

for us on all Chinese questions, for there have been efforts for years past to restrict Chinese immigration in California, and the matter has been constantly before the superior courts there, and the judges there (if we may take the reports as correct) are more than ordinarily skilled in laying down the law correctly in constitutional points of that nature. Indeed, there is no other country which has such experience generally in constitutional law as applicable to a federation of states.

Of course, in all the observations I make I recognize the now well-known distinction between the relations of a State of the Union to the Federal Government, and our relation as a Province to the Dominion. Still both Federal Governments have reserved to themselves the regulation of trade and commerce and naturalization and aliens; so the analogy is so close as to become almost a direct authority.

In the *Lin Sin* judgment, p. 579, the learned judge says of the power of taxing foreigners, as in the present *qua* foreigners: "If the power exist it may be exercised upon all foreigners residing in the State, and may be so exercised as to bar the door of foreign commerce as effectually as the Government could do by issuing its mandate and closing its ports."

And again "to determine whether there is a conflict or not," *i. e.*, of jurisdictions, "the power must be considered with reference to its consequences, for its effect when carried out is the only criterion by which a judgment can be formed."

In another place he says—"It would be an empty sound to say that the several States cannot pass any law to prevent foreigners from coming here if they may pass laws which will compel such foreigners to depart as soon as they arrive."

And again, "A tax imposed by the law on these persons for the mere right to reside here, is an appropriate and effective means to discourage the immigration of the Chinese into the State."

During the argument on the case before me, the Attorney-General claimed that this was direct taxation, and a direct tax within the Province, to raise revenue for Provincial purposes, and, therefore, *intra vires*; but the question is not one of name but of fact. Does it interfere with trade or commerce? Can it be legally imposed on foreigners as foreigners, for even a legal tax in other respects becomes illegal when it goes beyond its proper limits, and interferes with powers exclusively given to the Dominion for the benefit of all?

In another California case, *In re Tiburcio Parrott*, it is laid down that if the apparent object of a statute is under a pretense of the exercise of constitutional powers to drive Chinese away, the end sought to be obtained being unlawful, the statute is void.

In *Russell v. Reg.* it is decided that the true nature and character of legislation must be determined in order to ascertain its legality.