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*In 1854, the Supreme Court of California decided the infamous case of People v. Hall, which reversed the murder conviction of George W. Hall, “a free white citizen of this State,” because three prosecution witnesses were Chinese. One legal scholar called the decision “the worst statutory interpretation case in history.” Another described it as “containing some of the most offensive racial rhetoric to be found in the annals of California appellate jurisprudence.”*

READ ABOUT PEOPLE V. HALL IN MICHAEL TRAYNOR’S ARTICLE STARTING ON PAGE 2

# The Infamous Case of *People v. Hall* (1854)

AN ODIOUS SYMBOL OF ITS TIME

BY MICHAEL TRAYNOR\*



*Chinese Camp in the Mines, [P. 265 Illus., from Three Years in California, by J.D. Borthwick]*

COURTESY, CALIFORNIA HISTORICAL SOCIETY, CHS2010.431

IN 1854, THE SUPREME COURT OF CALIFORNIA decided the case of *People v. Hall*, which reversed the murder conviction of George W. Hall, “a free white citizen of this State,” because three prosecution witnesses were Chinese.<sup>1</sup> The court held their testimony inadmissible under an 1850 statute providing that “[n]o black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, a white person.”<sup>2</sup>

If cases could be removed from the books, *People v. Hall* would be former Chief Justice Ronald George’s candidate.<sup>3</sup> Professor Charles McClain described it as “containing some of the most offensive racial rhetoric to be found in the annals of California appellate jurisprudence.”<sup>4</sup> Judge Leon Yankwich called it “prejudice in

the form of law.”<sup>5</sup> According to Professor John Nagle, it is “the worst statutory interpretation case in history.”<sup>6</sup> It preceded in infamy the *Dred Scott* case three years later.<sup>7</sup>

Instead of a legal critique, this note provides brief context from a period of rising hostility to Chinese immigrants in California. It aims to help us comprehend the odious decision while not excusing it.<sup>8</sup>

Here are just a few highlights from eventful 1854, starting nationally and then going to California and our Supreme Court and its decision: Franklin Pierce was president and Roger B. Taney chief justice of the United States. The Republican Party began in Ripon, Wisconsin and two years later nominated John C. Fremont of California for president (he lost to Democrat James Buchanan). The Kansas-Nebraska Act repealed the Missouri Compromise and allowed slavery by self-determination in the new territories. Yung Wing was the first-known Chinese student to graduate from a U.S. university (Yale College). Susan B. Anthony encouraged the attendees at the fifth Women’s Rights Convention to petition state legislatures to protect the equal rights of women. As the year ended, Harriett Tubman conducted her three brothers to freedom in the Christmas Escape.

\* © 2017 by Michael Traynor. Michael Traynor is Senior Counsel at Cobalt LLP in Berkeley. The author acknowledges with appreciation the assistance of the California State Archives, the Nevada County Historical Society, and the Nevada Historical Society, which holds the collection of William M. Stewart’s papers. Early papers of Stewart and early records of Nevada County that might have pertained to 1854 and *People v. Hall* were destroyed by fire.

In California, the gold rush continued. Approximately 23,000 Chinese were recent arrivals, many of whom became gold miners.<sup>9</sup> Sacramento became the new capital. Governor John Bigler, hostile to both American Indian and Chinese immigrants, began his second term. Unprovoked killing of American Indians was common.<sup>10</sup>

On March 31, 1854, the Supreme Court moved by horse-drawn wagon from San Francisco to San Jose.<sup>11</sup> The court had three members, all quite young: Chief Justice Hugh Campbell Murray, then 28; Justice Solomon Heydenfeldt, then 37; and Justice Alexander Wells, then 34.

