a clerk for the railroad, and his youngest son was named Leland Stanford Brown. Brown's appearance on behalf of Chinese in the exclusion cases no doubt fueled exclusionists' accusations of the close connections between the large railroads and Chinese immigration.

Carroll Cook

Carroll Cook was the first assistant U.S. attorney in San Francisco between 1883 and 1886. He helped U.S. Attorney Samuel Hilborn represent the government's case in *Chew Heong* and in many other Chinese habeas corpus cases. His brother, William Hoff Cook, was one of several attorneys hired on behalf of Chew Heong, making the two adversaries, at least for a short while.

Carroll Cook came from a distinguished family of lawyers. His father, Elisha Cook, came to San Francisco in 1850 and established a thriving practice and an ex-

cellent reputation in criminal law. Carroll was the eldest son, born in San Francisco in January 1855, and he followed in his father's footsteps by developing a specialty in criminal law. After serving four years as assistant U.S. attorney, Cook went on to be elected as a judge of the Superior Court of San Francisco, serving a six-year term (1896–1903).

While in the 1880s, Cook opposed Chinese habeas corpus petitions in his position as assistant U.S. attorney. Twenty years later he became an advocate for the Chinese-American community. The Chinese consul general and the Chinese Consolidated Benevolent Association (or Chinese Six Companies) hired Cook to be their attorney. They paid him a monthly fee to represent Chinese in immigration, civil, and criminal cases whenever the need arose. Several attorneys who had represented the government in the U.S. Attorneys' office later used the expertise they developed on behalf of their Chinese clients.

William Hoff Cook

William Hoff Cook was one of several attorneys hired to represent Chew Heong. The case pitted him against his older brother, Carroll Cook, who argued the government's case as the assistant U.S. attorney. William Hoff Cook was born in San Francisco in 1860, making him only twenty-four years old at the time of the *Chew Heong* case. His father, Elisha Cook, was a prominent criminal law attorney who established a lucrative practice. It is unclear how Cook came to work as an attorney for the Chinese. It is possible that he worked in a legal practice with Thomas D. Riordan, one of the other established attorneys in the case. Cook later represented the city of San Francisco as an attorney and carried on a general legal practice.

Samuel Greeley Hilborn

Samuel Hilborn was appointed by President Chester A. Arthur to be the U.S. attorney for the Northern District of California in San Francisco between 1883 and 1886. He was intimately involved in the litigation over the Chinese exclusion cases. He led the government's fight in the *Chew Heong* case to require that all Chinese resident laborers must present return certificates.

Hilborn was born in Minot, Maine, in 1835 and graduated from Tufts College in Massachusetts in 1859. He moved in 1861 to Vallejo, California, where he established a private law practice and also served in a number of official capacities, from city trustee to county supervisor. A Republican, he was elected to the California state senate in 1875–1876 and 1877–1878 and was a member of the state constitutional convention of 1878. He opposed the new constitution, which would run into significant legal difficulties in litigation before the federal courts. After his term as U.S. attorney

ended, Hilborn went on to serve as a member of the U.S. House of Representatives from 1892 to 1894 and again from 1895 until his death in 1899.

William A. Maury

William Maury was the assistant attorney general who represented the government in the Supreme Court hearing of the *Chew Heong* case. Maury was the son-in-law of Commodore Matthew Fontaine Maury, a famous American pioneer in oceanography and meteorology, who left his position as the head of the United States Naval Observatory to become a commander in the Confederate Navy when the Civil War broke out. Maury shared his father-in-law's southern sympathies and served as a judge advocate in the Confederate Army. He was first appointed as assistant U.S. attorney general by President Chester Arthur, to whom he was distantly related by marriage. Soon after his appointment, the *New York Times* characterized Maury as "a pronounced Bourbon Democrat of aristocratic birth and surroundings." Maury evidently had higher aspirations, but his primary appointment remained as the assistant attorney general, which position he retained through the Arthur, Cleveland, and Harrison administrations. After his service in the Department of Justice, Maury was appointed as a member of the Spanish Treaty Commission in 1901 and also served as a faculty member at Columbian College, later renamed George Washington University. He died on June 15, 1918, in Washington, D.C.

Thomas D. Riordan

Thomas Riordan was a California native, born in San Francisco in 1855. He graduated from St. Ignatius College with high honors at the age of nineteen and read law. Riordan's legal mentor was Benjamin S. Brooks, a prominent member of the San Francisco bar who had become an advocate for the Chinese. When, in 1876, a special congressional committee visited San Francisco to investigate Chinese immigration to the United States, Brooks volunteered his services as a lawyer to help represent the Chinese community. In 1877, Brooks published a pamphlet, *The Chinese in California*, defending Chinese immigrants against rising anti-Chinese sentiments. It was during this period that Riordan studied law under Brooks' tutelage and, after being admitted to the state and federal bar in 1879, Riordan soon became an attorney for the Chinese consul and the Chinese Six Companies in San Francisco. Hired on retainer, Riordan represented many Chinese in immigration cases and in civil and criminal matters. He not only led the legal team representing Chew Heong, but also argued several of the landmark Chinese exclusion and civil rights cases before the federal courts and on appeal to the Supreme Court, including the *Chinese Exclusion Case* of 1889 and *Fong Yue Ting v. United States* in 1892. Riordan died in San Francisco in 1905.

Media and Public Debates

In all of its proceedings regarding Chinese residents, the federal courts in San Francisco operated under close public scrutiny. Chinese immigration remained one of the most volatile political issues in the late nineteenth century, and both political parties competed to demonstrate their zeal to confront the perceived problem. Newspapers covered in detail court cases involving Chinese, reflecting in their stories and editorial columns their political perspectives. Political cartoonists were particularly blunt and powerful, using caricature and visual allusions to make more pointed criticisms of the courts' decisions. By 1887, a special agent from the Department of Justice warned that "Very grave charges are brought against Judge Sawyer and U.S. Attorney J.T. Carey, in connection with proceedings in these habeas corpus cases, by the Press of San Francisco, and by H.H. Scott, Deputy Collector of Customs . . . Two coordinate branches of Government are engaged in a hostile conflict, with the people and the press on the side against the courts, accusing them openly of all manner of bargain, intrigue and corruption, which threaten to do away with their usefulness and bring the administration into ridicule, contempt and utter disregard."

Even with the constitutional protections of tenure and salary, federal judges were affected by the scathing criticism they endured. They and other government officials worried that the Chinese exclusion cases undermined popular respect for the courts. Judge Field warned his fellow judges in the *Chew Heong* case, for example, that "oftentimes, . . . there is a sense of impatience in the public mind with judicial officers for not announcing the law to be what the community at the time wishes it should be. And nowhere has this feeling been more manifested than in California, and on no subject with more intensity than that which touches the immigration of Chinese laborers." Most newspapers hesitated to accuse the judges of outright corruption, but frequently portrayed the courts as the weak dupes of the Chinese, unable to prevent their courts from being used to circumvent the exclusion policy. Judges also had their own reputations to consider and, in their private correspondence and their public judicial decisions, expressed their frustration that their decisions were misunderstood and deliberately misrepresented in the press.

In various ways, the judges sought to respond to the unjust criticism and defend their actions, though they did not abandon their unpopular interpretations of the exclusion law. The one exception may be Justice Stephen Field. Field, perhaps, had suffered the most severe consequences for his decisions in Chinese exclusion and civil rights cases. Field had wanted to be President but his judicial opinions regarding railroad regulation and the Chinese engendered bitter public opposition to his candidacy. As the political campaign for President gained force in the spring of 1884, Field defended his record in the Chinese cases, predicting "one of these days our good people will see their error and they will do me full justice. . . . They will then admit that a just judge could not ignore the law or treaties, or the Constitution, however

offensive and detested the persons protected by them may have been." Soon thereafter, the Democratic Party of California explicitly repudiated Field as a potential candidate. By September, when Chew Heong's case came before the circuit court, Field's interpretation of the law had shifted. Whether Field, in deciding against Chew Heong, responded to bitter public condemnation of the court is difficult to know, but he received more favorable reviews in the press thereafter.

The other judges coped with public criticism in other ways. Judge Ogden Hoffman lobbied congressional representatives and senators for legislative reforms that would keep the unpopular cases out of his court. He also used judicial opinions, most notably in *In re Tung Yeong*, to explain and justify his decisions. The judges continued to profess their support for Chinese exclusion and, frequently, their dislike of Chinese immigrants, but reiterated the need to respect treaties and legal precedent. Judge Sawyer found the Supreme Court's decision in *Chew Heong* particularly gratifying in light of the unfavorable public opinion. In a letter to Judge Matthew Deady, Sawyer wrote "it is some consolation, after all the lying, abuse, threatening of impeachment, etc. as to our construction of the Chinese Restriction Act, and the grand glorification of brother Field for coming out here and so easily, promptly, and thoroughly setting down on us and setting us right on that subject, to find that we are not so widely out of our senses after all." He expressed the hope that "I guess time will bring us out about right."

Historical Documents

Government documents

Angell Treaty of 1880

In the 1870s, the growing anti-Chinese movement led to demands to limit Chinese immigration to the United States. The California legislature passed a law in 1874 requiring a $500 bond for the landing of any "lewd or debauched women," a measure aimed specifically at Chinese immigrant women. State efforts to restrict immigration ended when the Supreme Court ruled that the regulation of immigration was a federal, not a state, concern. The federal government took some steps to restrict Chinese immigration with the Page Act of 1875, forbidding the entry of Asian contract laborers, prostitutes, and felons. More sweeping limits remained difficult to achieve because the Burlingame Treaty of 1868 between China and the United States explicitly recognized the right of free migration. The Fifteen Passenger Act of 1879, which required that ships carry no more than fifteen Chinese passengers to the United States at a time, was vetoed by President Rutherford Hayes on the grounds that it violated the treaty.

To placate his critics, Hayes sent a commission led by James Angell to China to negotiate a new treaty to allow restrictions on Chinese immigration. On November 17, 1880, the new treaty was signed at Peking. As the excerpts reprinted here reveal, the treaty allowed for the regulation—but not the total exclusion—of Chinese immigration. Furthermore, the treaty specifically limited proposed restrictions to Chinese laborers who had never been in the United States. Laborers who lived in the United States before the treaty was signed and all other Chinese were to be allowed to migrate freely, as before. The Angell Treaty also reaffirmed the "most favored nation" status of Chinese residing in the United States, originally extended to Chinese in the Burlingame Treaty. Congress soon used its new power to restrict Chinese immigration, but the treaty would continue to limit the scope of exclusion, especially as it was interpreted by the courts.

[Document Source: *U.S. Statutes at Large* 22 (1881): 826.]

The Angell Treaty of 1880

Article I.

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.

Article II.

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.

Chinese Exclusion Act of 1882

Congress soon took advantage of its new power to limit Chinese immigration. The Chinese Exclusion Act of 1882 prohibited the immigration of Chinese laborers for ten years. The act did not apply to Chinese laborers who resided in the United States at the time of enactment or arrived within 90 days after passage of the law, nor did it apply to Chinese who were not laborers. Sections 3 and 6 of the act established a system of identification for Chinese exempt from the act, specifying that Chinese laborers leaving the United States obtain what came to be known as a "return certificate" from the collector of the port. Other Chinese had to secure a certificate from the Chinese government explaining why they were exempt from the law. Chinese immigration fell sharply, but exclusionists remained frustrated by the success some Chinese had in using the exemptions in the law to gain entry into the United States and sought further legislation to tighten restriction.

[Document Source: *U.S. Statutes at Large* 22 (1882): 58.]

An act to execute certain treaty stipulations relating to Chinese.

Whereas, in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the expiration of ninety days after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; . . .

SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act. . . .

