

Hong Merchant Litigation in the American Courts

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CANTON, China, was one of the great seaports of the world in the early 19th century. As the only port open to conduct the foreign trade of the Chinese empire, it attracted merchants from many countries, both private traders and representatives of great national companies. Canton's enormous commerce was conducted on the Chinese side by a monopoly group of hong or security merchants, nominally 13 in number, but rarely at full strength. Joined together in a guild known as the Cohong, these merchants traded under a set of regulations that made them responsible for the tightly restricted activities of Western traders from the moment of the arrival and securing of a vessel with a particular hong merchant.¹ This article concerns litigation by hong merchants in the American courts during the early 19th century.

Despite the great fame of the 13 hong of Canton, their history has been written in little more than its basic outline.² It is clear that the T'ung-wen hong of Puankhequa (P'an Chen-ch'eng), "a true merchant prince," was the principal trading house until Puankhequa's death in 1788.³ For years thereafter, no single firm could claim dominance. Only with the death in 1812 of Mowqua I

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1. The regulations are summarized in: Michael Greenberg, *British Trade and the Opening of China 1800-1842* (Cambridge, 1951), 57-58; Randle Edwards, "The Old Canton System of Foreign Trade," in V. Li, ed., *Law and Politics in China's Foreign Trade* (Seattle, 1977), 360, 364.

2. Ann Bolbach White, "The Hong Merchants of Canton" (Ph.D. diss., Univ. of Pennsylvania, 1967), 3-8. Studies of the 13 hong include: Henri Cordier, "Les Marchands Hanistes de Canton," *T'oung pao*, (2d ser.), 3 (1902): 282-315; William C. C. Hu, "The Co-Hong or the Canton System: A Monopoly on Foreign Trade" (M.A. thesis, Univ. of Hawaii, 1959); Liang Chia-pin, *Kuangtung Shih-San Hang K'ao* (Shanghai, 1937; rev. ed., Taipei, 1960); An-yun Sung, "A Study of the Thirteen Hong of Kuangtung: A Translation of Parts of the Kuangtung Shih-San-Hang Kao of Liang Chia-Pin" (M.A. thesis, Univ. of Chicago, 1958); and White.

3. White, "Hong Merchants," 47, 76-78, 81-82; Sung, "Study of the Thirteen Hong," 4.

(Lu Kuan-heng) and the assumption by Howqua II (Wu Ping-chien) of the formal position of Cohong chief did a dominant firm again arise. Trading first under the name of Puqua, and then as Howqua,⁴ Wu Ping-chien skillfully used American trade and Boston connections as bases upon which he established and maintained his Yi-ho hong as the preeminent foreign trading firm of Canton through to his death in 1843, after the First Anglo-Chinese (Opium) War.⁵

While a number of the principal firms stood above the Canton commercial world, the fortunes of the greater number of hong merchants were quite precarious. Subject to shifting commodity prices, heavy taxes, and arbitrary governmental exactions, as well as to the dangers of war, piracy, and other maritime loss, usually without adequate capital or a source of liquid funds, and often heavily involved in debt both to Western traders and to inland Chinese tea merchants, lesser hong merchants failed with disturbing frequency.⁶ Solvent hong merchants, who were obligated through the Cohong to pay the debts of their insolvent brethren, repeatedly asked to be allowed to withdraw from trade, and found their requests either denied by officials at Canton or granted only upon payment of a large fee.⁷ A body of "outside merchants," from among whom several hong merchants were involuntarily chosen, challenged the officially regulated monopoly and made tea and other staples of trade covertly available to Western merchants at lower prices.⁸ When the Chinese government attempted

4. This trading name is variously written "Howqua" or "Houqua" in contemporary sources. The spelling "Howqua" is preferable as more plainly indicating the correct pronunciation and the trading name's Chinese language source, Hao-kuan. See Arthur W. Hummel, *Eminent Chinese of the Ch'ing Period* (Washington, 1943), 877; William Cameron Forbes, "Houqua: The Merchant Prince of China, 1769-1843," *Bulletin of the American Asiatic Association*, 6 (1940): 9-18.

5. White, "Hong Merchants," 83, 94-96, 108; Sung, "Study of the Thirteen Hong," 4, 22-23.

6. White, "Hong Merchants," 87; Greenberg, *British Trade*, 61-63; *The Chinese Security Merchants and Their Debts* (London, 1838); Yen-ping Hao, *The Commercial Revolution in Nineteenth-Century China* (Berkeley, 1986), 319-320.

7. Greenberg, *British Trade*, 51; White, "Hong Merchants," 93-94.

8. The hong merchant monopoly of foreign trade encompassed export staples such as teas, silks, cloth, and cassia, and import articles including cloth, spices, metals, and dyes. The outside shopmen were permitted to sell small personal articles to the foreign traders. Greenberg, *British Trade*, 53-54; White, "Hong Merchants," 110-116, 192-195. Consequa traded as an outside merchant until his "extensive business with Europeans & his

to crack down on these traders, certain financially pressed hong merchants proved willing for a price to permit outside merchants to operate safely under the cover of their firms.⁹

The general view of the hong merchants is an accumulation of rumor and legend, peopled alternately by such figures as James Clavell's unattractive Jin-qua, the opium-trading, opium-smoking womanizer with a weak pun for a name,¹⁰ or men of the type that Russell & Company partner William C. Hunter recalled, gentlemen of perfect peace and equanimity who traded without written contracts and were capable of tearing up a promissory note of substantial amount in order for an American to be able to return home.¹¹ An obvious problem with these visions is that they do not fit naturally with the record of the hong and outside merchants of Canton, who were actively engaged in foreign trade on a massive scale. Their successes in business were certainly achieved for reasons other than, and perhaps notwithstanding, a customary generosity. The challenge is to find surviving sources to supplement the historical record and correct or explain these views.

This investigation may profitably start in American sources, with an examination of the conduct of trade at Canton by Americans. It is familiar that from the start of this nation's trade with China, a fundamental problem lay in identifying profitable outbound cargoes that the Chinese would want. This quest led to a search of the forests of New England for ginseng and hastened American vessels across the globe to locate furs and other products for sale at Canton.¹² Until the discovery in the first decade of the

reputed wealth . . . attracted the notice of Government" in Dec. 1796, when he was arrested, subjected to a heavy fine, and obliged to assume hong status. Hosea B. Morse, *The Chronicles of the East India Company Trading to China, 1635-1844* (1926; rpt. Taipei, 1975), 2:283; White, "Hong Merchants," 93.