Murray, born in St. Louis, Missouri, arrived in California in 1849, entered law practice and politics, served as a trial judge in San Francisco, became an associate justice in 1851 and chief justice in 1852. He was reelected in 1855 as a candidate of the Know Nothing Party and died of tuberculosis in 1857. He never married. He had a mixed reputation as a drinker, gambler, and fighter but also as an author of some important opinions.<sup>12</sup>

Heydenfeldt, born in Charleston, South Carolina, practiced law in Alabama and then came to San Francisco in 1850, entering law practice and politics. He became a justice in 1852 and served until 1857, when he resigned and thereafter practiced law and was a philanthropist. Married three times, he had three groups of children and died in San Francisco in 1890. Among his many opinions was one holding that an intoxicated plaintiff who fell into an uncovered hole in the sidewalk should not necessarily be denied recovery: “A drunken man is as much entitled to a safe street as a sober one, and much more in need of it.”<sup>13</sup>

Wells, born in New York City, practiced law and served in the Assembly in New York, earning a reputation as an entertaining speaker and known as the “Great Little Thunder.” After arriving in California in 1849, he engaged in law practice and politics and became a justice in 1852. Wells died unexpectedly at his home in San Jose on October 31, 1854, leaving his wife and one daughter.<sup>14</sup>

Chief Justice Murray was “anxious to arrive” at the meaning of the statute.<sup>15</sup> His opinion in *Hall* is devoid of facts about the underlying crime and trial. The case file from the trial court and the minutes of the Supreme Court provide the following facts:<sup>16</sup>

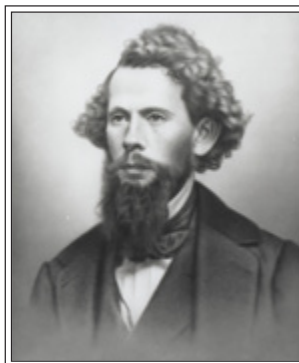
George Hall, John Hall, and Samuel Wiseman were indicted for the murder of Ling Sing, described as “(a Chinaman),” in Nevada County. The indictment charged George Hall with shooting Ling Sing in the back with a shotgun, mortally wounding him with at least fifteen buckshot wounds; it charged John Hall and Wiseman as accessories. William T. Barbour was the trial judge. The district attorney was William M. Stewart. The lead defense counsel was John R. McConnell. Judge Barbour tried the two Halls separately from Wiseman (records indicate no outcome for Wiseman).

At the trial, before a jury of twelve men, the prosecution called twelve witnesses, including three Chinese witnesses who testified with the help of sworn interpreters. The record does not show any defense objection to their testimony on the ground that they were Chinese. The court overruled a defense motion to exclude part of the testimony of one of the Chinese witnesses concerning the handling of the victim’s body and what other parties did after the shooting. The defense called 16 witnesses, including Wiseman. The jury found George Hall guilty and John Hall not guilty. Judge Barbour sentenced George Hall to “hang by the neck until he is dead.”

Counsel argued the appeal first before Justices Heydenfeldt and Wells. Subsequently, on McConnell’s motion, Chief Justice Murray and Justice Heydenfeldt heard reargument.<sup>17</sup> The court thereafter reversed Hall’s conviction.<sup>18</sup> Murray wrote the majority opinion in which Heydenfeldt concurred; Wells dissented in one sentence without further explanation.

Supplementary sources provide additional background: Ling Sing was killed in the course of an armed robbery at a Chinese mining camp.<sup>19</sup> It was not unusual then for white miners to attack Chinese mining camps.<sup>20</sup> George Hall and John Hall were brothers.<sup>21</sup> Judge Barbour had won both a contested election and litigation in which Stephen J. Field (later Justice Field) represented the prior incumbent.<sup>22</sup> Defense counsel McConnell practiced law in Nevada City after serving as district attorney and later was elected attorney general. District Attorney Stewart served briefly as acting attorney general and later became U.S. senator from Nevada and reminisced about the case.<sup>23</sup> Stewart recalled arguing for the prosecution that the defense had not taken objection to the Chinese testimony and that Chinese were not Indians under the statute. He recalled McConnell arguing that the testimony of Chinese witnesses was inadmissible because they were the same as Indians.<sup>24</sup>

In his majority opinion, Chief Justice Murray did not address the defendant’s failure to object on the ground that the statute made the testimony of the Chinese witnesses inadmissible. He cited no case authority. He referred to the “discoveries of eminent Archeologists” and the “researches of modern Geologists.” He concluded that “the name of Indian, from the time of Columbus to the present day, has been used to designate, not alone the North American Indian, but the whole of