SEC. 4. That for the purpose of properly identifying Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and in order to furnish them with the proper evidence of their right to go from and come to the United States of their free will and accord, as provided by the treaty between the United States and China . . . 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 peculiarities, and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the custom-house; and every such Chinese laborer so departing from the United States shall be entitled to, and shall receive, . . . a certificate, signed by the collector or his deputy . . . in such form as the Secretary of the Treasury shall prescribe. . . . The certificate herein provided for 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. . . .

SEC. 6. . . . Every Chinese person other than a laborer who may be entitled by said treaty and this act to come within the United States, and who shall be about to come to the United States, shall be identified as so entitled by the Chinese Government in each case, such identity to be evidenced by a certificate issued under the authority of said government, which certificate shall be in the English language or . . . accompanied by a translation into English, stating such right to come, and which certificate shall state the name, title, or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, and place of residence in China. . . . Such certificate shall be prima-facie evidence of the fact set forth therein, and shall be produced to the collector of customs, or his deputy, of the port in the district in the United States at which the person named therein shall arrive.

Chinese Exclusion Act of 1884

In 1884, Congress amended the 1882 exclusion law, acting primarily in response to the litigation in the Chinese habeas corpus decisions. Chinese routinely appealed to the federal courts when denied entry by the collector of customs. Following the 1882

Exclusion Act, federal courts allowed exempt Chinese who had not been able to obtain certificates to establish their right to enter through other written evidence and "parol evidence," that is, oral testimony. Federal courts had differed on the question whether the Exclusion Act applied only to Chinese subjects or to all of Chinese descent who lived in any country. The definition of who, exactly, was a "laborer" was another contentious issue. Were skilled workers excluded, or only unskilled workers? Was a peddler a merchant and exempt from the law or a laborer to be excluded?

In the opinion of the House of Representatives Committee on Foreign Affairs, the law needed to be changed to prevent "the manifold evasions" of the original act that had been accomplished through judicial interpretation and Chinese fraud. A minority of congressmen opposed the 1884 act, arguing that Chinese exclusion had been a success as was evident in the significant decline in the number of Chinese who applied for entry at U.S. ports. The charges of fraud and evasion of the law were based on "suspicion and guess-work," said the opponents, but the bill passed easily.

The 1884 law set out the requirements for the certificates and the definitions of exempt Chinese in much more detail and gave the U.S. consuls in China new responsibilities for enforcing the exclusion law. The "return certificates" of prior residents and the "section 6" certificates of other exempt Chinese would now include more information to assist in the identification of Chinese. Most important for the Chew Heong case, the certificates were to be the "only evidence permissible" to establish an individual's right to enter.

[Document Source: *U.S. Statutes at Large* 23 (1884): 115.]

An act to amend an act entitled "An act to execute certain treaty stipulations relating to Chinese approved May sixth eighteen hundred and eighty-two."

SEC. 4. . . . The certificate herein provided for 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, and said certificate shall be the only evidence permissible to establish his right of re-entry; and upon delivering of such certificate by such Chinese laborer to the collector of customs at the time of re-entry in the United States, said collector shall cause the same to be filed in the custom-house and duly canceled.

SEC. 6. . . . Every Chinese person, other than a laborer, who may be entitled by the said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese government, or of such other foreign Government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government . . . . If the person so applying for a certificate shall be a merchant, said certificate shall . . . state the nature, character, and estimated value of the business carried on by him prior to and at the time of his

application as aforesaid: *Provided,* That nothing in this act nor in said treaty shall be construed as embracing within the meaning of the word "merchant," hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation. If the certificate be sought for the purpose of travel for curiosity, it shall also state whether the applicant intends to pass through or travel within the United States, together with his financial standing in the country from which such certificate is desired. The certificate provided for in this act, and the identity of the person named therein shall, before such person goes on board any vessel to proceed to the United States, be vised by the indorsement of the diplomatic representatives of the United States in the foreign country from which said certificate issues, or of the consular representation of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative . . . is hereby empowered . . . to examine into the truth of the statements set forth in said certificate, and if he shall find . . . that said or any of the statements therein contained are untrue it shall be his duty to refuse to indorse the same. Such certificate vised . . . shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities.

SEC. 15. That the provisions of this act shall apply to all subjects of China and Chinese, whether subjects of China or any other foreign power; and the words "Chinese laborers," wherever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining.

Chinese Exclusion Act of 1888

By 1886, both the Chinese and the U.S. governments were unhappy with the exclusion policy, though for different reasons. The Chinese government was particularly frustrated by the growing violence against Chinese in the 1880s, culminating in the 1885 "Rock Springs Massacre" in Wyoming in which twenty-eight Chinese laborers were killed. Frustrated by the unwillingness of the U.S. government to protect Chinese subjects and to provide compensation for the victims of anti-Chinese mobs, the Chinese government approached the U.S. Department of State with a proposal for a new treaty. China would agree to greater restrictions on Chinese immigration in exchange for the American government's promise to provide better security for Chinese living in the United States. The administration of Grover Cleveland, under growing pressure from exclusionists and judges alike to make the exclusion laws more effective and stringent, entered into extensive negotiations with China, resulting in a new treaty which forbade the immigration of all Chinese laborers for twenty years, including prior residents unless they had parents, wives, or children living in the United States or property or debts worth at least $1,000.

The treaty was never ratified, however, as the Chinese government balked when mass rallies and newspaper articles bitterly condemned the new restrictions. Congress, frustrated and angry, passed an even more stringent law in October 1888 known as the Scott Act, which clearly violated the 1880 treaty. Under the new law, no Chinese laborers could enter the United States, regardless of prior residence. The residence certificates were declared void, and the exclusion of Chinese laborers was made without time limit. The policy would remain in place, with some amendments, until 1943.

[Document Source: *U.S. Statutes at Large* 25 (1888): 504.]

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.

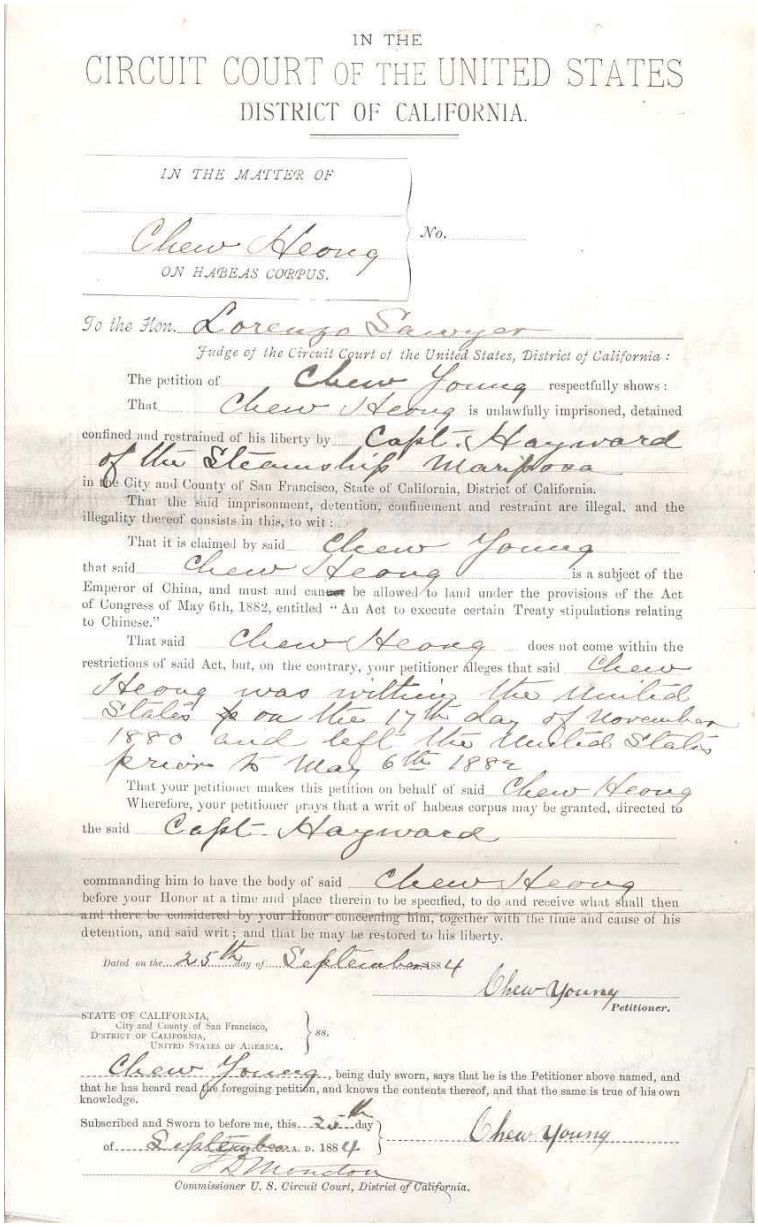
. . . it shall be unlawful for any chinese laborer who shall at any time heretofore have been, or who may now or hereafter be, a resident within the United States, and who shall have departed, or shall depart, therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States.

SEC. 2. That no certificates of identity . . . 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.

Habeas corpus petition of Chew Heong

The habeas corpus petition of Chew Heong reveals how common such cases had become in the federal courts in San Francisco. Standardized forms were printed to accommodate the hundreds of petitions filed. A friend or relative would file the petition on behalf of the Chinese immigrant seeking entry into the United States. The master of the steamship would be named as the offending party, restraining the immigrant of his or her liberty. But the real opposing party was the collector of customs who had denied the immigrant entry. In the hearing before the court, the U.S. attorney would appear on behalf of the government.

[Document Source: Habeas corpus petition of Chew Heong, U.S Circuit Court of the District of California, File 3472, RG 21, National Archives and Records Administration, San Bruno, Cal.]



IN THE
CIRCUIT COURT OF THE UNITED STATES
DISTRICT OF CALIFORNIA.

IN THE MATTER OF
Chew Heong
ON HABEAS CORPUS.
No.

To the Hon. Lorenzo Sawyer
Judge of the Circuit Court of the United States, District of California:

The petition of Chew Young respectfully shows:

That Chew Heong is unlawfully imprisoned, detained confined and restrained of his liberty by Capt. Haywood of the Steamship Manitoua in the City and County of San Francisco, State of California, District of California.

That the said imprisonment, detention, confinement and restraint are illegal, and the illegality thereof consists in this, to wit:

That it is claimed by said Chew Young that said Chew Heong is a subject of the Emperor of China, and must and cannot be allowed to land under the provisions of the Act of Congress of May 6th, 1882, entitled "An Act to execute certain Treaty stipulations relating to Chinese."

That said Chew Heong does not come within the restrictions of said Act, but, on the contrary, your petitioner alleges that said Chew Heong was within the United States on the 17th day of November 1880 and left the United States prior to May 6th 1882

That your petitioner makes this petition on behalf of said Chew Heong

Wherefore, your petitioner prays that a writ of habeas corpus may be granted, directed to the said Capt. Haywood

commanding him to have the body of said Chew Heong before your Honor at a time and place therein to be specified, to do and receive what shall then and there be considered by your Honor concerning him, together with the time and cause of his detention, and said writ; and that he may be restored to his liberty.

Dated on the 25th day of September 1884

Chew Young
Petitioner.

STATE OF CALIFORNIA,
City and County of San Francisco,
DISTRICT OF CALIFORNIA,
UNITED STATES OF AMERICA. } ss.

Chew Young, being duly sworn, says that he is the Petitioner above named, and that he has heard read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge.