9. White, "Hong Merchants," 93, 111-113; Greenberg, *British Trade*, 53-55.

10. James Clavell, *Tai-Pan: A Novel of Hong Kong* (New York, 1980), 15, 33, 52, 120, 327.

11. William C. Hunter, *The 'Fan Kwae' at Canton Before Treaty Days 1825-1844* (London, 1882), 40, 42-44, 95-97; Samuel Eliot Morison, *The Maritime History of Massachusetts 1783-1860* (Boston, 1921), 65; Ph. de Vargas, "William C. Hunter's Books on the Old Canton Factories," *Yenching Journal of Social Studies*, 2 (1939): 91-117.

12. Tyler Dennett, *Americans in Eastern Asia* (New York, 1922), 18-21, 34-43. Kenneth S. Latourette, "The History of Early Relations Between the United States and China," *Transactions of the Connecticut Academy of Arts and Sciences*, 22 (1917): 27-30, 53-60, 71-76.

19th century that opium was a profitable cargo for China, as long as American merchants could find no alternative, their vessels carried great quantities of silver coins to China. This exportation, in the face of a shortage of silver coins for trade in the United States, greatly irritated American citizens,¹³ but it made Americans popular at Canton.¹⁴ Where a European would need time to sell his woollens, cotton, spices, or other imported products, without regard to the state of the market, before he could purchase Chinese goods, the American, cash in hand, was by contrast often ready to buy on arrival at Canton. If the American merchant did not have cash, he could be relied upon to remit silver upon his return to the United States.

It is apparent that the steady stream of silver from the United States to Canton encouraged the hong merchants to grant credit to United States citizens. Tyler Dennett describes how Americans became deeply involved in these transactions, which served as opportunities for some Chinese to dispose of surplus teas on credit. Ultimately, unpaid American debts jeopardized several hong, and even Howqua, who was at one time "extensively involved in these transactions . . . learned to become more discriminating in his extensions of credit."¹⁵

These heavy American credits, and in particular those that depended for repayment on the profitable sale of a particular cargo, resulted in considerable discord between Chinese merchants and Americans. Dennett makes passing reference to one lawsuit which the Philadelphia merchant Edward Thomson brought against Howqua to recover for what the American claimed to have been poor quality silks and crapes.¹⁶ The contem-

13. Dennett, *Americans in Eastern Asia*, 20-21; Latourette, "Early Relations," 28, 71 n.90. In Boston the *Columbian Centinel*, Feb. 13, 1802, and Oct. 20, 1802, contained advertisements offering a premium on Spanish dollars for ships about to sail to Canton.

14. Greenberg, *British Trade*, 68; White, "Hong Merchants," 96; Jacques M. Downs, "American Merchants and the China Opium Trade, 1800-1840," *Business History Review*, 42 (1968): 419, 421. The American trade was considered so advantageous that the brother of a rich salt merchant attempted in 1828 to form a hong for the sole purpose of trading with Americans. Greenberg, *British Trade*, 68; Morse, *Chronicles*, 4:168; White, "Hong Merchants," 114.

15. Dennett, *Americans in Eastern Asia*, 8, 52-53, 57, 85-86; Greenberg, *British Trade*, 67.

16. Dennett, *Americans in Eastern Asia*, 85. Crapes are fine worsted fabrics. Dennett cites a short article in *Niles' Register*, Apr. 23, 1825, 118-119, as his source. Certain filc

porary English-language version of the hong merchant Consequa's appeal to President Madison, in which he sought assistance in collecting debts arising from his credit transactions with Americans, speaks of "many" who are able to pay their debts, but who "object to pay them, as he thinks upon frivolous grounds, and involve the Claims upon them in tedious litigation."¹⁷ These reports, it turns out, accurately reflect considerable collection activity by Chinese merchants in American courts.

An examination of reported decisions, unpublished case files, and archival records reveals extensive litigation involving Chinese hong and outside merchants in the American courts in the early 19th century, specifically in the federal courts in Massachusetts, Pennsylvania, and Rhode Island, as well as in the state courts of New York and Pennsylvania.¹⁸ The great bulk of these suits involved promissory notes made by Americans, often by supercar-goes or other agents of Americans not present in China, in favor of Chinese merchants in order to purchase tea at Canton. A large

records of the suit *Thomson v. Houqua*, in which Howqua was represented by the attorneys Charles Chauncey and Thomas Dunlap, including the declaration (complaint), interrogatories and cross interrogatories sent under a commission to Canton (in which Benjamin C. Wilcocks is named by the defendant Howqua as one of his commissioners), the report of jury verdict, and the defendant's argument for a new trial, are in the Records of the Supreme Court (Eastern Division), Record Group 33, Division of Archives and Manuscripts, Pennsylvania Historical and Museum Commission, Harrisburg, Pennsylvania. Jury verdict entered against Howqua in the amount of \$15,377.01, Mar. 9, 1825, and Thomson acknowledged satisfaction on Apr. 18, 1826. Other suits involving Howqua include: *Houqua v. Hodge*, Oct. term 1824, No. 24 (action on a \$6,491.27 promissory note made at Canton, Dec. 24, 1822), Records of the Circuit Court of the United States for the District of Pennsylvania, Federal Archives and Records Center, Philadelphia, Pennsylvania ("Records of the Circuit Court for the District of Pennsylvania"); and *Houqua v. James Perkins, et al.*, Oct. term 1811, No. 23 (jury verdict entered against the firm of James and Thomas H. Perkins for the \$14,645.65 unpaid balance of a \$45,000 promissory note made in 1804 jointly with the Providence, R.I., firm of Munro, Snow & Munro, since bankrupt), Record Group 21, Records of the United States Circuit Court for the District of Massachusetts, Federal Archives and Records Center, Waltham, Mass.

17. Petition of Consequa, a Hong Merchant of the City of Canton in China, Feb. 10, 1814, Despatches of United States Consuls at Canton, Vol. I, National Archives, Washington, D.C., published in File Microcopies of Records in the National Archives, No. 101, Roll 1; Dennett, *Americans in Eastern Asia*, 86; Lo-shu Fu, *A Documentary Chronicle of Sino-Western Relations (1644-1820)* (Tucson, 1966), 391-393 (complete modern translation). No record has been found of any response to Consequa's plea.