*Chief Justice  
Hugh Campbell Murray.*

COURTESY ADMINISTRATIVE  
OFFICE OF THE COURTS

the Mongolian race”; the word “Black” means “the opposite of ‘White’”; the word “White” “excludes black, yellow, and all other colors”; and the legislature “adopted the most comprehensive terms to embrace every known class or shade of color, as the apparent design was to protect the White person from the influence of all testimony other than that of persons of the same caste. The use of these terms must, by every sound rule of construction, exclude every one who is not of white blood.”<sup>25</sup>

Murray relied on materials untested by cross-examination or searching counter-argument. He stated that “ethnology” had advanced to “that high point of perfection which it has since attained by the scientific inquiries and discoveries of the master minds of the last half century.” His opinion preceded by a few years Gregor Mendel’s first hybrid peas that bloomed in the abbey garden and Charles Darwin’s *On the Origin of Species by Means of Natural Selection*, by more years the promotion and then renunciation of “eugenics,”<sup>26</sup> and by many years the leading cases involving racial intermarriage, school desegregation, and scientific evidence.<sup>27</sup>

Murray ruled that public policy also impelled the decision: “The same rule which would admit them to testify, would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls. This is not a speculation which exists in the excited and overheated imagination of the patriot and statesman, but it is an actual and present danger.”<sup>28</sup> He then went on:

The anomalous spectacle of a distinct people, living in our community, recognizing no laws of this State except through necessity, bringing with them their prejudices and national feuds, in which they indulge in open violation of law; whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference, is now presented, and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administering the affairs of our government. These facts were before the Legislature that framed this Act, and have been known as matters of public history to every subsequent Legislature. . . . For these reasons, we are of opinion that the testimony was inadmissible.<sup>29</sup>

On remand, Stewart elected not to retry Hall.<sup>30</sup> A local report indicates that Hall was released because one of the principal white witnesses had died and the other could not be found and that in May 1857 he was

“living quietly on Brush Creek near Nevada City.”<sup>31</sup> The decision aggravated the exposure of Chinese and other minorities to violence by assailants confident that non-white witnesses could not testify.<sup>32</sup> A black California correspondent for *Frederick Douglass’ Paper* wrote that “the Chinese have taken the place of the colored people, as victims of oppression.”<sup>33</sup>

In January 1855, after another anti-Chinese speech by Governor Bigler, Chinese merchants objected both to it and the court’s ruling that “we Chinese are the same as Indians and Negroes” who are not allowed to bear witness. Sadly, they also made an invidious comparison: “And yet these Indians know nothing about the relations of society; they know no mutual respect; they wear neither clothes nor shoes; they live in wild places and caves.”<sup>34</sup>

Despite growing protests, which included remonstrations from white leaders, the legislature explicitly disqualified Chinese and Mongolian witnesses in an 1863 amendment to the statute. It finally repealed the offensive law by omission from the Penal Code of 1872 and expressly in 1955.<sup>35</sup> Indeed, in 1876, former Justice Heydenfeldt testified in defense of the rights of the Chinese before the Congressional Joint Special Committee Investigation of Chinese Immigration.<sup>36</sup>

I first learned about *People v. Hall* from Justice Harry Low when I was a young colleague of his in the California Attorney General’s office in San Francisco. It seems fitting to close by referring to his important and heartfelt statement as an appellate justice that the term “Chinese Wall” should be abandoned. Citing *People v. Hall*, he objected to the linguistic discrimination, to the inappropriate reference to “one of the magnificent wonders of the world and a structure of great beauty,” and to the architecturally inaccurate metaphor. The Great Wall of China was built not to prevent two-way communication but “to keep outsiders out — not to keep insiders in.”<sup>37</sup> Justice Low called for “jettisoning the outmoded legal jargon of a bygone time.”<sup>38</sup> Although we have achieved much progress since *People v. Hall*, more than a vestige remains of the social and cultural effects of the discrimination for which it is infamous.<sup>39</sup> ★

#### ENDNOTES

1. *People v. Hall* (1854) 4 Cal. 399.
2. 1850 Cal. Stat. ch. 99, § 14, pp. 229, 230, amended by 1863 Cal. Stat., ch. 70, § 1, p. 69, repealed by omission from codification, Cal. Penal Code § 1321, officially repealed, 1955 Cal. Stat. ch. 48, § 1, pp. 488, 489; see also Gabriel J. Chin, “‘A Chinaman’s Chance’ in Court: Asian Pacific Americans and Racial Rules of Evidence,” *UC Irvine L. Rev.* 3 (2013): 965–972 (reviewing California statutory and case law history).
3. Richard H. Rahm, “Chief Justices Celebrate Publication of the History of the California Supreme Court,” *CSCS Newsletter*, Fall/Winter 2016, 5; see also Ronald M. George, *Chief: The Quest for Justice in California*. Berkeley: Berkeley Public Policy Press, Institute of Governmental Studies, 2013, 561–562.