Subscribed and Sworn to before me, this 25th day of September A. D. 1884

Chew Young

J. D. Monstow
Commissioner U. S. Circuit Court, District of California.

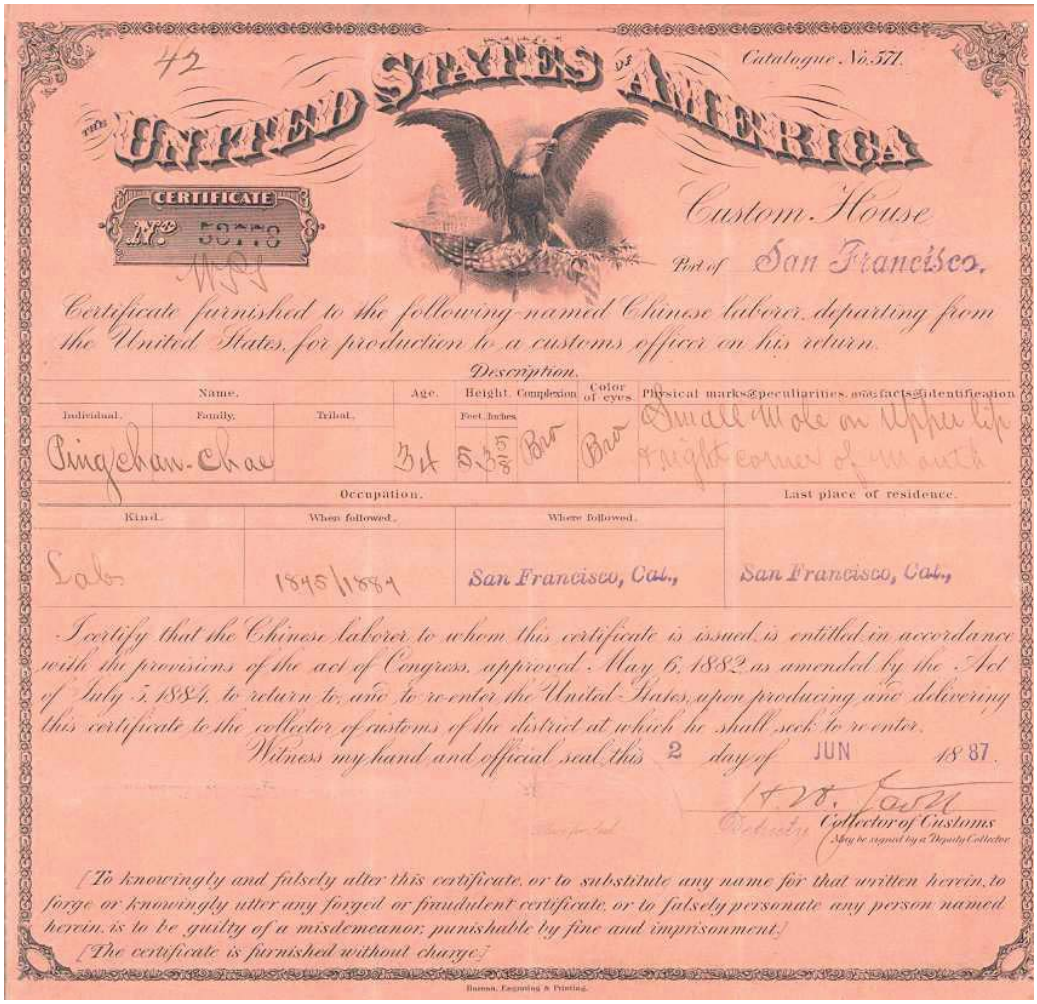
Laborer's return certificate: Chae Chan Ping

The return certificate lay at the heart of the dispute in the Chew Heong case. It was one of several types of documents devised by the U.S. government to identify Chinese who were exempt from the exclusion laws. The return certificate verified that a Chinese laborer had resided in the United States before the exclusion policy was adopted and provided identifying information. The resident laborer who left the United States for travel abroad presented the certificate to the collector of the

port upon returning to the United States. For those, like Chew Heong, who left before the certificates became available, the federal courts ruled these Chinese could present other evidence to establish that they had lived in the United States and had a right to reenter. Others used forged or transferred certificates to gain illegal entry.

Frustrated by both continued legal and illegal immigration by Chinese, Congress in the Scott Act of 1888 forbade the further entry of any Chinese laborers and declared all return certificates void and of no legal use. Chae Chan Ping, already en route to the United States when the Scott Act was passed, fell subject to the new law. His return certificate was declared null and void and his appeal to the Supreme Court failed in the landmark case Chae Chan Ping v. United States (also known as The Chinese Exclusion Case, 130 U.S. 581 [1889]).

[Document Source: *In re Chae Chan Ping*, No. 10100, October 11, 1888, U.S. Circuit Court for the Northern District of California, Records of the District Courts of the Untied States, RG 21, National Archives, Pacific Coast Region, San Bruno, Cal.]



42

Catalogue No. 577.

THE UNITED STATES OF AMERICA

CERTIFICATE

No. 50218

Custom House

Port of San Francisco.

Certificate furnished to the following-named Chinese laborer, departing from the United States, for production to a customs officer on his return.

Description.

Name.			Age.	Height. Feet. Inches.	Complexion	Color of eyes	Physical marks, peculiarities, and facts of identification
Individual.	Family.	Tribal.					
Ping Chan. Chae			34	5 5/8	Bro	Bro	Small Mole on Upper Lip & right corner of Mouth

Occupation.			Last place of residence.
Kind.	When followed.	Where followed.	
Lab	1845/1884	San Francisco, Cal.,	San Francisco, Cal.,

I certify that the Chinese laborer to whom this certificate is issued is entitled in accordance with the provisions of the act of Congress, approved May 6, 1882, as amended by the Act of July 5, 1884, to return to, and to re-enter the United States, upon producing and delivering this certificate to the collector of customs of the district at which he shall seek to re-enter.

Witness my hand and official seal this 2 day of JUN 1887.

Collector of Customs

May be signed by a Deputy Collector.

[To knowingly and falsely alter this certificate, or to substitute any name for that written herein, to forge or knowingly utter any forged or fraudulent certificate, or to falsely personate any person named herein, is to be guilty of a misdemeanor, punishable by fine and imprisonment.]

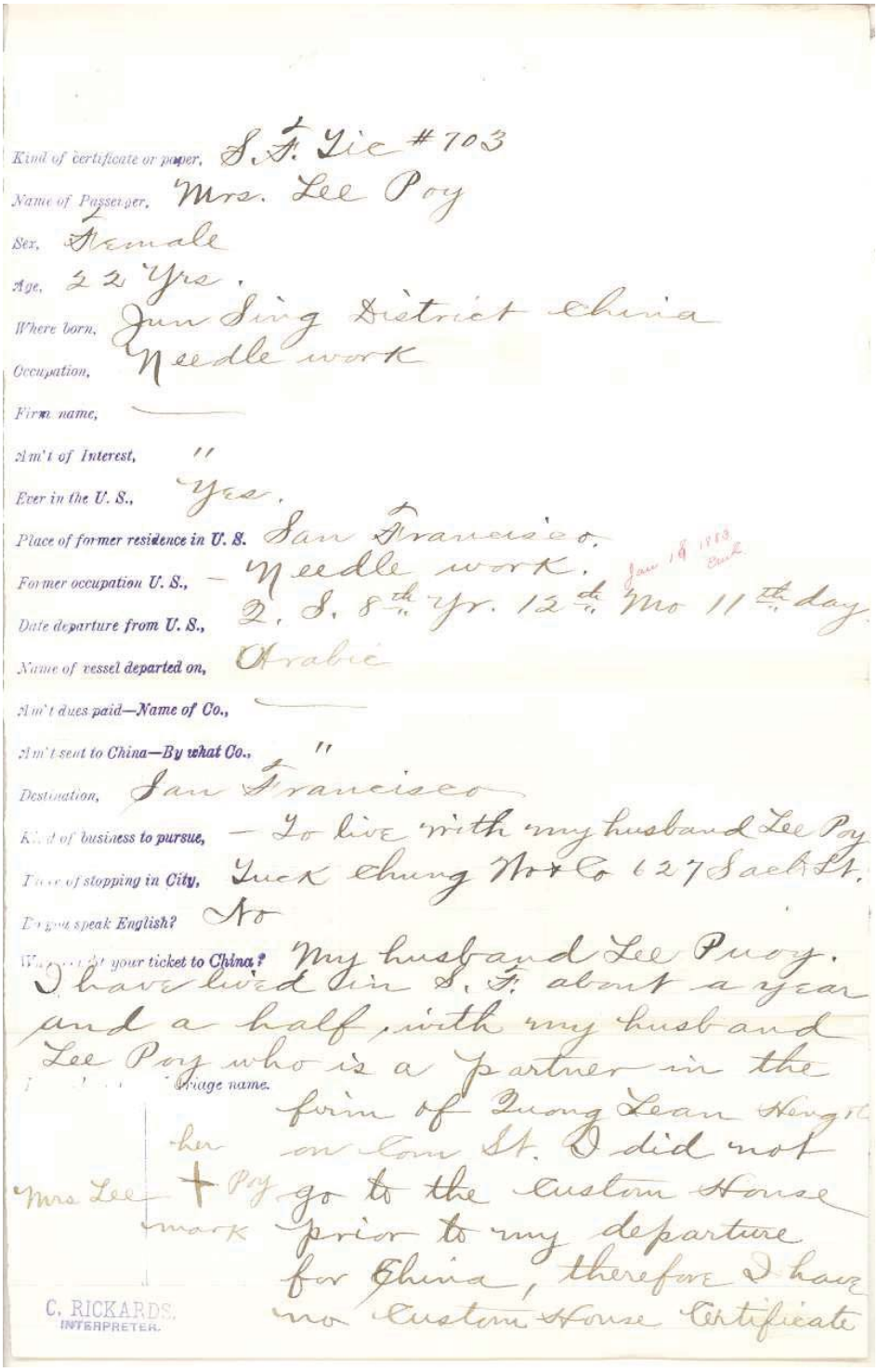
[The certificate is furnished without charge.]

Bureau, Engraving & Printing.

Collector of customs' investigation of Chinese immigrants

The collector of customs was responsible for enforcing the Chinese exclusion laws at each port. With hundreds of Chinese applying for admission as exempt from exclusion, the collector struggled to develop investigatory procedures and documents to determine who should be admitted and to provide a system to track immigrants as they came and went. The early forms, such as that used in 1883 for Mrs. Lee Poy, the wife of a Chinese merchant, were fairly simple and standardized. As time went on, the investigations became lengthier and more complex as government officials sought to catch fraudulent cases by finding conflicts in the interviews of applicants and their witnesses. In this case, Mrs. Lee Poy was admitted, even though she did not have a certificate verifying prior residence. She benefited from her husband's status as a merchant and from the assistance of Frederick Bee, American attorney and Chinese consul, who appeared on her behalf and personally identified her. The case illustrates the importance of lawyers and the Chinese consul in interceding on behalf of Chinese immigrants.

[Document Source: Arrival Investigation Case Files, 1884–1944, 9-3-85/S.S. City of Peking/Lee Poy (Mrs.), Records of the Immigration and Naturalization Service, RG 85, San Francisco District, National Archives, Pacific Coast Region, San Bruno, Cal.]



Kind of certificate or paper, S. F. Lic #703
Name of Passenger, Mrs. Lee Poy
Sex, Female
Age, 22 Yrs.
Where born, Jun Sing District China
Occupation, Needle work
Firm name, ——
Am't of Interest, "
Ever in the U. S., Yes.
Place of former residence in U. S. San Francisco.
Former occupation U. S., — Needle work.
Date departure from U. S., 2. S. 8th Yr. 12th Mo 11th day. Jan 18 1903 Cust
Name of vessel departed on, Arabic
Am't dues paid—Name of Co., ——
Am't sent to China—By what Co., "
Destination, San Francisco
Kind of business to pursue, — To live with my husband Lee Poy
Place of stopping in City, Yuck Chung Nov Co 127 Sacht St.
Do you speak English? No
Who paid for your ticket to China? My husband Lee Poy.
I have lived in S. F. about a year and a half, with my husband Lee Poy who is a partner in the firm of Quong Lean Heung C on Com St. I did not go to the Custom House prior to my departure for China, therefore I have no Custom House Certificate
Former name, if changed by marriage name.
her
Mrs Lee + Poy
mark
C. RICKARDS,
INTERPRETER.