18. Certain records of litigation, notably the records of an action against Consequa in the Court of Common Pleas for the City of Philadelphia (in which the plaintiffs attached notes payable to Consequa in the amount of \$500,000), which should be in the files of the Office of the Prothonotary in Philadelphia, are missing and may well have been destroyed. It is likely that considerable additional records of collection activity and litigation, as yet unlocated, still exist.

number of these suits, the "tedious litigation" to which Consequa refers, involved himself as a litigant. The great majority were commenced in the federal or state courts of Pennsylvania.¹⁹ Chinese litigants included the hong merchants Chunqua, Consequa, Exchin, Howqua, Pacqua (Exchin II), and Youqua, and the outside merchants Cowqua, Eshing, Keetshing, Kingling, Namshing, and Thonching.²⁰

Disputes between Chinese merchants and Americans were drawn to the United States for two reasons. First, China lacked a systematic civil or commercial law or a forum in which foreign nationals and Chinese citizens might present civil claims against each other.²¹ As Consequa explained, "When such Debtors come to, or reside in China, he cannot claim the aid of the Laws of the Imperial Dynasty in his behalf. They prohibit such confidences, as

19. For a time, Philadelphia had the largest tonnage engaged in the China trade, and for more than 20 years was a leader in the merchandizing of China trade articles and commodities. Dennett, *Americans in Eastern Asia*, 6, 10. It has been said that between 1783 and 1846 Philadelphia controlled as much as one-third of United States trade with China and one-ninth of China's total maritime commerce with the West. Jonathan Goldstein, *Philadelphia and the China Trade* (University Park, 1978), 67.

20. Carelessness and inconsistency in the transcription of the trading names of Chinese merchants by American merchants, lawyers, court clerks, and court reporters make it difficult to match each named litigant with a known hong merchant or outside shopman. An original promissory note in the files for the case *Chomqua v. Mason*, 5 F. Cas. 649 (C.C.D.R.I. 1812) (No. 2,693), establishes that "Chomqua" is the hong merchant Chunqua. Chunqua's name was also rendered as Cheongwo and Cheonqua. *Cheongwo v. Jones*, 5 F. Cas. 544 (C.C.E.D. Pa. 1818) (No. 2,638); *Cheonqua v. Tagert*, Apr. term 1816, No. 45, Records of the Circuit Court for the District of Pennsylvania. The hong merchant Exchin is the plaintiff in *Exsching Looqua v. Dexter*, June term 1815, Records of the Circuit Court of the United States for the District of Rhode Island, Record Group 22, Federal Archives and Records Center, Waltham, Mass., and the hong merchant Pacqua (sometimes Pakqua) (Exchin II) is the plaintiff in *Pacqua v. Pleasants*, Apr. term 1822, No. 4, Records of the Circuit Court for the District of Pennsylvania. See Morse, *Chronicles*, 3:208, 234, 4:57. Actions commenced by outside merchants include: *Keetshing v. Wells*, Apr. term 1822, No. 36, Records of the Circuit Court for the District of Pennsylvania; *Kingling v. Read*, Apr. term 1805, No. 68, Records of the Circuit Court for the District of Pennsylvania; *Namshing v. Coe*, Apr. term 1826, No. 25, Records of the Circuit Court for the District of Pennsylvania; and *Thonching v. Coe*, Apr. term 1826, No. 28, Records of the Circuit Court for the District of Pennsylvania. Other foreigners prominent in the China trade were also involved in litigation in the American courts. For example, the Indian merchants Ramdullolday and Ruggoo Ram Gossain both brought actions against Americans in the federal court in Philadelphia. [Note as to citation form: legal citation in this article is in the form prescribed by *A Uniform System of Citation* (14th ed., Cambridge, Mass., 1986), with slight modification.]

21. Edwards, "Old Canton System," 360, 368. Randle Edwards, "Ch'ing Legal Jurisdiction Over Foreigners," in Jerome Cohen, et al., eds., *Essays on China's Legal Tradition* (Princeton, 1980), 222-269.

he has placed in Subjects of the United States."²² The only exceptions were the state-enforced private guaranty of hong debts to foreigners provided by the Cohong in the event of the insolvency of one of its members²³ and the willingness, discussed below, of certain hong merchants to allow credit, damages, or interest upon proof of the shipment of poor quality teas, which in one case included an agreement to submit the dispute to neutral arbitration.²⁴ The second reason was the willingness, by contrast, of American courts to assert jurisdiction over disputes involving merchants and events half a world away.²⁵

The most important episode in the hong merchant litigation took place in 1808 in Philadelphia. Consequa, who had made

22. Petition of Consequa, a Hong Merchant of the City of Canton in China, Feb. 10, 1814, Despatches of United States Consuls at Canton, Vol. I, National Archives, Washington, D.C., published in File Microcopies of Records in the National Archives, No. 101, Roll 1.

23. Greenberg, *British Trade*, 53. The Cohong guaranty served as a model for the "Safety Fund" established in New York in 1829, one of the earliest bank deposit insurance plans and an ancestor of the modern Federal Deposit Insurance Corporation. It was cited in a letter to Gov. Martin Van Buren from the merchant and "Safety Fund" proponent Joshua Forman, who said, "The propriety of making the banks liable for each other, was suggested by the regulations of the Hong merchants in Canton, where a number of men, each acting separately, have, by the grant of the government, the exclusive right of trading with foreigners, and are all made liable for the debts of each in case of failure. . . . This abstractly just principle, which has stood the test of experience for seventy years, and under which the bond of a Hong merchant has acquired a credit over the whole world, not exceeded by that of any other security, modified and adapted to the milder features of our republican institutions, constitutes the basis of the system." Carter Goodrich, ed., *The Government and the Economy, 1783-1861* (Indianapolis, 1967), 337-339, 348.

24. Edwards, "Old Canton System," 371. The popularity among businessmen of the arbitration of commercial disputes and the utility of arbitration in connection with foreign commerce in the early 19th century is discussed in Morton J. Horwitz, *The Transformation of American Law* (Cambridge, Mass., 1977), 145-154.