4. Charles J. McClain, *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America*. Berkeley: Univ. of California Press, 1994, 21; reviewed by Robert C. Berring, "Review Essay," *Asian L.J.* 2 (1995): 87.
5. Leon R. Yankwich, "Social Attitudes as Reflected in Early California Law," *Hastings L.J.* 10 (1959): 250, 257–261.
6. John Copeland Nagle, "The Worst Statutory Interpretation Case in History," *Nw. U. L. Rev.* 94 (2000): 1445, 1459–1468.
7. *Dred Scott v. Sandford* (1857) 60 U.S. 393.
8. See, e.g., Charles S. Cushing, "The Acquisition of California, Its Influence and Development under American Rule," *Calif. L. Rev.* 8 (1920): 67, 75–76; Mark Kanazawa, "Immigration, Exclusion, and Taxation: Anti-Chinese Legislation in Gold Rush California," *J. Econ. Hist.* 65 (2005): 779, 781–789; Jean Pfalzer, *Driven Out: The Forgotten War against Chinese Americans*. Berkeley: Univ. of California Press: 2007, passim.
9. See Najia Aarim-Heriot, *Chinese Immigrants, African Americans, and Racial Anxiety in The United States, 1848–82*. Urbana: Univ. of Illinois Press, 2006, 30–42 (3 arrivals in 1848, 325 in 1849, 450 in 1850, 2,716 in 1851, 20,026 in 1852, 4,270 arrivals and 4,421 returns in 1853, net total through 1853 of 23,369).
10. Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe*. New Haven: Yale Univ. Press, 2016, 228.
11. Jake Dear and Levin, "Historic Sites of the California Supreme Court," *CSCHS Yearbook* 4 (1998–99): 63.
12. J. Edward Johnson, *History of the Supreme Court Justices of California 1850–1900*, vol. 1. San Francisco: Bender-Moss Company, 1963, 43. Charles J. McClain, Jr., "Pioneers on the Bench: The California Supreme Court, 1849–1879, chap. 1, in Harry N. Scheiber, ed., *Constitutional Governance and Judicial Power: The History of the California Supreme Court*. Berkeley: Institute of Governmental Studies Press, 2016, 9–20.
13. Johnson, *History of the Supreme Court Justices*, 44–45; *Robinson v. Pioche, Bayerque & Co.* (1855) 5 Cal. 460.
14. Wells' gravestone states that he "died at San Jose, Cal. Oct. 31st 1854 Aged 36 years and 24 days." Two infant daughters predeceased him; see also, Johnson, *History of the Supreme Court Justices*, 48–49 which includes more detail about Wells but states incorrectly that he was born "about 1821" and died leaving "his wife and two little daughters."
15. 4 Cal. at 399.
16. Reviewed by the author on March 21, 2017 at the California State Archives.
17. Minutes of the Supreme Court (1854), 180–181, 332, 349–350, 494, 504–505 (Case no. 255). It was not unusual for two justices to hear argument. The minutes state that at the first argument on January 17, 1854, McConnell argued for the appellant and Churchman for the respondent, *ibid.*, 180–181, and that at the reargument on May 9, 1954, the case was "argued by Atty Genl McConnell," submitted, and taken under advisement. *Ibid.*, 350–351. The minutes do not identify any prosecutor at the reargument. Stewart recalls that he and McConnell argued; perhaps this was at the reargument at which Chief Justice Murray was present. See William M. Stewart, *Reminiscences of Senator William M. Stewart, of Nevada*. New York: Neale Pub. Co., 1908.