Opinion of Justice Stephen J. Field in the U.S. Circuit Court for the District of California, *In re Cheen Hong*

The U.S. Circuit Court for the Ninth Circuit considered the reach of the new 1884 amendment to the Chinese Exclusion Act in the case of Chew Heong. The crucial issue for the court was whether the 1884 law's requirement that a certificate of residence was the only permissible evidence to establish prior residence, and thus exemption from the exclusion law, applied to Chinese who left the United States before the certificates became available. Until the Chew Heong case, the federal judges had agreed that Chinese resident laborers in such cases should be allowed to use other evidence to prove their right to enter. Now, the judges sharply disagreed. Justice Field changed his position, holding that the judges should abide by the explicit language of the law, requiring all Chinese laborers to present a certificate of residence, even if it worked hardships in particular cases. Judges Sawyer, Hoffman, and Sabin continued to insist that the law must be interpreted in accordance with the Treaty of 1880, which protected the right of Chinese laborers already residing in the United States to come and go at will.

[Document Source: 21 *Federal Reporter* 791 (Sept. 29, 1884).]

My associate, the circuit judge, sustains the contention of the petitioner, and in a written opinion has presented his construction of the act with his usual elaboration and learning. The district judge of this district and the district judge of the district of Nevada concur with him. It is, therefore, with much diffidence that I venture to express my dissent from their conclusions. . . . The third section [of the Chinese Exclusion Act] then provides that the two sections mentioned shall not apply to Chinese laborers who were in the United States on the seventeenth of November, 1880, or who came within 90 days after the passage of the act, "who shall produce to such master *before going on board such vessel,* and shall produce to the collector of the port in the United States at which such vessel shall arrive, *the evidence hereinafter in this act required of his being one of the laborers in this section mentioned*;" . . .

What, then, is the evidence which must thus be produced to the master in the foreign port, and to the collector at the port of the United States, by the laborers thus within the exception mentioned? The fourth section answers this. It declares that, for the purpose of identifying those laborers,—that is, those who were here on the seventeenth of November, 1880, or came within the 90 days mentioned,—and to furnish them with "the proper evidence" of their right to go from and come to the United States . . . each laborer departing thus [from the United States] shall be entitled from the collector, or his deputy, to 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 and to 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."

Now, what is the meaning of these provisions? It is not, as I read them, that the Chinese laborer in the United States on the seventeenth of November, 1880,—the date of the supplementary treaty,—or who came within 90 days after the passage of the act,—that is, before it took effect,—shall be subsequently permitted—that is, after the act had taken effect—to come without any certificate, for the act makes no exceptions of persons by whom it must be obtained. It means, in my judgment, that those laborers, *if still in the United States when the act takes effect,* and desirous to leave and yet return again, shall be permitted to do so upon obtaining the prescribed certificate. . . . The act, interpreted according to its direct language, necessarily excludes in its operation those who left the country before the act took effect. If this construction works any hardship, it is for congress to change the act. The court has no dispensing power over its provisions. Its duty is to construe and declare the law, not to evade or make it. Oftentimes, indeed, there is a sense of impatience in the public mind with judicial officers for not announcing the law to be what the community at the time wishes it should be. And nowhere has this feeling been more manifested than in California, and on no subject with more intensity than that which touches the immigration of Chinese laborers; but it often does great injustice to officers anxious to perform their whole duty. . . .

The provisions of the amendatory act of 1884 seem to me to remove any doubt as to the necessity of the certificate, if any existed under the act of 1882, for the admission of any Chinese laborers, who may have left the country before the passage of the original act. Under the construction adopted in this circuit, parol evidence had been allowed in a multitude of cases where previous residence was alleged; and the district and circuit courts were blocked up by them, to the great delay of their general business and the inconvenience of suitors. This circumstance, and the suspicious character, in many instances, of the testimony produced, from the loose notions entertained by the witnesses as to the obligation of an oath, created a general expression of a desire for further legislation placing some restriction upon the evidence which should be received. This desire led to the passage of the amendatory act; and by that it is 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 declaration applies to the certificate issued under either act. By it the door is effectually closed to all parol evidence. Nothing can take the place of the certificate or dispense with it. . . .

Writ discharged, and petitioner remanded.

Dissenting opinion of Judge Lorenzo Sawyer, *In re Cheen Hong*

[Document Source: 21 *Federal Reporter* 791 (Sept. 29, 1884).]

Sawyer, J., *dissenting*.

(Hoffman and Sabin, JJ., who sat as consulting judges, concurred in the dissenting opinion of the circuit judge.) . . .

. . . It is very clear to my mind that congress did not intend to make the provisions of section 4 applicable, and that they do not apply, to those Chinese laborers who were in the country on November 17, 1880, and who subsequently left the United States before the passage of the original act, and who could not possibly have obtained the prescribed certificate . . . . The act purports to be an act "to execute certain treaty stipulations with China,"—*not to abrogate them.*

It is scrupulously framed so as not, in express terms, to conflict with the provisions of the treaty. If it be held to take away any rights secured by the treaty, it must be done by construction, and by far-fetched and overstrained implications,—not because of any direct, express provision to that effect. The treaty and the act must, if possible, be so construed that they can stand together. The treaty with China authorized the government of the United States to "regulate, limit, or suspend" the coming of "Chinese laborers" to, or residence in, the United States. But it provided that "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 limitation."* And it was further expressly provided that "legislation taken in regard to *Chinese laborers will be of such character only as is necessary to enforce the regulation, limitation, or suspension of immigration."* It is still further provided that *"Chinese laborers* who are *now in the United States* (at the date of the treaty, November 17, 1880) *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 restriction act must be construed with reference to the provisions of the treaty. . . .

If it had been the intention to violate the specific terms of the treaty which secured the right to those Chinese laborers who were in the United States at the date of the treaty "to go and come of their own free will and accord," by excluding from returning all those who departed for temporary purposes upon the faith of the treaty prior to the passage of the act of 1882, congress would certainly have acted in a manly way, and expressed that intention boldly, openly, and by plain and direct language which could not be misunderstood . . . .

For the reasons stated I am satisfied that the provisions respecting certificates in section 4 of the amended act have no application whatever to these Chinese laborers

who were residing in the United States on November 17, 1880, and who afterwards departed prior to May 6, 1882; that they were not intended by the act in question to be excluded from the country for want of such certificate, or on any other grounds; and that such Chinese laborers are entitled to re-enter the United States upon their return, upon other satisfactory evidence, without producing the certificate prescribed by said section. . . .

The construction I have given to this law not only reconciles the legislation with the observance of the plighted faith of the nation, but it carries out and effectuates the object of the treaty and the law. The evil to be remedied was the continued, unrestricted immigration of Chinese laborers. . . . This object, the law in its practical operation, has been attained. Not only has there been no accession to the number of the Chinese in this country, but the statistics of the custom-house show that, during the 28 months which have elapsed since the passage, the number of departures exceed the number of arrivals by 12,000. Not only, therefore, has the number of the Chinese on this coast not increased, but it has been diminishing (after making due allowance for those who may have clandestinely crossed the northern boundary of the United States) at the rate which ought to satisfy the sturdiest opponent of this class of laborers,—a rate which could not be largely increased without serious disturbance to the industries of this coast. But, even if this were not so, there is a price too high to be paid, without absolute necessity, in any case, for the exclusion of Chinese laborers, and that price is the national honor. And especially, when, as I have shown, the plighted faith of the nation may be kept without impairing the effectiveness and satisfactory operation of the law. By the construction here adopted, also, the treaty and the law are in harmony; and the various provisions of the act are consistent and in accord with each other. But, on the construction insisted upon by the United States attorney and sanctioned by the presiding justice, the treaty and the law conflict, and various provisions of the restriction act itself are inharmonious and inconsistent with each other.

I therefore dissent from the decision of the presiding justice, and from the order remanding petitioner.

Opinion of Justice John Marshall Harlan in the Supreme Court of the United States (excerpt), *Chew Heong v. United States*

Chew Heong's attorneys were able to appeal the case to the Supreme Court based on a "certificate of division in opinion" because the judges in the U.S. circuit court disagreed in the case. On appeal, the Supreme Court reversed the circuit court's decision. Justice John Marshall Harlan adopted the reasoning of the dissenting circuit court judge, Lorenzo Sawyer. The act of 1884 should be interpreted to protect the rights of resident Chinese laborers, as guaranteed in the Treaty of 1880. Thus, the 1884 requirement for certificates of residence only applied to Chinese laborers who

were in the United States when the certificates began to be issued. Not surprisingly, Justice Field, the author of the circuit court opinion under review, dissented bitterly in the Supreme Court, on both legal and policy grounds.

[Document Source: *Chew Heong v. United States*, 112 U.S. Supreme Court Reports 536 (1884).]

When the act of 1882 was passed, Congress was aware of the obligation this Government had recently assumed, by solemn Treaty, to accord to a certain class of Chinese laborers the privilege of going from and coming to this country at their pleasure. Did it intend, within less than a year after the ratification of the Treaty and without so declaring in unmistakable terms, to withdraw that privilege by the general words of the 1st and 2nd sections of that Act? Did it intend to do what would be inconsistent with the inviolable fidelity with which, according to the established rules of international law, the stipulations of treaties should be observed? These questions must receive a negative answer. The presumption must be indulged that the broad language of these sections was intended to apply to those Chinese laborers whose coming to this country might, consistently with the Treaty, be reasonably regulated, limited or suspended, and not to those who, by the express words of the same Treaty, were entitled to go and come of their own free will, and enjoy such privileges and immunities as were accorded to the citizens and subjects of the most favored nation. . . .

[The fourth] section [of the act of 1882] was amended by the Act of 1884 so as to require that the list made by the collector or his deputy, and entered in the registry books kept for that purpose, as well as the certificate issued by the collector to any Chinese laborer about to depart by vessel, should show (what the original act did not require) his individual, family and tribal name in full, and when and where his occupation was followed. It was further amended so as to provide, in terms, that the certificate furnished to such laborer by the collector "shall be the only evidence permissible to establish his right of reentry."

In that section, as in the 3d, a certain class of Chinese laborers is described, as those who were here on the 17th of November, 1880. Why was that date fixed, unless for the purpose of giving effect to the article of the Treaty, which secured to Chinese laborers, who were in this country on that particular day, the same freedom, in respect of travel and intercourse, that was accorded to the citizens and subjects of the most favored Nation? Congress certainly did not overlook, much less intend to ignore, the stipulations of the Treaty, or question their scope or effect; for the 4th section, referring to Chinese laborers who were here on the 17th day of November, 1880, expressly recognizes the fact that the Treaty of that date gave them "the right to go from and come to the United States." . . .

The supposition should not be indulged that Congress, while professing to faithfully execute treaty stipulations, and recognizing the fact that they secured to a

certain class the "right to go from and come to the United States," intended to make its protection depend upon the performance of conditions which it was physically impossible to perform . . . . What injustice could be more marked than, by legislative enactment, to recognize the existence of a right, by treaty, to come within the limits of the United States and, at the same time, to prescribe, as the only evidence permissible to establish it, the possession of a collector's certificate, that could not possibly have been obtained by the person to whom the right belongs? . . .