25. Attorneys for the hong merchants and the American traders used a striking legal fiction to place Canton in the local forum. Promissory notes were described as having been made "at Canton, to wit, at Philadelphia in the District aforesaid." See *Consequa v. Morris*, Apr. term 1804, No. 37, *Eshing v. Morris*, Apr. term 1804, No. 38, *Youqua v. Morris*, Apr. term 1804, No. 39, Records of the Circuit Court for the District of Pennsylvania. This fiction was an application of the controversial case *Moslyn v. Fabrigas*, Cowper 161, 98 Eng. Rep. 1021 (1774) (Lord Mansfield, J.), which placed the Island of Minorca in the City of London, in the parish of Saint Mary Le Bow in the Ward of Cheap for the purpose of maintaining jurisdiction in an action brought for damages for assault and false imprisonment. William Blackstone, *Commentaries on the Laws of England* (1765-1769; rpt. ed., Chicago, 1979), 3:107; Robert Millar, *Civil Procedure of the Trial Court in Historical Perspective* (New York, 1952), 7; Alan Harding, *A Social History of English Law* (Gloucester, Mass., 1973), 308-309.

extensive loans to Americans at Canton and now was deeply in debt to the British East India Company, had grown angry with payment delays and had begun to press for collection through connections in Philadelphia including George Emlen, Peter Dobell, and Benjamin Chew Wilcocks.²⁶ In 1804, with the hong merchant Youqua and the outside merchant Eshing, he initiated actions in federal court to collect on notes made at Canton in 1801, and in 1805 he commenced several new actions based on small notes made at Canton in 1800 and 1801.²⁷ Late in 1807, he handed more overdue notes to Benjamin C. Wilcocks at Canton, with instructions to bring them to America and collect the amounts due from his debtors.

The Rhode Island merchant Edward Carrington, then United States consul at Canton, described Consequa's resolve in a letter to Samuel Snow in Providence.²⁸ Carrington had told the hong merchant about Snow's difficult financial situation and asked that Snow be allowed one more season to meet his obligations, but "Consequa pretended to be much disappointed and out of temper in the business." Consequa

had given the note [to] Mr. Wilcocks with many others to be sent to Am[eric]a for collection. I then told him if he would retain it, I would write to you I could secure the money would come next season, he said no it would not do, that the notes must go. I spoke to Wilcocks, who applied to Consequa on the subject, but without success. Your note, with Bently, B. Dexter and others in Rhode Island are forwarded by this opp[ortunit]y to Messrs. R. H. Wilcocks & B. C. Wilcocks at Phila[del-]

26. Consequa made collections in New York City through John Jacob Astor, and in Boston through the lawyer William Sullivan. Deposition of Benjamin Chew Wilcocks, Dec. 5, 1810, in *Consequa v. Joshua and Thomas Gilpin*, Oct. term 1809, No. 9, Records of the Circuit Court for the District of Pennsylvania; Consequa's Account Current with George Emlen, Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania, Philadelphia.

27. *Consequa v. Morris*, Apr. term 1804, No. 37, *Eshing v. Morris*, Apr. term 1804, No. 38, *Youqua v. Morris*, Apr. term 1804, No. 39, *Consequa v. Yard*, Apr. term 1805, No. 46, *Consequa v. Baker*, Apr. term 1805, No. 47, *Consequa v. Wiles*, Oct. term 1805, No. 60, Records of the Circuit Court for the District of Pennsylvania.

28. Edward Carrington to Samuel Snow, Canton, Jan. 19, 1808, China Letterbook F, Edward Carrington Papers, Rhode Island Historical Society, Providence, R.I. In contrast, the hong merchant Mowqua agreed to hold Snow's notes until the next season. As Snow's firm, Munro, Snow & Munro, had failed over a month before Carrington wrote Snow, it is unlikely that either Consequa or Mowqua was ever repaid in full. Jacques M. Downs, "A Study in Failure—Hon. Samuel Snow," *Rhode Island History*, 25(1966):1, 5.

phia] for Collections. Conseequa is very much out with the Am[ericans] in consequence of heavy claims that have been urged against him for bad Goods furnished to them—he has become the most obstinate, pernicious Merch[an]t of the Hong, & it is almost impossible to move him when he takes a stand. I have been this particular, lest you should think I had not attended to your requests.

Pursuant to Conseequa's instructions, Wilcocks brought the overdue notes to Philadelphia, where he "made application to" several debtors who provided him with \$9,000 for Conseequa. He then turned the remaining unpaid notes over to the lawyer Charles Jared Ingersoll for collection.²⁹

Learning of Conseequa's new collection efforts, his debtors Edward Dunant and Joshua and Thomas Gilpin, who had claims against the hong merchant arising from poor quality teas allegedly furnished to them at Canton in 1805, acted to seize their creditor's assets in return. In two actions which they commenced in the Court of Common Pleas for the City of Philadelphia, founded on claims against Conseequa for \$20,000 and \$30,000 respectively, they sought and secured an attachment of all of the hong merchant's property in that city. On April 2 and 4, 1808, the sheriff proceeded "to attach and did attach all the goods and chattels rights and credits of the said Conseequa in the hands of" 21 merchants, namely promissory notes in the total amount of one half million dollars.³⁰ This large sum is a dramatic statement of the great amount of a single hong merchant's credits to Americans in one city early in the 19th century.³¹ In the meantime, on Decem-

29. Deposition of Benjamin Chew Wilcocks, Dec. 5, 1810, in *Conseequa v. Joshua and Thomas Gilpin*, Oct. term 1809, No. 9, Records of the Circuit for the District of Pennsylvania.

30. Declarations (complaints) in *Conseequa v. Joshua and Thomas Gilpin*, Oct. term 1809, No. 9, and *Conseequa v. Edward Dunant*, Oct. term 1809, No. 33, Records of the Circuit Court for the District of Pennsylvania. As noted above, the records of the Court of Common Pleas for the City of Philadelphia during this period do not appear to have survived. No newspaper coverage of the Common Pleas lawsuits has been found in a review of the principal Philadelphia newspapers for this period.

31. An examination of court records and other archival sources indicates that Conseequa made loans or sent consignments of goods in annual amounts ranging from \$1,365 to \$149,632.01 during the years 1795–1817, and that he received modest payments on his American loans during the years 1805, 1806, and 1810. Conseequa's massive debt to the British East India Company, as reflected in the pages of Morse, *Chronicles*, grew as his lending to private Americans declined. See the appendix to Frederic Grant, Jr., "The Failure of the Li-ch'uan Hong: Litigation as a Hazard of Nineteenth Century Foreign Trade," *American Neptune*, 48 (1988). In November 1805 Conseequa told William Read, a

ber 22, 1807, President Jefferson signed the Embargo Act, which would eventually hold American shipping in port until March 1809. The attachment of Conseequa's property was thereafter maintained until May 22, 1809, by which date the stoppage of trade had damaged many businesses and rendered still more of Conseequa's American debtors unable to pay their notes due.