18. *Ibid.*, 505.
19. David Alan Rego, "People v. Hall (1854)," in Jonathan H.X. Lee, ed., *Chinese Americans: The History and Culture of a People*. Santa Barbara: ABC-CLIO, 2016, 213–217; Michael Bottoms, *An Aristocracy of Color: Race and Reconstruction in California and the West, 1850–1890*. Norman: Univ. of Oklahoma Press, 2013, 14–38. For a contemporary description of a Chinese mining camp, see J.D. Borthwick, *Three Years in California [1851–1854]*. Edinburgh and London: W. Blackwood and Sons, 1857, 262–267.
20. See Iris Chang, *The Chinese in America: A Narrative History*. London: Penguin Books, 2003, 44–45.
21. Rego, "People v. Hall," 213.
22. See *People ex rel Barbour v. Mott* (1853) 3 Cal. 502 (Field was counsel for the incumbent Judge Mott); Stephen J. Field, *Personal Reminiscences of Early Days In California with Other Sketches*. Washington, DC: n.p., 1893, 29–34 (describing his difficulty and aborted duel with Barbour) (paperback reproduction).
23. Stewart, *Reminiscences of Senator William M. Stewart*, 76–81.
24. *Ibid.*, 79. Stewart says that there had been antagonism between Mr. Churchman, who also was a prosecutor at the trial, and Mr. McConnell and that Churchman "transferred his antagonism" to Stewart when he became district attorney. *Ibid.*, 76–77.
25. 4 Cal. at 401–404.
26. Siddhartha Mukherjee, *The Gene: An Intimate History*. New York: Scribner, 2016, 39–40, 49–50, 64–100, 138, 259.
27. *Perez v. Sharp* (1948) 32 Cal.2d 711; *Brown v. Board of Education* (1954) 347 U.S. 483; *Daubert v. Merrell Dow Pharmaceuticals* (1993) 509 U.S. 579.
28. 4 Cal. at 404.
29. *Ibid.*, 404–405.
30. See Stewart, *Reminiscences of Senator William M. Stewart*, 79; Rego, "People v. Hall," 217.
31. Email from Pat Chesnut, Director of the Searls Historical Library in Nevada City, to the author (Mar. 12, 2017) (referring to local historian David Comstock's timeline drawn from early newspapers and contained in Comstock's *Lives of the Pioneers before 1900*).
32. See, e.g., Bottoms, *An Aristocracy of Color*, 29; Aarim-Heriot, *Chinese Immigrants, African Americans, and Racial Anxiety*, 44–45.
33. "Letter from Nubia [pen name for William H. Newby]" *Frederick Douglass' Paper*, April 6, 1855, in Philip S. Foner and Daniel Rosenberg, eds., *Racism, Dissent, and Asian Americans from 1850 to the Present*. Santa Barbara: Greenwood Press, 1993, 211; Eddie L. Wong, *Racial Reconstruction: Black Inclusion, Chinese Exclusion, and the Fictions of Citizenship*. New York: NYU Press, 2015, 100–102.
34. Lai Chun-chuen to Governor Bigler, Jan. 1955, excerpted in McClain, *In Search of Equality*, 22.
35. See n. 2, *supra*.
36. Heydenfeldt's testimony is reproduced in Foner and Rosenberg, *Racism, Dissent, and Asian Americans*, 34–36.
37. *Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 293–294 (concurring opinion of Low, P.J.).
38. *Ibid.*
39. See, e.g., Chin, "'A Chinaman's Chance' in Court," 990.