The entire argument in support of the judgment below proceeds upon the erroneous assumption that Congress intended to exclude all Chinese laborers of every class who were not in the United States at the time of the passage of the Act of 1882, including those who, like the plaintiff in error, were here when the last Treaty was concluded, but were absent at the date of the passage of that Act. We have stated the main reasons which, in our opinion, forbid that interpretation of the Act of Congress. To these may be added the further one, that the courts uniformly refuse to give to statutes a retrospective operation, whereby rights previously vested are injuriously affected, unless compelled to do so by language so clear and positive as to leave no room to doubt that such was the intention of the Legislature. . . .

In accordance with these views, it is adjudged that the plaintiff in error is entitled to enter and remain in the United States. The first of the certified questions is, therefore, answered in the negative, and the second and third in the affirmative.

The judgment is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Dissenting opinion of Justice Stephen J. Field in the Supreme Court of the United States (excerpt), *Chew Heong v. United States*

[Document Source: *Chew Heong v. United States*, 112 U.S. Supreme Court Reports 536 (1884).]

. . . The majority of this court . . . narrow the meaning of the act so as measurably to frustrate its intended operation. Whereas, if the Treaty as to such laborers be construed, as I think it should be, to apply to those then here who afterwards continue their residence in the country and who may, during such residence, desire to be temporarily absent, there is no conflict between it and the Act of Congress. Both are then in perfect harmony, the imputation of bad faith is without a plausible pretext, and the citations in the opinion of the Circuit Judge and of this court, as to the necessity of construing Acts so as not to lead to injustice, oppression or absurd consequences, have no application.

The petitioner, a native of China and a laborer, though here when the Treaty of 1880 was concluded, left the country in June, 1881, and was in the Hawaiian Islands

over three years before he desired to return. Chinese laborers do not travel for pleasure, and during that time he had acquired a residence in those islands as fully as he ever had in the United States. But, according to the opinion of the court, this fact is of no significance. He could reside there twenty years and then return, notwithstanding the Act of Congress. I cannot construe the Treaty as conferring any such unrestricted right or as applying to any other laborers than those who afterwards continued their residence here. . . .

Before proceeding to examine in detail the Act of Congress in question, a few words may be said as to the causes which led to its enactment. Upon the acquisition of California and the discovery of gold, people from all parts of the world came to the country in great numbers, and among them Chinese laborers. They found ready employment; they were industrious and docile, and generally peaceable. They proved to be valuable domestic servants, and were useful in constructing roads, draining marshes, cultivating fields and, generally, wherever outdoor labor was required. For some time they excited little opposition, except when seeking to work in the mines. But as their numbers increased they began to engage in various trades and mechanical pursuits, and soon came into competition, not only with white laborers in the field, but with white artisans and mechanics. They interfered in many ways with the industries and business of the State. Very few of them had families, not one in five hundred, and they had a wonderful capacity to live in narrow quarters without injury to their health, and were generally content with small gains and the simplest fare. They were perfectly satisfied with what would hardly furnish a scanty subsistence to our laborers and artisans. Successful competition with them was, therefore, impossible, for our laborers are not content and never should be, with a bare livelihood for their work. They demand something more, which will give them the comforts of a home, and enable them to support and educate their children. But this is not possible of attainment if they are obliged to compete with Chinese laborers and artisans under the conditions mentioned; and it so proved in California. Irritation and discontent naturally followed, and frequent conflicts between them and our people disturbed the peace of the community in many portions of the State. . . .

. . . But, notwithstanding they [the Chinese] have remained among us a separate people, retaining their original peculiarities of dress, manners, habits and modes of living, which are as marked as their complexion and language. They live by themselves; they constitute a distinct organization with the laws and customs which they brought from China. Our institutions have made no impression on them during the more than thirty years they have been in the country. They have their own tribunals to which they voluntarily submit, and seek to live in a manner similar to that of China. They do not and will not assimilate with our people; and their dying wish is that their bodies may be taken to China for burial. . . .

. . . It is not surprising that there went up from the whole Pacific Coast an earnest appeal to Congress to restrain the further immigration of Chinese. It came, not only

from that class who toil with their hands, and thus felt keenly the pressure of the competition with coolie labor, but from all classes. Thoughtful persons who were exempt from race prejudices saw, in the facilities of transportation between the two countries, the certainty, at no distant day, that, from the unnumbered millions on the opposite shores of the Pacific, vast hordes would pour in upon us, overrunning our coast and controlling its institutions. A restriction upon their further immigration was felt to be necessary, to prevent the degradation of white labor, and to preserve to ourselves the inestimable benefits of our Christian civilization. . . .

The plain purport of the Act, as it seems to me, was to exclude all Chinese laborers except those who came at certain designated periods and continued their residence in the country, and, if they should leave and be desirous of returning, to require them to obtain a proper certificate of identification. By this construction, all the provisions of the Act are made harmonious; without it, they are contradictory and absurd. . . .

To obviate the difficulties attending the enforcement of that Act from the causes stated, 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." By it the door is effectually closed or would be closed but for the decision of the court in this case, to all parol evidence and the perjuries which have heretofore characterized its reception. But for this decision, nothing could take the place of the certificate or dispense with it; and I see only trouble resulting from the opposite conclusion. All the bitterness which has heretofore existed on the Pacific Coast on the subject of the immigration of Chinese laborers will be renewed and intensified, and our courts there will be crowded with applicants to land, who never before saw our shores, and yet will produce a multitude of witnesses to establish their former residence, whose testimony cannot be refuted and yet cannot be rejected. I can only express the hope, in view of the difficulty, if not impossibility, of enforcing the exclusion of Chinese laborers intended by the Act, if parol testimony from them is receivable, that Congress will, at an early day, speak on the subject in terms which will admit of no doubt as to their meaning.

Political cartoons from The Wasp

From The Bancroft Library, University of California, Berkeley

Political cartoons provided one of the most effective vehicles for the anti-Chinese movement. With an economy of words and powerful images, cartoons drew on popular caricatures and stereotypes to convey their messages. *The Wasp*, a weekly illustrated magazine published in San Francisco between 1876–1928, was particularly well known for its colorful satirical cartoons. As federal judges in San Francisco

became involved in Chinese civil rights and exclusion cases, they became the targets of *The Wasp*'s cartoonists.

"Judge Righteous Judgment," *The Wasp*, v. 4, August 1879–July 1880

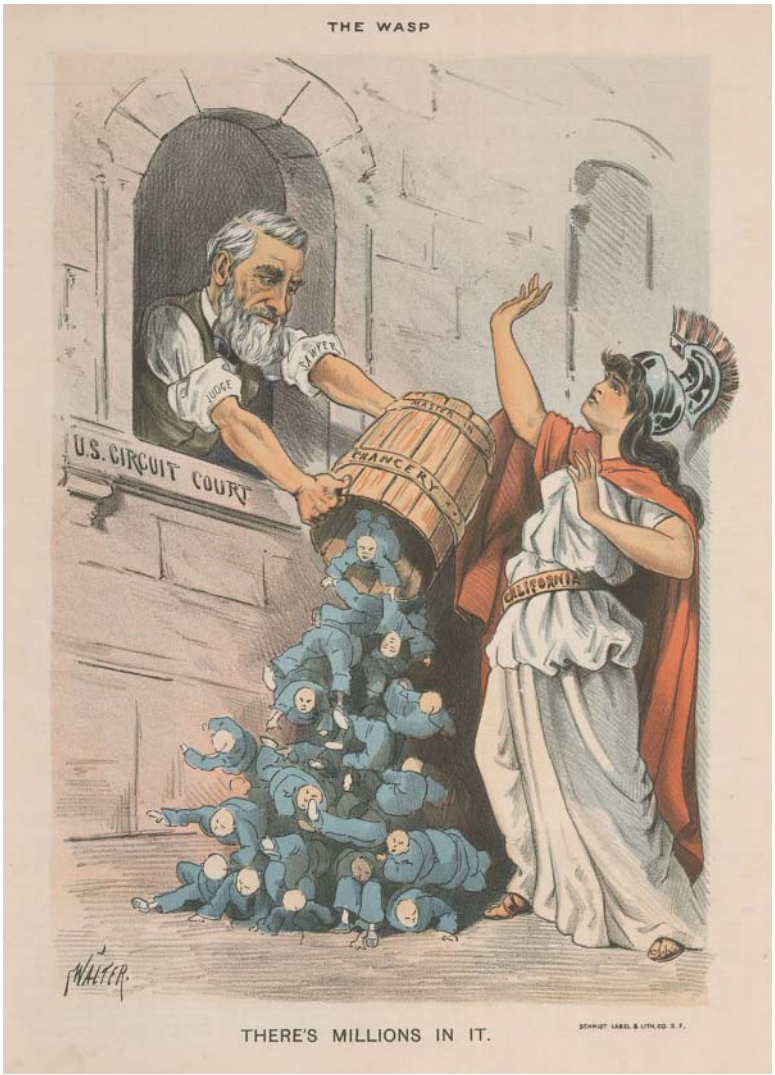
Justice Stephen Field's decision in Ho Ah Kow v. Nunan on July 7, 1879, sparked an angry reaction in the local press, as the cartoon suggests. The case involved San Francisco's so-called "queue ordinance" that mandated all convicted prisoners in the local jail have their hair cut within one inch of their scalp. Although the ordinance did not specifically mention Chinese, Justice Field, sitting on the circuit court, admonished that everyone knew the San Francisco Board of Supervisors was targeting Chinese men who viewed the loss of their queues as deeply humiliating. He condemned the law as "hostile and spiteful" and struck it down as an unconstitutional discrimination. Field's decision was crucial in broadening the interpretation of the Equal Protection Clause of the Fourteenth Amendment as he ruled that all persons, not just citizens, were entitled to equal protection of the laws. Furthermore, he held that laws that appeared to be neutral could be discriminatory in their enforcement and thus violate the Equal Protection Clause.

The newspapers were not impressed by such reasoning. The San Francisco Argonaut condemned the "sickly sentimentality" of the judges and found the concern for the "soulless heathen" "absurd" and "altogether ridiculous." The Wasp's cartoonist sarcastically dubbed Field, "Judge Righteous," and dressed him in Chinese garb, replete with a queue. In "Judge Field's Barber Shop," Field reattaches the queue cut off the Chinese man by San Francisco sheriff Matthew Nunan. Such cartoons reinforced allegations that Field was pro-Chinese and helped to frustrate his ambitions to become the Democratic presidential candidate in 1880.


32 THE ILLUSTRATED WASP.
JUDGE RIGHTEOUS JUDGMENT.

"There's Millions in It," *The Wasp*, 1884

By 1884, when the U.S. circuit court heard the Chew Heong case, the local press often blamed federal judges for weakening the Chinese exclusion law. Here, Judge Lorenzo Sawyer is portrayed dumping Chinese out of his court by the barrel while California protests in vain. The caption, "There's Millions in It," suggests not only that millions of Chinese might succeed in evading exclusion because of Sawyer's decisions but also alludes to occasional rumors that Sawyer was turning a handsome profit from the "habeas corpus mill," receiving bribes to allow Chinese to land. In a letter to Judge Matthew Deady of the U.S. District Court for Oregon on August 9, 1884, Judge Sawyer characterized the newspapers' reports of his Chinese decisions as "unmitigated lying" that sparked a "torrent of abuse founded on that lying."



"The Restriction Act Knocked Out," *The Wasp*, Aug. 15, 1885, pp. 8–9

After the Supreme Court's decision in Chew Heong, exclusionists' criticism of the federal courts increased and their frustration with the difficulty of enforcing the exclusion law mounted. The cartoonist of "The Restriction Act Knocked Out" conveys in detail the inept efforts of various federal officials to prevent Chinese immigrants from landing through litigation. In this game, the Chinese are clearly winning. The Wasp (Aug. 15, 1885, p. 3) included the following detailed explanation of the cartoon for its readers.