The attachment of his Philadelphia credits, more objections by financially sound debtors to paying him due to claims of bad quality tea, and the hazards of international trade in a dangerous era,³² spelled doom for Conseequa and his Li-ch'uan hong. By 1809, the date of the first published indication of the amount of Conseequa's debt to the British East India Company, the hong's debt to that firm had reached the great amount of 670,769 taels,³³ and foreign traders were growing wary of him. On March 29, 1809, Edward Gray of Philadelphia wrote the hong merchant Chunqua that "Conseequa will have no more business with this place you and Houqua will do it all."³⁴

In January 1813 Conseequa, Exchin, Manhop, Poonequa, and Goqua were obliged to appeal to their foreign creditors, who agreed to stop calculating interest on the debt of the five firms in exchange for an agreement placing the affairs of the embarrassed hong in the control of three foreign trustees.³⁵ In February 1814

supercargo for the Philadelphia firm of Willings & Francis, that he was willing to make loans in the amount of \$100,000 to \$150,000. William Read to Willings & Francis, Canton, Nov. 27, 1805 (continuation of letter dated Nov. 9, 1805), Willings & Francis Papers, 1805 folder, Historical Society of Pennsylvania, Philadelphia.

32. Of the notes that were collected, Benjamin C. Wilcocks testified that "he believes great part thereof was prevented by capture from getting into Conseequa's hands." Deposition of Benjamin Chew Wilcocks, Dec. 5, 1810, in *Conseequa v. Joshua and Thomas Gilpin*, Oct. term 1809, No. 9, Records of the Circuit Court for the District of Pennsylvania.

33. Morse, *Chronicles*, 3:100. This figure, evidently a high mark for Conseequa's debt to the British East India Company, approaches one million Spanish dollars in equivalent value.

34. Edward Gray to Chonqua (Chunqua), Philadelphia, Mar. 29, 1809, Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania, Philadelphia.

35. Morse, *Chronicles*, 3:183, 311; Greenberg, *British Trade*, 62. The precarious condition of all but the strongest hong merchants during this period was described by Peter Snow in a letter to Edward Carrington. "The Hong Merchants with a few exceptions as you may have anticipated before your departure are in a bad state—all but Mouqua Houqua and Cheonqua [Chunqua] are unable to pay their duties, and some of them I am told are in want even of the common necessaries of life." Peter Snow to Edward Carrington, Aug. 11, 1811, Edward Carrington Papers, Box 13, Rhode Island Historical Society, Providence.

Consequa directed his appeal to President Madison, pleading for help collecting his American loans, and in 1818 the trustees concluded that matters had not improved sufficiently with the junior hong and decided to restrict further advances to them.³⁶ The Li-ch'uan hong failed in 1821, the other hong was obliged to assume its debts, and Consequa was left in day-to-day control of the business.³⁷ It only declined further, and on August 5, 1823, Consequa died, following rejection by the British East India Company of two final requests, on April 29 and May 23, 1823, for loans.³⁸

Perhaps the greatest value of the litigation records lies in the information they yield about the normal conduct and financing of the tea trade.³⁹ As the products of adversity, based on claims of disruption or nonobservance of the accepted practices of trade, these records offer a high quality of information about the selection, testing, and shipment of teas; the availability of better grades of teas at particular times; the ability to finance tea purchases, and on what terms; and the ordinary methods by which disputes arising in the enormous Chinese tea trade with the West were resolved.

The litigation records support the assertion of Russell & Company partner William C. Hunter that "Entire cargoes of tea were purchased and shipped from a few small cannister musters, and

36. Morse, *Chronicles*, 3:311-312.

37. Morse, *Chronicles*, 4:8; Samuel Russell to Edward Carrington, Canton, Nov. 13, 1821, Letterbook 1, Container 15, Russell & Company Papers (Samuel Russell Papers), Library of Congress, Washington, D.C.

38. Morse, *Chronicles*, 4:73.

39. The records also provide insights into the practices and financing of other trades. For example, a letter of instruction written by the merchant John Brown of Providence, R.I., in Nov. 1800, quoted in *Chomqua v. Mason*, 5 F. Cas. 649, 650 (C.C.D.R.I. 1812) (No. 2,693) (the hong merchant Chunqua is plaintiff), requests that care be taken "to lay out your money for such articles, as are not generally to be had for credit, namely, nankeens, china, and silks; the teas are generally to be had with more ease for credit than the above articles are." The case of *Wilcocks v. Phillips*, 29 F. Cas. 1198 (C.C.E.D. Pa. 1843) (No. 17,639) was an action brought to recover "kumshaws" paid by opium purchasers for deliveries of opium off the ship *Scattergood* in 1829, and includes detailed description of the practices in sales off the opium store-ships lying at Lintin Island. Frederic Grant, Jr., "Merchants, Lawyers, and the China Trade of Boston," *Boston Bar Journal*, 23(1979):5, 8 n.26 (listing published decisions of the Supreme Judicial Court of Massachusetts involving opium trade).

were weighed by taking the average of a few chests from each 'chop.'"⁴⁰ The published decision of the federal court action brought by the Gilpins and Edward Dunant against Consequa indicates that the defendant proved that the commercial usage at Canton was for American merchants to secure a given vessel with one of the hong merchants.⁴¹ Consequa further showed how a cargo of teas would be selected by the American trader.

That one chest, called the muster chest, out of each chop (consisting of a great number of chests of each quality), was sent to the factory, or residence of the purchaser, for his examination. If, after trying it himself and taking the advice of others, on whose judgment he relies, he approves, the whole quantity purchased is sent to the weigh-house, where the chests are weighed and marked anew; generally the next day, they are sent down, in one of the Hong boats, to Whampoo [Whampoa], about twelve miles from Canton, where the ship is moored.