**EDITORS' NOTE:** *We invited Michael Traynor to prepare this imaginary playbill to include colorful tidbits and characters that didn't make it into his necessarily selective, spare, and serious historical account of People v. Hall. The endnotes reflect post-performance history and refer to the endnotes in the main article.\**

## PEOPLE V. HALL, A CALIFORNIA TALE

*Premiering Saturday evening, January 31, 1857 8:00 p.m.  
at and celebrating Nevada County's new courthouse in Nevada City,  
replacing the old courthouse destroyed in the Great Fire of 1856.*

ACT ONE: THE TRIAL

ACT TWO: IN THE SUPREME COURT

ACT THREE: AFTERMATH

*There will be a short intermission between Acts One and Two,  
and, for those of you who wish to stay, a discussion with the cast after the performance.*

### CAST

Chief Justice of California .....	Hugh C. Murray
Trial judge .....	William T. Barbour
District Attorney .....	William M. Stewart
Additional prosecuting attorney .....	James Churchman
Defense counsel .....	John R. McConnell
Defendant .....	George W. Hall
Jury .....	Twelve white men
Interpreter .....	Reverend William Speer
Widow of Justice Alexander Wells .....	Mrs. Alexander Wells
San Francisco madam .....	Ah Toy
Chorus .....	Chinese miners
Governor John Bigler; Associate Justice Solomon Heydenfeldt;	
Associate Justice Alexander Wells; Sheriff William H. Endecott;	
John E. C. Hall; various prosecution and defense witnesses;	
clerk and bailiff of the Supreme Court of California .....	CSCHS Troupe

### CAST NOTES

**HUGH C. MURRAY** came to California in 1849 via Panama after service as a lieutenant in the war with Mexico. He presently serves as Chief Justice of California and wrote the majority opinion in *People v. Hall*. He previously starred in *In re Perkins* (1852) 2 Cal. 424 (1852) (denying habeas corpus and ordering that three fugitive slaves be delivered by the sheriff to their Mississippi master). Brilliant and fearless, he is also “[w]idely known as a drunk, [who] fit[s] comfortably into the rambunctious world of California courts”; threw a future U.S. Senator (John Conness) against a hotel bar; and “attacked a man on the street and beat him with his cane because the man had publicly described him as ‘the meanest man that ever sat on a supreme bench.’”<sup>1</sup>

**WILLIAM T. BARBOUR** served as a trial judge in Nevada County. After a contested election and litigation, he was seated instead of the prior incumbent represented by Stephen J. Field. Judge Barbour presided at the trial in 1853 of George W. Hall and John E. C. Hall in the old courthouse. He is happy to be at the new courthouse for this premiere.<sup>2</sup>

**WILLIAM M. STEWART** came to California in 1849. He studied law with John R. McConnell and succeeded McConnell as district attorney of Nevada County from 1853–1854, when he resigned and was succeeded by Niles Searls (later Chief Justice). Stewart persuaded Reverend Speer to serve as interpreter for the Chinese witnesses. “I asked him if they all told the same story, and he said they did, which was a mystery to me. I had not the slightest doubt that Hall killed the Chinaman, because he was seen coming from their camp where the dead body was found.” Stewart recalls arguing in the Supreme Court for the prosecution.<sup>3</sup>

\* © 2017 by Michael Traynor. The author appreciates this invitation, noting that no court has ever invited him to submit a supplemental brief containing colorful tidbits not in the main brief.



**JAMES CHURCHMAN** is an eminent lawyer who previously practiced law at the Illinois bar and is a friend of Abraham Lincoln. After the close of testimony, he opened the prosecution's argument to the jury and he and Stewart closed. Churchman recalls arguing for the prosecution in the Supreme Court as reflected in the court's minutes. He questions Stewart's memory, noting that Stewart recalled that there were six Chinese witnesses rather than three and that there was one defendant, John Hall, rather than two, George Hall and John Hall.<sup>4</sup>

**JOHN R. MCCONNELL** came to California in 1849 and first became a miner. He is a leading lawyer, expert in mining law. He served as the lead defense counsel at trial and on appeal. He preceded Stewart as district attorney and later was elected attorney general. During Act Two, he will reenact his argument in the Supreme Court and identify his opponent.<sup>5</sup>

**GEORGE W. HALL**, born in 1823, was convicted of killing Ling Sing at a Chinese mining camp in Nevada County. He did not testify at the trial and is correspondingly quiet in Acts One and Two; in Act Three, we will learn about his life after escaping hanging and retrial.

**THE TWELVE WHITE MEN** on the jury are played by members of the CSCHS Troupe. On the first day of trial ten jurors were empaneled, exhausting the panel. The court ordered the sheriff to summon twenty-one additional jurors for the next day and two additional jurors were then empaneled.<sup>6</sup>

**REVEREND WILLIAM SPEER** was the lead interpreter for the three Chinese prosecution witnesses. He is the author of *An Humble Plea Addressed to the Legislature of California, in Behalf of the Immigrants from the Empire of China to this State* (1856). He was a Presbyterian missionary to Canton during the Opium Wars, is fluent in Chinese, and is "a tireless champion of Chinese rights in California."<sup>7</sup>