In our double-page cartoon is an allegorical representation of one phase of the Chinese question. Representing a baseball game between the civic authorities and the Asiatics, we have Senator Miller pitching the ball (the Restriction Act) at the Chinaman on the home plate. Collector-of-Customs Sears stands behind and is earnestly determined to "catch him out." The Mongol, however, defeats this purpose, for with his gnarled and misshapen "bat" of Perjury he negatives the efforts of both pitcher and catcher and sends the ball "skywards" over the fence into the Supreme Court. This being out of the bounds, the Act is a "lost ball," and will so remain until in the slowness of revolving years the Federal judiciary chooses to return it. United States Judge Sawyer acts as Referee between the parties, but owing to the sinuosities, bends and curves of the telescopic law through which he is compelled to look he has entirely lost sight of the ball. Surveyor-of-the-Port Morton, whose business it is to be the first man on incoming ships and deny a landing to any Chinaman who has not a proper certificate, in this pictured game acts as "shortstop" and is frantic in his efforts to cut short the ball in its aerial flight. But the Chinaman has sent it over his head. United States District-Attorney Hilborn finding that the Mongols have beaten the "pitcher," the "catcher" and the "short-stop," and are passing all the "bases," in turn, puts himself in the way as the expositor of the law to prevent a "home-run," but he finds himself toppled over and knocked out of line by a "habeas corpus," which the almond-eyed stranger always applies as a last resort. Thus he makes the goal of a home landing, and an interminable line of his fellows under the intelligent "coaching" of Colonel Bee, their captain, awaits in turn the running of the "corners." A Pacific Mail steamer is seen in the distance from which the "little brown men" are debounching [sic] in quantity. In the foreground of the picture are to be seen the "bats" used by the whites, while the knotty club of "False-Personation" indicates another of the means by which the Restriction Act is "knocked out of time." Altogether the lesson of the hour is graphically set forth in this telling picture.


THE WASP.
SUPREME COURT
LAW
EXECUTIVE GENERAL
PERJURY
HABEAS CORPUS
THE RESTRICTION ACT KNOCKED OUT.

Newspapers and public opinion

"The Evasion Act"

The newspapers in San Francisco reported on the Chinese exclusion litigation in detail. Often they were quite critical, as is evident in the following article in which the reporter renamed the Exclusion Act "the Evasion Act," to reflect his dismay at the ability of Chinese immigrants to circumvent the law. Drawing on common stereotypes of Chinese, the reporter attributed the failure of the law to Chinese perjury and fraud and to unscrupulous, money-hungry lawyers.

[Document Source: *Daily Alta*, December 18, 1883, p. 1, col. 4.]

The Evasion Act.

How the "Oceanic's" "Traders" Are Seeking to Land.

The beneficiaries of the "Chinese Evasion Act," or what might be called with propriety "An Act to perfect the art of lying among the Chinese and their white auxiliaries," assembled yesterday in Judge Hoffman's Court-room to the number of thirty-two. . . . About ten fairly reputable Chinamen and 200 odd highbinders congregated in the spectators' lobby, every individual smell among them asserting itself in the boldest manner, and at the same time aiding to form a vast, stupendous aggregate of odor that caused the solemn-looking Federal Judge to gasp for air and vexed the olfactory nerves of the ancient bailiff. Busily engaged about the court-room were three attorneys who have an extensive practice among the Chinese, anxious to knock holes in the "Evasion Act," though to hear at least one of these attorneys on the stump before the election of 1880 declare his willingness not only to sacrifice his private interests, but even to risk his life, to keep the Mongolian hordes from overrunning this fair land, one would have thought that no amount of fees could tempt him to assist a Chinaman to land.

Highbinder Influence

By a wise arrangement these thirty-two heathens anxious to take advantage of the "Evasion Act" had been kept away from San Francisco Chinese brokers before being brought into the Court, but the instant they reached the United States building they were interviewed by as nice a set of Chinese highbinders as ever blackmailed Bartlett Alley or practiced perjury as a fine profession . . . To facilitate the Court proceedings the Chinese were divided into two lots, viz.: Those who had certificates from China and those who relied upon the beauties of the "Evasion Act" to put them through without even that slight formality. . . .

Pro-Chinese Attorneys

Had made special pleas and complained of the hardship of their poor, poor clients being detained on board the *Oceanic*, District Attorney Hilborn rather more than insinuated that the whole proceedings as at present conducted were a howling farce, and for this reason: The bland-faced heathen, Moy Jim Mun, who judicially contorts Chinese *patois* into English, "as she is spoke" around Chinatown, is not only in the pay of the Chinese, but receives a fee of $5 for every Chinaman who gets the benefit of the "Evasion Act." It occurred to Mr. Hillborn that this was wrong, but Judge Hoffman thought otherwise, though he admitted that it would be as well to engage the Custom House interpreter. The suspicions of Mr. Hillborn were aroused from the fact that Moy is very friendly with all the highbinders around the Court, while the lately-skipped Government language torturer, Fon Sing, who assisted to expose fraudulent traders, was complimented by having a price set on his head by the highbinders' society. After some discussion the alleged traders who have certificates were released on bail set at $1,000 each, while the others were sent back to the *Oceanic* in charge of the U. S. Marshall.

"Chinamen Without Certificates Must Stay Away"

As one of the first test cases of the 1884 law heard by Justice Field, presiding over the circuit court, Chew Heong's habeas corpus hearing was followed closely in the local newspapers. The Daily Alta provided a detailed description of the proceedings on its front page, including the statements of the judges and attorneys. From its report, it appears that Field came to the hearing with his mind made up. His frustration with the Chinese habeas corpus cases is evident in his testy exchange with Chew Heong's attorney, Thomas D. Riordan. Note that the newspaper refers to Chew Heong as "Chew Yeong." Given the unfamiliarity of American officials with Chinese names, it was not unusual for Chinese names to be spelled several different ways which could later lead to confusion in subsequent investigations.

[Document Source: *Daily Alta*, Sept. 27, 1884, p. 1, col. 3.]

Justice Field—The law is perfectly plain. It says that the certificate shall be the only evidence. How many Chinamen will try to come in the same way?

Mr. Riordan—About 12,000.

Justice Field—And what shall the Courts do with them? Can it give each one of them a separate trial? Can it let each of them produce evidence of former residence? No; it was because the Courts were overcrowded that the second Act was passed. It was to relieve that pressure. Besides, Congress never supposed that Chinamen intended to go back to China and stay several years. If they do not come back at

once they should not be allowed to come at all. We can't have them going away and staying as long as they want to.

Mr. Riordan—Then I suppose, your Honor, it is no use arguing the case further.

Justice Field—Not the least. My mind is made up on the matter. If there is any special hardship, there are other ways of remedying it. Bring the case to the notice of the Chinese Minister at Washington, let him present it to the Secretary of State, with the request that our Minister of China look into the matter and report it. Or, if you would prefer, appeal the case to the Supreme Court of the United States and have it settled there. I'll prepare a written opinion for you by Monday. Is there any other case?

There was no other case, and the two other questions to be considered, whether a Chinaman born in this State is entitled to the privileges of citizenship, and whether Chinese refused a landing here shall be admitted to bail, were set for hearing today.

"Mr. Justice Field on the Restriction Act"

Justice Field had earlier agreed with the other federal judges that Chinese laborers returning to the United States did not have to present a certificate if it had been impossible to obtain one, but when he came to San Francisco in September 1884 to preside over the circuit court, he arrived with an impatient resolve to bring an end to the "habeas corpus mill." The several cases decided on September 22, 1884, made clear Field's determination to enforce the exclusion policy more strictly. Foreshadowing his decision in Chew Heong, Field, in the "Case of the Unused Tag," sternly held "It matters not that the petitioner was entitled to have a certificate from the collector. If he has not got it, the court cannot help him. That is the 'only evidence permissible' says the statute, and the court has no power to dispense with that requirement."

In another case, Field appeared determined to prove wrong his detractors who referred to the "sickly sentimentality" of his earlier Chinese decisions. In the "Case of the Chinese Wife" (21 F. 785), Field held that the Chinese wives of resident Chinese laborers could not enter the United States without proper documentation from the Chinese government. While Field had earlier ruled that unreasonable requirements should be avoided in the enforcement of the exclusion laws, he expressed no discomfort at the hardships imposed by the possible separation of husband and wife. Such decisions earned him praise from the Daily Alta. Given the scathing condemnation of Field for his earlier rulings in Chinese cases, the Daily Alta's editorial must have been gratifying for Field and may have been part of an attempt to rehabilitate his public image for political purposes.

[Document Source: *Daily Alta*, Sept. 25, 1884, p. 4.]

Mr. Justice Field on the Restriction Act

These decisions show how unjustly the people of California have judged Mr. Justice Field with reference to the Chinese question. He rigorously nullified the wretched and abortive legislation of this State with reference to the Chinese, which developed itself in laundry ordinances, in laws forbidding the employment of the Chinese by corporations, and in ordinances providing for cutting off the queues of Chinamen. He maintained the inviolacy of a treaty of the Federal Government by a State. He suppressed the rebellion of a single State against the action of the Union of States in the exercise of the treaty-making power. While he was doing this he was active in suggesting the adoption of measures by the only power capable of dealing with the subject, with the view of relieving the State from the great curse of the Chinese invasion. It was he who drew up the plank in the Democratic National platform of 1880 with reference to the Chinese question. It was he who suggested to Senator Miller the idea of the Restriction Act. It is he who now finally construes it in the spirit and intent with which it was passed, thus securing to the people of the State of California the benefits for which the people have struggled so long, and which they have thus far failed to realize because of the inefficient and demagogic struggles of men who, claiming to be in the interest of the people upon this subject, have condemned the action of Justice Field with reference to it.

The people of California will now be compelled to acknowledge that the man whom they have abused is the man who has heaped blessings upon their head. It is so with all Mr. Justice Field's decisions. He has never hesitated to stand up against the clamor and the prejudices of the hour. He trusts to the future for vindication.

Federal officials on Chinese immigration and litigation

Judge Lorenzo Sawyer on the Supreme Court's decision in *Chew Heong*

After learning that the Supreme Court overturned Justice Field's circuit court decision in the Chew Heong case, Circuit Judge Lorenzo Sawyer wrote to his friend and colleague, Judge Matthew Deady of the U.S. District Court of Oregon, expressing his satisfaction that his view of the case had prevailed. As Sawyer's letter reveals, Justice Field could be a difficult and, at times, domineering presence on the circuit court. Sawyer's delight in the Supreme Court's decision stemmed in part in its rejection of Field's position and its affirmation of the other federal court judges' interpretation in the case. Sawyer also suggests the impact of the negative public opinion on the judges. Finally, Sawyer reveals speculation about Justice Bradley's dissent in Chew Heong, which reputedly had less to do with his legal views of the case than his desire to soothe Justice Field's hurt feelings.

[Document Source: Lorenzo Sawyer to Matthew Deady, Dec. 22, 1884, Deady Papers, Oregon Historical Society.]

Yes, it is some consolation, after all the lying, abuse, threatening of impeachment, etc. as to our construction of the Chinese Restriction Act, and the grand glorification of brother Field for coming out here and so easily, promptly, and thoroughly sitting down on us and setting us right on that subject, to find that we are not so widely out of our senses after all. Under ordinary circumstances it would not be a matter of any special gratification to find ourselves in the right and brother Field in the wrong once in a while, but under the circumstances of the present case, there is really very substantial ground for feeling, at least, comfortable over the result. Riordan says that Justice Field really fought [illegible] himself with a great deal more zeal and bitterness than he had anticipated. And I see by some of the New York papers, that his opinion is characterized as "intemperate." I received a note from a stranger to me, a professor in the University of Wisconsin commending me for maintaining the rights of the Chinese with courage and energy in opposition to a strong current of popular clamor. I guess time will bring us out about right. You do not seem to be aware that Justice Bradley dissented. Riordan has just returned, and he says the lawyers at Washington account for his dissent upon this principle. They say he is a tender hearted good natured old gentleman who does not like to hurt his associates' feelings, and acting on these generous impulses, when they find it necessary to overrule or reverse a decision of some of his brethren, he occasionally dissents for the purpose of letting him down easy. And this happened to be one of those occasions. And if there ever was a case justifying that course, this, certainly, must be one. Otherwise under the conditions surrounding the case, the fall was liable to be heavy.