In depositions taken at Canton as part of Stephen Girard's 1806 lawsuit against his supercargo, George W. Biddle, for deviations in the purchase of a cargo at Canton in December 1804, Consequa stated that it was "customary for the merchant to send musters to the supercargo's factory or to examine them at the hong merchant's pack house," and Loqua indicated the same, adding "that any further examination that the Supercargo may deem necessary is always permitted by the hong merchants."⁴² In a letter of instructions for tea purchases written not long after the trial of this action, Stephen Girard cautioned that several quarter chests of each chop offered for sale should be examined, that good judges such "as Eshing and other native residents" be employed, and that care be used in marking, weighing, and watching the shipment of the cargo.⁴³

40. Hunter, 'Fan Kwae,' 96.

41. *Gilpins v. Consequa*, 10 F. Cas. 420, 421-422 (C.C.D. Pa. 1813) (No. 5,452). *Willings v. Consequa*, 30 F. Cas. 55, 61 (C.C.D. Pa. 1816) (No. 17,767).

42. Depositions of "Consequa security merchant of Canton" and "Loqua a hong merchant of Canton" [Exchin], Feb. 24, 1807, included in Stephen Girard's records of the lawsuit *Girard v. Biddle*, Reel 439, Stephen Girard Papers, Estate of Stephen Girard, deceased, microfilm copies on deposit with the American Philosophical Society, Philadelphia [cited hereafter as Girard Papers]. *Girard v. Biddle* was commenced in the Sept. 1806 term of the Court of Common Pleas for Philadelphia County. *Gilpins v. Consequa*, 10 F. Cas. 420, 422 (C.C.D. Pa. 1813) (No. 5,452).

43. Stephen Girard to Edward George and Samuel Nichols, Philadelphia, Jan. 3, 1810, Letter 428, Letterbook 11, Girard Papers.

Great care in judging teas was appropriate for any purchase, and it was extremely important for any credit purchase late in the Canton season. Much of the best of the crop reached that city subject to advance purchase, and the rest was sold quickly, and for cash. In certain years good teas, or better teas of particular varieties, were very scarce;⁴⁴ generally, by late in the season, all superior teas were gone.⁴⁵ With the best quality not easily distinguished by the visiting supercargo, at least not without the assistance of an expert taster who would require a fee,⁴⁶ many of the Chinese merchant lawsuits arose naturally from late season purchases on credit.

The credit purchase of tea carried risk for the purchaser, just as the extension of credit to a merchant nearly half a world away involved risk for the too-often financially insecure Chinese merchant. Stephen Girard asserted that "I am informed, that at no time a Hong Merchant of good repute will sell a Cargo of Teas on Credit only, but that some unknown or ordinary characters as

44. Deposition of Benjamin C. Wilcocks, undated, in Stephen Girard's records of the lawsuit *Girard v. Biddle*, Reel 439, Girard Papers; *Cheongwo v. Jones*, 5 F. Cas. 544, 545-546 (C.C.E.D. Pa. 1818) (No. 2,638); *Youqua v. Nixon*, 30 F. Cas. 887 (C.C.D. Pa. 1816) (No. 18,189).

45. *Gilpins v. Consequa*, 10 F. Cas. 420, 422 (C.C.D. Pa. 1813) (No. 5,452).

46. The failure to use an expert figures in two cases. In *Willings v. Consequa*, 30 F. Cas. 55, 59 (C.C.D. Pa. 1816) (No. 17,767), one of the points at issue was the alleged provision of teas "of very inferior quality" to the ship *Bingham*, which carried them to Amsterdam where they were sold at auction for a poor return. William Read, supercargo of the *Bingham*, had written Willings & Francis at the time of purchase that he had rejected the 2 percent fee required for the services of Mr. Rabinel the tea examiner as "far beyond what I thought the services to be rendered merited" and that he felt confident of his ability to make "such a selection of Teas as will render his assistance of little consequence." A month later Read innocently reported that Rabinel "informs me he has written a letter to his friends in Holland which may be of use in the Sales of the Cargo, and regrets he could not render you the services you wished, and on such terms as would answer your expectations, and consistent with his own and the Interest of the Gentn. his assistants in the Factory." Letters from William Read to Willings & Francis, Canton, Nov. 9, 1805, and Dec. 10, 1805, Willings & Francis Papers, Folder 1805, Historical Society of Pennsylvania, Philadelphia. In *Cheongwo v. Jones*, 5 F. Cas. 544, 546 (C.C.E.D. Pa. 1818) (No. 2,638), assertions that the "excellent" teas which the defendant's supercargo believed he had selected at Canton had been switched for the "most infamous" teas that arrived at the warehouses of the Asiatic Company in Amsterdam for auction sale were answered with the testimony of a witness "that he had lived at Canton for ten years, and that it was very difficult for a person who had not, for a period of time, resided in China, to judge of the qualities of teas. That instances had sometimes occurred, of a few chests of teas being changed on board the Hong boats, by the mariners; but that he had never heard of an instance of a cargo being changed by the merchant who had sold it."

Loqua and a few others, will sell black Teas payl. at 15 months."⁴⁷ In a later letter, Girard stated that in teas

lies the great deception and I do not believe that a China merchant of good repute & credit who is particular in dealing in the best teas can purchase them even cash in hand as low as any other Chinese whose principal object is to obtain a long credit this last character may possibly purchase teas at the lowest Cash price payle. at 2 or 3 years consequently the difference in price will apparently be in his favour but in quality it will perhaps prove to be some fifty to 60 Pr cent worse than the tea purchased by the Chinese merchant of good repute this I have experience at Antwerp in 1804 at the sales of the ship Rousseau's cargo there was a small parcel of Souchong tea purchased at Canton of Eshing which sold upwards of fifty pr cent more than what was furnished by Consequa.⁴⁸

The extension of credit was by no means required in every sale. In at least one instance, a hong merchant resisted but was finally persuaded to allow the unexpectedly large credit sought by a visiting supercargo.⁴⁹ The interest rate applied in these loans was very commonly the 12 percent rate customary at Canton.⁵⁰

47. Stephen Girard, "Observations on Mr. Benjamin C. Wilcocks's Deposition," included in Stephen Girard's records of the lawsuit *Girard v. Biddle*, Reel 439, Girard Papers.

48. Stephen Girard to Edward George and Samuel Nichols, Philadelphia, Jan. 3, 1810, Letter 428, Letterbook 11, Girard Papers.

49. Deposition of Benjamin C. Wilcocks, May 31, 1811, in *Consequa v. Willings & Francis*, Oct. term 1809, No. 49, Records of the Circuit Court for the District of Pennsylvania.