**MRS. ALEXANDER WELLS** is the widow of Associate Justice Alexander Wells, who also had come to California in 1849 and died shortly after he issued his one sentence dissent from the majority opinion. She is heartened by having the chance in this play to relate her husband's dismay and will read excerpts from the blistering dissent he was drafting but never finished.<sup>8</sup>

**AH TOY**, who makes her grand entrance in Act Three, came from Hong Kong to San Francisco in 1848 or 1849 with her husband who died onboard the ship. As the legend goes, she became the mistress of the ship's captain and arrived with plenty of his gold in her pocket. She is a retired madam who ran her famous establishment and peep show in San Francisco. She is glad to help reenact the colorful and tumultuous time when the trial and argument occurred. Until *People v. Hall*, she enlisted the aid of California courts and Chinese witnesses in litigation involving her business, notwithstanding the criminal statute construed in that case and a comparable statute applicable in civil cases. She was impelled by San Francisco's anti-prostitution ordinance of 1854 and the case to go out of business.<sup>9</sup>

**THE CHINESE MINERS** who constitute the chorus are played by the CSCHS Troupe and resemble those depicted in the accompanying illustration by J.D. Borthwick. We gratefully acknowledge the miners who loaned us their camp clothes for this performance and are attending this premiere as our honored guests.<sup>10</sup>

**OUR OWN CSCHS TROUPE** members wrote the play and enact the various cameo roles as well as the parts of the jury members and the Chinese miners. The core group consists of one justice and two senior staff members who travel with the court to its various locations. The remaining members vary from time to time at our different venues and usually are local judges, lawyers, writers, and aspiring actors and singers. None of us has ever served on a Vigilance Committee.<sup>11</sup> ★

#### ENDNOTES

1. D. Michael Bottoms, *An Aristocracy of Color: Race and Reconstruction in California and the West, 1850–1890*. Norman: Univ. of Oklahoma Press, 2013, 19–20; Edgar Whitteley Camp, "Hugh C. Murray: California's Youngest Chief Justice," 20 *Calif. Hist. Soc. Q.* (1941): 365–373; Oscar T. Shuck, *Representative and Leading Men of the Pacific*,

Boston: Bacon and Company, 1870, 473–476. Murray died on September 18, 1857 and at his memorial, Chief Justice Terry said, "As a judge, he was just, impartial, and fearless," and Attorney General Wallace said, "He was gifted by nature with an intellect capable of grasping the mightiest subjects." 8 Cal. iii–v (1857). Later on tour, Roger B. Taney, his previous understudy, played Murray's role.