Judge Lorenzo Sawyer on the "Chinese question," ca. 1890

While the federal judges in San Francisco came to decisions in the habeas corpus litigation that were often favorable to Chinese immigrants, they tended to share their contemporaries' negative opinion and stereotypes of Chinese. Upon his arrival in California in 1850, Sawyer praised the industriousness and intelligence of the Chinese he found there. In an interview in 1890, however, he expressed regret that Chinese had ever been allowed to immigrate to the United States. He continued to praise the industry of Chinese laborers and argued that they had been crucial to California's economic development, but he worried about a growing tendency of Chinese to stay in the United States and to bring their families. If he appreciated the economic value of a mobile Chinese labor force, Sawyer was alarmed by the prospect of a permanent Chinese community within the United States, citing indelible race differences as the source of his concern.

[Document Source: Lorenzo Sawyer dictations on "Chinese Question," BANC MSS C-D 321, Bancroft Library, University of California at Berkeley.]

I do not think it at all desirable that the Chinese should come here permanently, but my objection is a very different one from the popular objection. It is in the distinction of the races. It is a great misfortune to this Country that we have the negro in the Country. The chinese are vastly superior to the negro, but they are a race entirely different from ours and never can assimilate and I don't think it desirable that they should, and for that reason I don't think it desirable that they should come here. I think we made a mistake when we opened our door of immigration to them. That is the fundamental basis of my ideas upon the subject, that is to say, the distinction of race. But when you come to drive them out suddenly, that is another question altogether. You cannot do that without destroying and breaking down our own industries. There is scarcely an industry on this Coast that would not be ruined were we to drive these men out. Our fruit industry would be ruined and many of our manufacturers also. We are much further advanced in many of our industries than we should be, had it not been for the Chinese; but the cheap labor is no feature that concerns me at all. The steam engine is nothing but cheap labor and you might as well cry out against that on that account as against the Chinese. In my view this is not the objection; the objection is the dissimilarity of races, and so far as the mere labor is concerned it is a great advantage to the Country. What we complain of, what the public complain of is really a virtue, their industry their economy their frugality and perseverance. If they would never bring their women here and never multiply and we would never have more than we can make useful, their presence would always be an advantage to the State. It enables thousands to employ labor who would otherwise have to do their own work. It lifts a very large class to a position superior to what they would otherwise be able to attain, and so long as the Chinese don't come here to stop, their labor is highly beneficial to the whole community. There are disadvantages about it, but the difficulty is that they are beginning to get over this idea that they must go back and they begin to believe that they can be buried here without detriment to their future. Then they will begin to multiply here and that is where the danger lies in my opinion. . . .

Judge Ogden Hoffman's appeal to Congress for relief from Chinese litigation, 1888

The federal judges at San Francisco frequently complained about the impact of the Chinese habeas corpus cases upon their workload. Between 1882 and 1905, the federal district and circuit courts at San Francisco processed almost 10,000 Chinese habeas corpus cases. At times, the other business of the courts came to a standstill as judges worked long hours to clear their dockets of the exclusion cases. The judges developed strategies to expedite the cases, such as appointing a referee to hear testimony and make recommendations. They also asked Congress for relief, hoping that modifications of the treaty or legislation might reduce the volume of litiga-

tion. Judge Hoffman wrote Representative Charles N. Felton in January 1888 upon hearing of Congress's intent to make the exclusion laws more stringent. Hoffman struggled with his belief that the nation should remain faithful to the treaty with China and his desire to escape from the crushing workload caused by the Chinese habeas corpus cases. Hoffman suggested a change in the law that was close to what Congress enacted in the Scott Act in October 1888.

[Document Source: Ogden Hoffman to Representative Charles N. Felton, Jan. 16, 1888, reprinted in Congressional Record, 50th Cong., 1st sess., p. 6569.]

My Dear Felton: The newspapers announce that you have introduced a bill for the abrogation of the treaty stipulations with China respecting Chinese immigration. You know the temper of Congress better than I do, but I have serious misgivings as to your ability to induce it to pass an act in open and avowed violation of the Burlingame and Swift treaties. It is surely not good statesmanship to forego what is practicable and attainable by attempting what be desirable but in fact is unattainable.

It is of paramount and indispensable importance that something should be done to relieve the courts of the intolerable nuisance and obstruction to their regular business caused by the Chinese cases. If they continue in the future as numerous as in the past, it is not too much to say that the constant service of one judge will be necessary to dispose of them.

Judge Sabin has been here on a summons of Judge Sawyer for one month almost exclusively engaged in trying Chinese habeas corpus cases. There still remain on the calendars of the two courts in the neighborhood of two hundred and fifty cases undisposed of. The steamers arrive tri-monthly, and it may be anticipated that they will continue to bring their usual complement of Chinese passengers, especially when news shall have reached China that a law forbidding their coming has been proposed, and may be passed, unless something is done speedily.

I know not how courts can deal with this mass of business. . . .

The prospect fills me with dismay and almost with despair. It appears to me if you even think you can succeed in inducing Congress to abrogate the treaty, it can only be done after preliminary negotiations with China, or at least after some notice to that Government of our intention to no longer be bound by our solemn treaty stipulations, and I need not remind you that Chinese negotiations once entered upon will postpone all prospects of relief for an almost indefinite period.

Judge Sawyer and myself have both pointed out some simple measures which I presume could be readily got through Congress, and which will effect the object we are so anxious to attain.

The first is to pass a law providing that after a reasonable notice, say of two or three months' notice, the right to enter the country on ground of previous residence shall no longer be recognized. This simple act would at once dispose of perhaps

three-quarters or more of the cases presented to us. I think there can be no objection to such a law on the ground of breach of public faith. When it goes into effect, even if passed at once, the Chinese will have had six years to exercise the privilege of returning on the ground of previous residence. . . .

If you could have attended court and listened to the hearing of any of these cases, you would have recognized how completely the court is at the mercy of Chinese testimony and how impossible it is to distinguish a genuine case from a fraudulent one. . . .

I am deeply interested in the matter, and unless something is done I do not see how Judge Sawyer or myself can discharge the ordinary duties of our office. Sickness and disability of any kind on the part of either of us for any length of time would produce an accumulation of cases on the calendar which would be simply appalling.

I am authorized by Judge Sawyer to say that he entirely concurs in the foregoing suggestions.

Very truly yours,

Ogden Hoffman

A U.S. Attorney on enforcement of the Chinese exclusion laws, 1888

Officials responsible for enforcing the exclusion laws did not find their job an easy one. Insufficient resources, overwhelming caseloads, and constant public scrutiny and criticism plagued not only the judges but also the U.S. district attorneys representing the collector of the port in the habeas corpus proceedings. Critics not only made their views known in the local newspapers, but also complained to federal authorities in Washington, D.C., and to their congressional representatives. In 1890, for example, Seth Martin complained to the Attorney General, responsible for overseeing the legal proceedings related to Chinese exclusion, that "the manner that the exclusion act has been enforced by our court under the management of the regular force of United States District Attorneys has always been a source of great dissatisfaction to the people of this state." The Exclusion Act, Martin concluded, had accomplished nothing because of the actions of the Department of Justice and the courts.

In the following letter, U.S. Attorney John T. Carey responds to a similar criticism, conveyed with a request for an explanation by his supervisor, the Attorney General. Carey began by describing the detailed procedures developed by local officials in their efforts to enforce the exclusion laws and catch those Chinese who sought to enter illegally. Some of these methods, such as the pretrial interrogation of Chinese immigrants by the U.S. attorney without the benefit of representation, violated norms of due process but were justified as necessary to root out illegal immigrants. Note the government's reliance on the Chinese Six Companies' records in enforcing the laws.

[Document Source: John T. Carey, U.S. Attorney, Northern District of California, to Attorney General, Sept. 7, 1888, Letters Received, File 980-84, Records of the Department of Justice, RG 60, National Archives and Records Administration.]

Sir:

The only way to defeat fraudulent prior residents from entering is by exhaustive searching and ingenious cross-examinations. The Six Chinese Companies have books in which the dues of every member is entered. Every chinaman that leaves for his home country pays dues to his company. His name is entered, giving him credit for amount of his dues and showing the date he sails and the steamer by which he sailed. We have transcripts of these books and every time a chinaman is landed his name is marked Landed, giving date of landing and name in book canceled. These books have been accepted as reliable and are used in the trial of all cases, prior residents as well as certificate cases. . . .

The prior resident . . . is cross-examined as to his knowledge of the country, means of transportation and such matters as will test the truth of his statements. He is asked about the cities, towns, rivers, steamers, mountains, products of the localities he pretends to be familiar with, the climate, habits and customs of our people, our holidays, and how each is observed and all matters that will aid in any degree to determine the truth or falsity of his claim of right to land.

They are all liars and have no regard for an oath so that there is no reliance to be placed in anything they say. Each chinaman is subjected to an examination by the Collector first. These examinations are so stereotyped however that they are of little value and are but indifferent safeguards against the learning the facts necessary to make his case a good one before it can be brought on for hearing.

In order to prevent this as far as possible, when writs [of habeas corpus] issue they are brought directly to my office, an examination is had here in such detail as to get his knowledge of the country and get his case as he then makes it before he has had an opportunity to see his countrymen here and be schooled in his lesson. This statement is taken down in shorthand and transcribed for use at the trial of his case.

I feel confident that there are Chinese in China and others that travel on the steamships, teaching those seeking to land, their statements of facts and drilling them upon every subject that they are likely to be interrogated about. I have endeavored to detect the persons engaged in this business, and, if possible, to expose the matter, but have not succeeded. . . .

With the outline of the methods adopted to prevent fraud you can to a degree at least appreciate the vast amount of labor bestowed upon these cases. . . . There are frequently times when the entire force of the office of necessity is compelled to drop

everything else in order to handle the vast herds of these people dumped upon us at one time.

For the past four months they have been coming over at the rate of from ten to twelve hundred per steamer. . . . There are now something like forty five hundred cases untried and we are trying at the rate of about ten cases per day. The influx has been so great that the habeas corpus cases completely clogged the Courts, so that public and private business pending in the Courts could not receive their attention. To relieve this condition of things, the Circuit Judge referred all habeas corpus cases to the Examiner for hearing and determination with the right of exception and a new hearing in the Court. The District Judge appointed a Referee to take and report the testimony with his recommendation in all Chinese Habeas Corpus cases. . . .

With the present force of assistants, interpreters, and short hand reporters, it will take about twenty four months to dispose of the cases on hand . . . .

There has been a great deal of complaint against the Judges of our Courts for admitting the Chinese to land by Habeas Corpus, but it is demagogical and not founded upon any reasonable, just or legal ground. They are censured for granting writs, for letting them out on bail and for allowing them to remain in the country for months without trial.

[The Chinese] are entitled to writs under the decision of the Supreme Court. The Court is required as a matter of law to receive the evidence of Chinese and act upon it. It is impossible for [the judges] to try more than just so many cases per day . . . . If [the habeas corpus cases] accumulate as they do by the hundreds, faster than they can be tried, the Courts are not at fault, nor is my office. But because of this accumulation and the law that permits it there is a feverish disposition on the part of those who are honestly opposed to the immigration of the Chinese to blame some one, it matters not who, and on the part of the demagogue and incendiary communist ever ready to get up a commotion, revolutionary in its bearing and demoralizing in its effects upon law and order and good government, to make a direct assault upon the integrity, honesty and faithfulness of those called upon to execute and administer the law.