50. The 12 percent per annum, or 1 percent per month, interest rate is applied in the large majority of surviving promissory notes to hong merchants and appears in the recitals of promissory note terms made in filed lawsuits. By the time of the decision in *Consequa v. Willings*, 6 F. Cas. 336, 338 (C.C.D. Pa. 1816) (No. 3,128), "The rate of interest in China, for instance, [was] so well established to be twelve per centum per annum, that the court would not require it to be proved." There was some variation. In *Consequa v. Fanning*, 3 Johns. Ch. 587, 607 (N.Y. 1818), *reversed*, 17 Johns. 511, 523 (N.Y. Court of Errors 1820) (appellate decision reversing the decision of Chancellor Kent and holding that the 7 percent statutory interest rate of New York, the place of performance, governs interest on promissory notes made at Canton, China), "the agents of the defendants used every exertion and argument to induce [Consequa] to receive ten per cent., but he tells them, 'I refused, and would have done the same, had either, or all of you, gentlemen, been present, and made the settlement yourselves.'" In testimony taken for Stephen Girard's suit against George W. Biddle, Benjamin C. Wilcocks stated that "The lawful interest of Canton, is any Interest which can be obtained. I believe the customary premium on money is from 12 to 15 pr. Cent, among Europeans & Americans. I have known both premiums paid & every intermediate one. In the months December, January and February the premium is high as all accounts between Chinese must be settled before New Year's day." Deposition of Benjamin C. Wilcocks, undated, in Stephen

Disputes arising in connection with sales by the hong merchants were frequently settled according to a recognized procedure. The deposition testimony of Mr. Blight in Consequa's litigation with Willings & Francis established that, with respect to the British East India Company, "where the sales in England show the inferior quality of the teas, documents are sent to Canton stating their quality; and if they were inferior to the quality contracted for, they are charged back according to their quality; that is, if they appear to have been third instead of first quality, the Hong merchant is charged the difference between first and third quality, in reference to the prime cost." Mr. Kuhn testified that upon his return to Canton following the auction sale of the cargo of the *Ganges* at Amsterdam, he presented Consequa with a statement of the claim of Willings & Francis for inferior quality tea provided to them by Consequa. "Consequa required a day or two for consideration, and for the purpose of consulting a friend, and he afterwards agreed to allow 19,000 dollars on account of this claim and another for cassia, sent in the same vessel."⁵¹ In 1807, upon the return of William Jones's supercargo to Canton with a complaint of the "bad quality of the defendant's teas," the hong merchant Chunqua entered into a written agreement "reciting this representation by Mr. Gray [the supercargo], of the bad quality of the teas; and promising to settle with the defendant [Mr. Jones], upon the same terms that other respectable houses at Canton had done; and, in case of a difference of opinion between the parties, to submit the same to arbitration."⁵²

Frederic Lauderbrun, the defendant in a suit brought by the outside merchant Cowqua to collect on a promissory note, stated "that the China merchants are in the practice of keeping regular books and that they are often referred to by foreign merchants to

Girard's records of the lawsuit *Girard v. Biddle*, Reel 439, Girard Papers. See also *Cowqua v. Lauderbrun*, 6 F. Cas. 675 (C.C.D. Pa. 1806) (No. 3,299); White, "Hong Merchants," 160.

51. *Willings v. Consequa*, 30 F. Cas. 55, 60-61 (C.C.D. Pa. 1816) (No. 17,767).

52. *Cheongwo v. Jones*, 5 F. Cas. 544, 545 (C.C.E.D. Pa. 1818) (No. 2,638) (the hong merchant Chunqua is plaintiff) ("This [settlement agreement] was denied by the plaintiff's counsel; and no settlement was effected by Mr. Gray, relative to the defendant's teas."). Samuel Russell to Edward Carrington & Co. and Cyrus Butler, Canton, June 9, 1820, Letterbook 1, Container 15, Russell & Company Papers (Samuel Russell Papers), Library of Congress.

see what goods have been shipped by them at former seasons. That he has heard & believes that some of the China merchants after the sailing of the ships from that Country have in some instances found out mistakes in their accounts against themselves and have written on such discovery being made to the persons to whom they sold the goods in this country to have such mistakes corrected which have been accordingly so done." Lauderbrun's efforts to inquire into the state of his account with Cowqua, to whom he admitted that some amount of money was owing, were frustrated by his inability to locate anyone in Philadelphia able to read the Chinese-language receipts provided by the outside merchant, and, upon the arrival at Canton of a commission sent by Lauderbrun, by Cowqua's absence from that city, with "his books which the Commissioners were to examine . . . not to be found."⁵³ Benjamin Chew Wilcocks stated he had "known many Instances of Teas furnished by respectable merchants returned from England & those merchants obliged to refund."⁵⁴ Stephen Girard stated of the British supercargoes, that if "any of the Hong Merchants by fraud or otherwise supplies them with bad Teas, and that sufficient proofs are sent from Europe to Canton, the Hong Merchant returns in good Tea, twice the quantity which is proved to be ordinary."⁵⁵

The records of Chinese litigation in American courts also cast light on one of the commonly cited attributes of the hong merchants, generosity. Such generosity was not strong enough to prevent the vigorous and sustained prosecution of suits to recover debt, but evidences of it may be detected even in the records of this litigation. For example, in the decision of an action brought by Consequa against the New York firm of Fanning and Coles, after dismissing with disgust the Fannings' attempted charges for a cow

53. Deposition of Frederick Lauderbrun, Oct. 9, 1806, in *Cowqua v. Lauderbrun*, Apr. term 1805, No. 48, Records of the Circuit Court for the District of Pennsylvania; *Cowqua v. Lauderbrun*, 6 F. Cas. 675 (C.C.D. Pa. 1806) (No. 3,299).

54. Deposition of Benjamin C. Wilcocks, undated, in Stephen Girard's records of the lawsuit *Girard v. Biddle*, Reel 439, Girard Papers.

55. Stephen Girard, "Observations on Mr. Benjamin C. Wilcocks's Deposition," included in Stephen Girard's records of the lawsuit *Girard v. Biddle*, Reel 439, Girard Papers.

and calf shipped to Canton, the court discussed the former exchange of gifts among the present opponents.⁵⁶

The most common source for examples of hong merchant generosity are the writings of Russell & Company partner William C. Hunter,⁵⁷ who states that "Numerous instances of munificence and generosity can be recorded on the part of the Hong merchants." Hunter cites two instances of Howqua's kindness, including the famous case of "Mr. W____," an American long resident at Canton who, having possessed a considerable fortune, suffered serious losses and found himself held at Canton by his promissory note to Howqua in the amount of \$72,000, which he could not pay.

