

cipal and other by-laws as other inhabitants of British Columbia, and such discriminations in so doing as are allowed in local legislatures between and among different persons and occupations among the whites are quite as applicable to them. These are the only discriminations which the law allows, and these are the permissible discriminations spoken of by Cooley in the portions cited before the Court. During the argument the case of *Lin Sing v. Washburn*, 20 California Reports, 534, was quoted as bearing on this case. There, the California Legislature passed an Act imposing a capitation tax "on each person, male and female, of the Mongolian race of the age of 18 years and upwards residing in the State," accompanying a license almost a *fac simile* of our own, and enforced in much the same way as in the case before us. That, after long and elaborate argument in which the Attorney-General appeared for the State, was determined to be unconstitutional, as it was an interference with trade and commerce, which could be regulated alone by the general government. It was in vain advanced that at least the State had concurrent jurisdiction in matters of taxation relative to its own internal affairs, of which this was one (the same proposition as was advanced by the Attorney-General in this case) in which it had a supreme and autonomous right to legislate. And the grounds of this decision were that the federal constitution had vested in the general government the power to regulate commerce in all its branches (as with us in the Dominion); and this power extends to every species of commercial intercourse, and may be exercised upon persons as well as property (Mr. Justice Field, whose arguments have been reproduced by the Attorney-General before me in this case, dissenting).

That commerce cannot be carried on without the agency of persons, and the tax, the effect of which is to diminish personal intercourse, is a tax on commerce. If the power to impose such a tax is acknowledged, it being a sovereign power, no limitation can be affixed to its exercise, and it may be so used as not only to diminish but destroy commerce.

The power asserted in the Act in question (the California Act) viz., the right of the State to prescribe the terms upon which the Chinese shall be permitted to reside in it, may be so used as to cut off all intercourse between them and the people of the State, and defeat the commercial policy of the nation.

That the Act could not be maintained as a police regulation; that branch of the police power had been surrendered to the Federal Government as a part of the power to regulate commerce, and its exercise by a State was incompatible with the authority of the Government.

That the Chinese might be taxed as other residents, but could not be set apart as special objects of the taxation, and be compelled to contribute to the revenue of the State in the character of foreigners.

The reports of the higher California courts are of great authority