While I sometimes differ with the conclusions reached by the Judges in passing upon these cases, I have no less confidence in their purpose to do their whole duty, honestly and faithfully, than I have in those who for other objects than good government, would attempt to bring them into ridicule and contempt and destroy the faith of the people in our judiciary. . . .

I can assure you, sir, that nothing has been left undone that could be suggested to enforce the law, and that I will obey your injunctions in every way possible. . . .

Very Respectfully,

John T. Carey, United States Attorney

Chinese perspectives on exclusion

Not surprisingly, many Chinese viewed exclusion and other discriminatory legislation as unfair. Some expressed their frustration in anonymous poems carved into the wooden walls of the detention barracks at Angel Island, the immigration station in San Francisco. Others, including Chinese diplomats, prominent merchants, and students educated in the United States, wrote articles in popular magazines and journals and gave speeches to middle and upper class Americans. They sought to remove cultural barriers between Chinese and Americans and expose the false stereotypes of Chinese that were used to justify exclusion.

Poem by Chinese immigrant detained at Angel Island

Between 1910 and 1940, approximately 175,000 Chinese immigrants entered the United States through Angel Island, the "Ellis Island of the West." A small island in San Francisco Bay, Angel Island evokes unpleasant memories for many Chinese Americans who recall tense interrogations by officials and long detentions as their applications for admission were investigated. Some Chinese were detained for weeks and even months. Many of those confined at Angel Island carved poems about their experiences into the wooden walls of the barracks.

The poet "Xu" captures the hopes, sadness, frustration, and determination of many Chinese immigrants who left their native homes for the United States, the "land of the Flower Flag." One of the first obstacles encountered would be the exclusion laws, "laws harsh as tigers."

[Document Source: From *Island: Poetry and History of Chinese Immigrants on Angel Island, 1910–1940*, edited by Him Mark Lai, Genny Lim, and Judy Yung. 1980. Reprint. Seattle: University of Washington Press, 1991. Reprinted by permission of the University of Washington Press.]

Poem by One Named Xu from Xiangshan
Encouraging the Traveler

Just talk about going to the land of the
Flower Flag and my countenance fills
with happiness.
Not without hard work were 1,000 pieces of
gold dug up and gathered together.
There were words of farewell to the parents,
but the throat choked up first.
There were many feelings, many tears flowing
face to face, when parting with the wife.

Waves big as mountains often astonished
this traveller.
With laws harsh as tigers, I had a taste of all
the barbarities.
Do not forget this day when you land ashore.
Push yourself ahead and do not be lazy
or idle.

"The Chinese Must Stay," by Yan Phou Lee

During the exclusion fervor, some educated Chinese made impassioned pleas for more equitable treatment of Chinese immigrants. Yan Phou Lee was a Chinese student brought to the United States by the Chinese Educational Mission in Hartford, Connecticut. He graduated from Yale University and became a Christian. In the excerpt from "The Chinese Must Stay," Yan Phou Lee calls upon Americans to live up to their liberal principles of equality and refutes common arguments made against Chinese to justify their exclusion. By the time he wrote, the stringent Scott Act had been passed and exclusion would remain America's official policy until 1943. In fact, the exclusion policy would be applied to all Asians by 1924. Appeals such as Yan Phou Lee's were successful, however, in gaining some middle class American sympathy and support for ameliorating the harshest aspects of the exclusion policy.

[Document Source: *North American Review*, 148 (April 1889): 476–83.]

"The Chinese Must Stay" by Yan Phou Lee

No Nation can afford to let go its high ideals. The founders of the American Republic asserted the principle that all men are created equal, and made this fair land a refuge for the whole world. Its manifest destiny, therefore, is to be the teacher and leader of nations in liberty. Its supremacy should be maintained by good faith and righteous dealing, and not by the display of selfishness and greed. . . .

How far this Republic has departed from its high ideal and reversed its traditionary policy may be seen in the laws passed against the Chinese.

Chinese immigrants never claimed to be any better than farmers, traders, and artisans. If, on the one hand, they are not princes and nobles, on the other hand, they are not coolies and slaves. They all came voluntarily, as their consular papers certified, and their purpose in leaving their home and friends was to get honest work. They were told that they could obtain higher wages in America than elsewhere, and that Americans were friendly to the Chinese and invited them to come. In this they were confirmed by certain provisions of the treaties made between China and the United States, by which rights and privileges were mutually guaranteed to the citizens of

either country residing in the other. No one can deny that the United States made all the advances, and that China came forth from her seclusion because she trusted in American honor and good faith.

So long as the Chinese served their purposes and did not come into collision with the hoodlum element afterwards imported to California, the people of that State had nothing to complain of regarding them. Why should they, when, at one time, half the revenue of the State was raised out of the Chinese miners? But the time came when wages fell with the cost of living. The loafers became strong enough to have their votes sought after. Their wants were attended to. Their complaints became the motive power of political activity. So many took up the cry against the Chinese that it was declared that no party could succeed on the Pacific coast which did not adopt the hoodlums' cause as its own. . . .

It has been urged:

I. *That the influx of Chinese is a standing menace to Republican institutions upon the Pacific coast and the existence there of Christian civilization.*

That is what I call a severe reflection on Republican institutions and Christian civilization. Republican institutions have withstood the strain of 13,000,000 of the lower classes of Europe, among whom may be found Anarchists, Socialists, Communists, Nihilists, political assassins, and cut-throats; but they cannot endure the assaults of a few hundred thousands of the most peaceable and most easily-governed people in the world! . . .

IV. *That the Chinese have displaced white laborers by low wages and cheap living, and that their presence discourages and retards white immigration to the Pacific States.*

This charge displays so little regard for truth and the principles of political economy that it seems like folly to attempt an answer. But please to remember that it was by the application of Chinese "cheap labor" to the building of railroads, the reclamation of swamp-lands, to mining, fruit-culture, and manufacturing, that an immense vista of employment was opened up for Caucasians, and that millions now are enabled to live in comfort and luxury where formerly adventurers and desperadoes disputed with wild beasts and wilder men for the possession of the land. Even when the Chinaman's work is menial (and he does it because he must live, and is too honest to steal and too proud to go the almshouse), he is employed because of the scarcity of such laborers. . . . You may as well run down machinery as to sneer at Chinese cheap labor. Machines live on nothing at all; they have displaced millions of laborers; why not do away with machines? . . .

V. *That the Chinese do not desire to become citizens of this country.*

Why should they? Where is the inducement? [*Yan Phou Lee recited the laws discriminating against Chinese to argue they have not been encouraged to become citizens.*] . . . Are you sure that the Chinese have no desire for the franchise? Some years ago,

a number of those living in California, thinking that the reason why they were persecuted was because it was believed they cared nothing for American citizenship, made application for papers of naturalization. Their persecutors were alarmed and applied to Congress for assistance, and the California Constitution was amended so as to exclude them. . . .

VII. *The Chinese neither will have intercourse with Caucasians nor will assimilate with them.*

Yes, just think of it! As soon as the ship comes into harbor, a committee of the citizens gets on board to present the Chinaman with the freedom of the city (valued at $5). A big crowd gathers at the wharf to receive him with shouts of joy (and showers of stones). The aristocrats of the place flock to his hotel to pay their respects (and to take away things to remember him by). He is so feted and caressed by Caucasian society that it is a wonder his head is not turned (or twisted off). . . .

Such are the charges made against the Chinese. Such were the reasons for legislating against them;—and they still have their influence, as is shown by the utterances of labor organs; by the unreasoning prejudice against the Chinese which finds lodgment in the minds of the people; and by the periodical outbreaks and outrages perpetuated against them without arousing the public conscience.

Select Bibliography and Resources

Secondary sources

Chan, Sucheng. *This Bittersweet Soil: Chinese in California Agriculture, 1860–1910*. Berkeley: University of California Press, 1986.

Chen, Yong. *Chinese San Francisco, 1850–1943: A Transpacific Community*. Stanford, CA: Stanford University Press, 2000.

Choy, Phillip P., Lorraine Dong, and Marlon K. Hom, ed. *Coming Man: 19th Century American Perceptions of the Chinese*. Seattle: University of Washington Press, 1995.

Fritz, Christian G. *Federal Justice in California: the Court of Ogden Hoffman, 1851–1891*. Lincoln: University of Nebraska Press, 1991.

Hsu, Madeline Yuan-yin. *Dreaming of Gold, Dreaming of Home: Transnationalism and Migration between the United States and Southern China, 1882–1943*. Stanford, CA: Stanford University Press, 2000.

Janisch, Hudson N. "The Chinese, the Courts, and the Constitution: A Study of the Legal Issues Raised by Chinese Immigration, 1850–1902." J.S.D. dissertation, University of Chicago Law School, 1971.

Kens, Paul. Justice *Stephen J. Field: Shaping Liberty from the Gold Rush to the Gilded Age*. Lawrence: University Press of Kansas, 1997.

Lai, Him Mark, Genny Lim, and Judy Yung. *Island: Poetry and History of Chinese Immigrants on Angel Island 1910–1940*. HOC DOI, 1980.

Lee, Erika. *At America's Gates: Chinese Immigration during the Exclusion Era, 1882–1943*. Chapel Hill: University of North Carolina Press, 2003.

McClain, Charles J., Jr. *In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth-Century America*. Berkeley: University of California Press, 1994.

McCurdy, Charles W., "Stephen J. Field and the American Judicial Tradition," in *The Fields and the Law*. San Francisco: Northern District Historical Society and Federal Bar Council, 1986.

McCurdy, Charles W. "Justice Field and the Jurisprudence of Government-Business Relations: Some Parameters of Laissez-Faire Constitutionalism, 1863–1897," in *Journal of American History* 61 (March 1975): 970–1005.

Przybyszewski, Linda. *The Republic according to John Marshall Harlan*. Chapel Hill: University of North Carolina Press, 1999.

Przybyszewski, Linda. "Judge Lorenzo Sawyer and the Chinese: Civil Rights Decisions in the Ninth Circuit," in *Western Legal History* 1 (1988): 23–56.

Salyer, Lucy. *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law*. Chapel Hill: University of North Carolina Press, 1995.

Shuck, Oscar T. *History of the Bench and Bar of California*. Los Angeles: Commercial Printing House, 1901.

Swisher, Carl Brent. *Stephen J. Field: Craftsman of the Law*. Chicago: University of Chicago Press, 1930.

Court records and government documents

In re Cheen Heong, on Habeas Corpus, 21 Federal Reporter 791 (Sept. 29, 1884)

Chew Heong v. United States, 112 U.S. Supreme Court Reports 536 (1884)

Chinese Exclusion Cases, File 980-84, Letters Received, General Records of the Department of Justice, RG 60, National Archives and Records Administration

Links

"The Chinese in California, 1850–1925," Library of Congress, American Memory

A wide ranging collection of digitized primary sources, including pamphlets, correspondence, photographs, and cartoons, about Chinese immigration.
http://memory.loc.gov/ammem/award99/cubhtml/cichome.html

Angel Island State Park, Immigration Station, San Francisco

Includes photographs and descriptions of the immigration station at Angel Island in San Francisco Bay. This was the major port of entry for Chinese immigrants, beginning in 1910.
http://www.angelisland.org/immigr02.html

Chinese Immigration Documents Online: Digitized Chinese Case files from the National Archives

Allows researchers on-line access to sample documents from investigations conducted by government officials of Chinese entering the United States during the exclusion period.
http://www.archives.gov/research/arc/topics/chinese immigration.html

Chinese Immigration Records in the National Archives

Describes the types of records relating to Chinese immigration available at the central and regional offices of the National Archives and Records Administration. Some of these records have been digitized and are available online.
http://www.archives.gov/genealogy/heritage/chinese-immigration.html

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