"Mr. W____" was the prominent Philadelphia merchant and third United States consul at Canton Benjamin Chew Wilcocks.⁵⁸ Howqua finally asked him why he had stayed so long at Canton. Wilcocks replied that while he had some resources, he did not have sufficient funds to meet his obligation to Howqua, and that he was held at Canton by the need alone to generate funds to pay the note.⁵⁹

Howqua summoned his purser, and ordered him to bring the envelope containing promissory notes from the treasury. Taking out that of Mr. W____, he said 'You and I are No. 1, "olo flen;" you belong honest man, only no got chance.' He then tore the note up, and throwing the fragments into the waste-paper basket, added, "Just now hav settee counter, alla finishee; you go, you please." That is to say, 'Our accounts are now all settled, you can leave when you like.'

This incident, which allowed Wilcocks to return to Philadelphia in 1827, stands as a remarkable example of hong merchant generosity. It is the more fully understandable, and may be seen as less strictly an act of charity, when the many years of valuable services that Wilcocks rendered assisting hong merchants in making col-

56. *Consequa v. Fanning*, 3 Johns. Ch. 587, 605-607 (N.Y. 1818), *reversed*, 17 Johns. 511, 523 (N.Y. Court of Errors 1820).

57. Russell & Company was the preeminent American trading firm on the China coast. Morison, *Maritime History of Massachusetts*, 274; Robert B. Forbes, *Personal Reminiscences* (2d ed., Boston, 1882), 337-345.

58. Jacques M. Downs, "American Merchants and the China Opium Trade, 1800-1840," *Business History Review* 42 (1968): 434-435 n.59; Dennett, *Americans in Eastern Asia*, 63, 71; William C. Hunter, *Bits of Old China* (London, 1885), 267-268.

59. Hunter, 'Fan Kwae,' 42-44.

lections from their debtors in Philadelphia, Providence, New York, and other American cities are considered. Such assistance appears not to have been an uncommon feature of the close relations between the leading American and Chinese firms in the early 19th century.⁶⁰

The history of the hong and outside merchants, as usually told, properly stresses the financial insecurity of these traders. In particular, borrowing from Western firms is studied as a source of the insecurity of the hong merchants. This Western debt was to some degree the natural result of the inadequate capitalization of and minimal domestic credit available to the merchants of Canton. It is apparent that the failure of Western traders to repay loans made to them by Chinese merchants also contributed to the financial problems of certain merchants at Canton. In the case of Consequa, the heavy losses that he suffered on his loans to American traders played a large role in his commercial decline. The willingness of the American courts to assert jurisdiction over disputes arising in connection with foreign trade only increased the insecurity of the Chinese merchants, who had no judicial process available to protect them in their own country.

While the exact amount of money that Chinese merchants loaned to American and other Western traders at Canton in the 18th and 19th centuries will never be known, surviving records of collection efforts and litigation in American courts establish that the dollar total was quite large. In addition to establishing the magnitude of Chinese loans to Western traders, the litigation records provide invaluable information about normal commercial practices at Canton, particularly with respect to credit purchases

60. For example, the Samuel Cabot Papers at the Massachusetts Historical Society include several letters from Howqua to debtors in Philadelphia, Providence, Salem, New York, and Boston, dated at Canton on Jan. 28, 30, and Feb. 5, 1814, reciting the "stoppage of the accustomed intercourse between this country and the United States" and Howqua's decision to forward promissory notes to his general agents James & Thomas H. Perkins of Boston for collection free of the uncertainties of shipment by sea in wartime. Also, the Diary of Edward Delano, Aug. 9, 1841, Franklin D. Roosevelt Library, Hyde Park, New York, indicates that Delano, then a clerk with Russell & Company, had been "Busy all day and evening making out powers of attorney for various Hong merchants to the end that they may recover back monies for teas &c. sold by them to a man calling himself an American under the cognomen of T. Woodhouse Stevens—he has absconded to Bombay on his way back to England & France."

and the informal procedures employed for the resolution of problems arising in the ordinary course of business. To the extent that these records undercut a common view of trade with the 13 hongs of Canton as some sort of mercantile idyll, the disruption may be excused as presenting a more real, and thereby far more useful, picture of a group of merchants too often seen lost in the haze.

Notes and Documents

WHEN? WHO? WHY?: RE-EVALUATING A 17TH-CENTURY SOURCE

FRANCIS J. BREMER*

CONTAINED in the manuscript collection of Winthrop Papers at the Massachusetts Historical Society is a handwritten, contemporary copy of a letter from English Puritan clergymen to the General Court urging the government of Massachusetts Bay to moderate its treatment of Baptist dissenters. The copy is undated and lacks references to specific events which would assist in dating it. Including the letter in volume five of the printed *Winthrop Papers*, the editors decided that it was a response to a crackdown on Baptists recorded in John Winthrop's *Journal* for 1645 and assigned it the conjectural date of June 1645.¹ That letter has become an important source supporting the contention that an early rift divided the English and colonial wings of Puritan congregationalism.

Perry Miller was one of the first to use the letter in this fashion. It became a major piece of evidence in his argument in "Errand into the Wilderness" that the colonist's sense of mission died during the Interregnum. As Miller expressed it, "It must have seemed, for those who came with Winthrop in 1630 and who remembered the clarity and brilliance with which he set forth the conditions of their errand, that the world was turned upside down and inside out when, in June 1645, thirteen leading Independent divines—such men as Goodwin, Owen, Nye, Burroughes, formerly friends and allies of Hooker and Davenport, men who might easily have come to New England and helped extirpate heretics—wrote the General Court that the colony's law banishing Anabaptists was an embarrassment to the Independent cause in England."² Many

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1. *Winthrop Papers* (Boston, 1947), 5:23-25.

2. Perry Miller, "Errand into the Wilderness" in Miller, *Errand into the Wilderness* (Cambridge, Mass., 1956), 13-14. Miller erroneously lists Jeremiah Burroughes as one of the authors; his name is not included as an author in either version of the letter and no other historian lists him as an author.

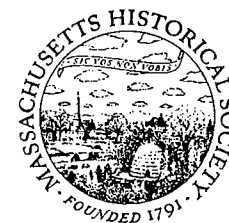
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