2. Justice Field later reminisced that Barbour had engaged in a dispute with him, challenged him to a duel, withdrew, and made amends, and that “My resentment accordingly died out, but I never could feel any great regard for him. He possessed a fair mind and a kindly disposition, but he was vacillating and indolent. Moreover, he loved drink and low company. He served out his second term and afterwards went to Nevada, where his habits became worse, and he sunk so low as to borrow of his acquaintances from day to day small sums — one or two dollars at a time — to get his food and lodging. He died from the effects of his habits of intemperance.” Stephen J. Field, *Personal Reminiscences of Early Days In California with Other Sketches*. Washington, DC: n.p., 1893, 32.
3. Stewart did not mention Churchman’s crucial role at trial or on appeal. See William M. Stewart, *Reminiscences of Senator William M. Stewart, of Nevada*, New York: Neale Pub. Co., 1908. Stewart became acting attorney general and later U.S. senator from Nevada. See Russell R. Elliott, *Servant of Power: A Political Biography of Senator William M. Stewart*, Reno: University of Nevada Press, 1983, 7–8. Shuck, *Representative and Leading Men of the Pacific*, 634–644. After returning from the trip that inspired *The Innocents Abroad* (1869), Mark Twain briefly clerked for Senator Stewart. See Stewart, *Reminiscences*, 219–224. In *Roughing It* (1872) (ch. 54), Mark Twain praised the Chinese while noting that “[a]ny white man can swear a Chinaman’s life away in the courts, but no Chinaman can testify against a white man.”
4. Churchman appears as “Mr. Churchman” in the trial transcript, and with initials [hard to decipher] and last name in the Supreme Court’s handwritten minutes of the first argument, p. 181. He is the only Churchman in a contemporary directory. Brown & Dallison’s, *Nevada, Grass Valley and Rough and Ready Directory*, vol. 1. San Francisco: n.p., 1856. President Lincoln later appointed him as consul to Valparaiso, Chile. See E. G. Waite, “Historical Sketch of Nevada County, California,” in *Bean’s History and Directory of Nevada County California*. Nevada: Daily Gazette Book and Job Office, 1867, 39. His son became a dentist and his daughter a writer in Portland, Oregon, and she traveled with Mark Twain’s party that inspired *The Innocents Abroad*. *Morning Oregonian*, Mar. 17, 1921; Nina Churchman Larowe, “An Account of My Life’s Journey so far, its Prosperity, its Adversity, its Sunshine and its Clouds,” 1917, in Christine Fischer, ed., *Let Them Speak for Themselves: Women in the American West 1849–1900*. Hamden, Conn., The Shoe String Press 1990, 207–228.
5. Shuck, *Representative and Leading Men of the Pacific*, 529–534. “Stewart owes all his dialectic skill, ingenuity, and eloquence to the early training of McConnell.” *Ibid.*, 532. “In political opinion, McConnell may be classed as an old school strict constructionist.” *Ibid.*, 533. In 1861, McConnell ran unsuccessfully for governor, losing to Leland Stanford.
6. Trial Transcript for October 4–5, 1853, California State Archives. A juror then had to be a citizen of the U.S., an elector (voter) of the county, over 21 and under 60, and otherwise competent. Calif. Stat. 1851, ch. 30, § 1. An elector had to be a “white male citizen.” Calif. Const. 1849, art. II, § 1; Calif. Stat. 1850, ch. 38, art. II, § 10.
7. Bottoms, *An Aristocracy of Color*, 35. In 1857, Speer also authored “An Answer to the Common Objections to Chinese Testimony”; and an “Earnest Appeal to the Legislature of California for Their Protection by Our Law,” and “A Remonstrance from the Chinese in California to the Congress of the United States,” in William Speer, *From the Oldest and Newest Empire: China and the United States*. Chicago: Jones, Junkin & Co., 1870.
8. Mrs. Wells came from a prominent New York family. Before she married Justice Wells in 1846, she was known as Annie Van Rensselaer Van Wyck. Born in 1822, she lived until 1919. After Justice Wells’ death, she moved back to New York. Gertrude Wells, their oldest daughter, married Schuyler Hamilton, the grandson of Alexander Hamilton, divorced him seven years later, married Baron Raoul Nicholas de Graffenried, divorced him seven years later, was known as a talented musician, and died at age 94 in 1944. See *Wikipedia* entry for Alexander Wells (California).
9. Ah Toy died in 1928, just shy of her 100th birthday. See Jay Barmann, *San Francisco’s 16 Greatest Infamous Local Legends*, [http://sfist.com/2015/04/03/san\\_franciscos\\_15\\_greatest\\_infamous.php](http://sfist.com/2015/04/03/san_franciscos_15_greatest_infamous.php); Ernest Beyl, “A Short History of Bordellos in San Francisco,” Part 2, *Marina Times*, Sept. 2012. After leaving the business, she “married and later sold clams in the South Bay town of Alviso.” *Ibid.*
10. J. D. Borthwick, *Three Years in California* [1851–1854]. Edinburgh and London: W. Blackwood and Sons, 1857, 265. Borthwick also describes his visit to the camp and the people there. *Ibid.*, 262–267.
11. For relevant local history, including political history and names and terms of various officials, see Waite, “Historical Sketch of Nevada County, California,” 9–72. For more about Murray, Heydenfeldt, Wells, Barbour, Bigler, and McConnell, see Oscar T. Shuck, *Bench and Bar in California: History, Anecdotes, Reminiscences*. San Francisco: The Occident Printing House, 1889, 69–71, 79–87, 102, 106, 154–157. For the ill treatment of the Chinese during the period under Governor Bigler, see Theodore H. Hittell, *History of California*, vol. 4. San Francisco: NJ Stone & Co., 1898, 98–115 (noting also, p. 111), that in the 1854 legislative session, Assemblyman B. F. Myres introduced but failed to get approval of a bill to prevent Asiatics “from giving evidence in favor of or against any white person in a criminal case,” and that “what Myres failed to accomplish” was accomplished by Murray in the *Hall* case.