

The Failure of the Li-ch'uan Hong: Litigation as a Hazard of Nineteenth Century Foreign Trade

FREDERIC D. GRANT, JR.

MERCANTILE activity involves risk. For both Chinese and Western merchants engaged in foreign trade in the nineteenth century, the risk was quite high. Some sources of this risk are familiar: bad weather, shipwreck, piracy, ill health, unexpected drop in price, insolvency or the failure to pay, or being taken as a prize by a war ship. To the extent that foreign trade in the nineteenth century meant great gain, a gain not always enjoyed, the extraordinary risk involved may have justified the gain.¹ A less familiar element of risk was the modern peril of litigation. For the Li-ch'uan hong, which extended enormous amounts of credit to American merchants in the first decade of the nineteenth century, litigation in the distant United States meant the loss of much of its capital, and the destruction of the formerly flourishing business of the hong merchant Consequa.

THE LI-CH'UAN HONG

Consequa [Pan Zhangyao (P'an Chang-yao), 3 December 1759-5 August 1823], a relative of the great hong merchant Puankequa, had established himself in trade at Canton by at least the year 1794, at about the age of thirty-five.² The exact date is not clear, but it is apparent

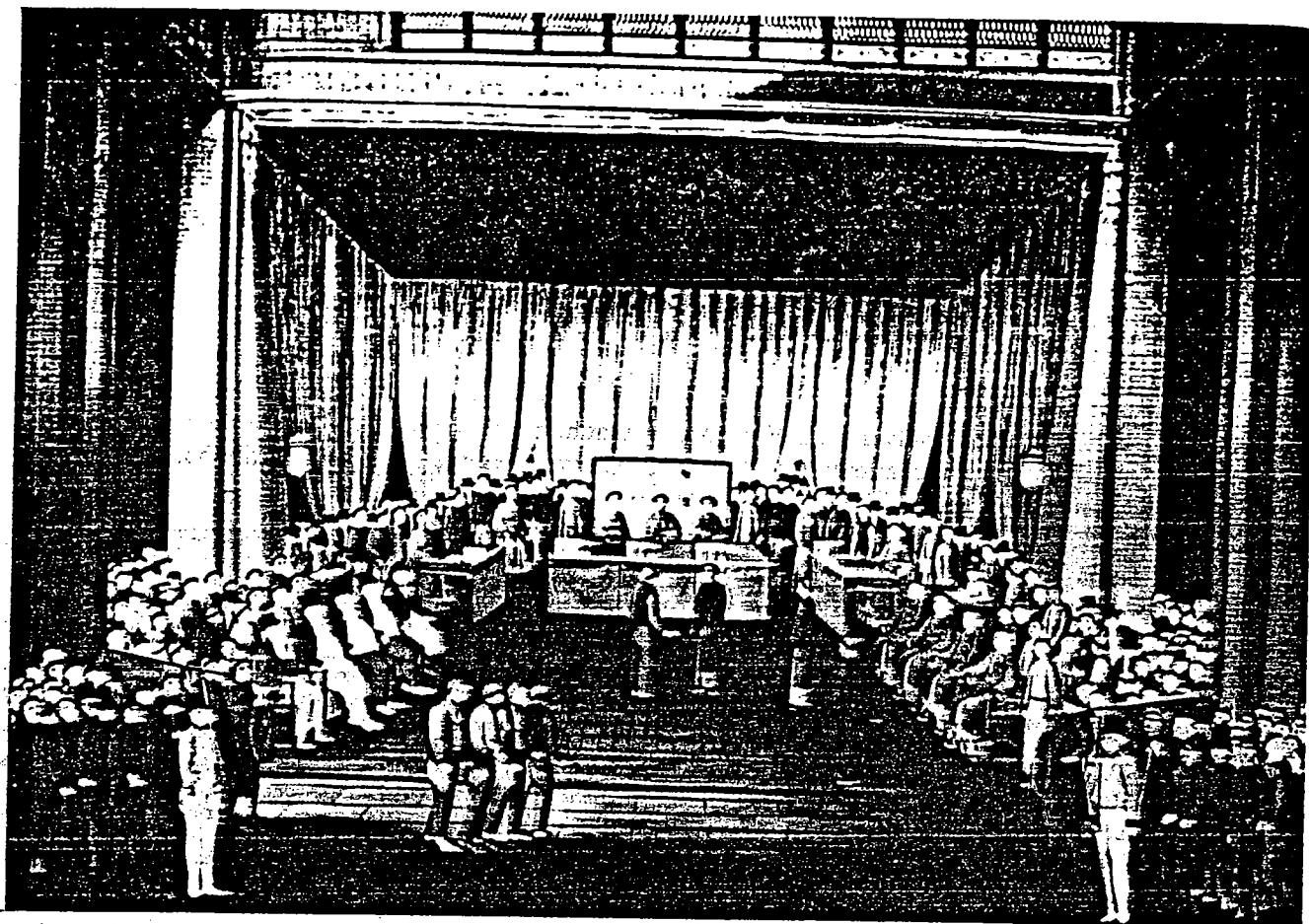
1. Allusion is made to a punning nickname based on the initials of the great New York firm of N. L. & G. Griswold. "No Loss and Great Gain." Richard C. McKay, *South Street: A Maritime History of New York* (New York: G. P. Putnam's Sons, 1934), p. 94. In contrast, this paper includes numerous examples of losses incurred by Americans engaged in trade with China. The suggestion has been made that as much money was lost as was made by Americans engaged in trade with China in the nineteenth century. See Tyler Dennett, *Americans in Eastern Asia* (1922; rpt. New York: Barnes & Noble, 1941), p. 74 ("It is obvious that American commercial relations with China were valued not so much because of their present returns as for their future possibilities.").

2. Pan Zhangyao engaged in business under the trading name of Consequa, which was sometimes written as "Conseequa." Deposition of Consequa, 24 February 1807, in *Girard v. Biddle*, an action com-

that he operated initially as one of the outside shopmen who violated the monopoly of the hong merchants.³

menced in the Court of Common Pleas for Philadelphia County, Pennsylvania, in September Term 1806, Stephen Girard Papers, Estate of Stephen Girard, deceased, microfilm copies on deposit with the American Philosophical Society, Philadelphia, Pennsylvania, Reel 439 (Consequa's age is "forty eight years and upwards."). Felix Renouard de Sainte-Croix, *Voyage Commercial et Politique aux Indes Orientales* (Paris: Archives du Droit Français, 1810), Vol. III, p. 155, 161 (Consequa was born on December 3). Hosea B. Morse, *The Chronicles of the East India Company Trading to China, 1635-1834* (1926; rpt. Taipei: Ch'eng-wen, 1966), Vol. II, p. 261, Vol. IV, p. 73 (Consequa died on 5 August 1823). In Lo-shu Fu, *A Documentary Chronicle of Sino-Western Relations* (Tucson: University of Arizona Press, 1966), pp. 391, 610, Pan Zhangyao's trading name is inaccurately reformed as "Ponseequa," i.e., P'an (surname) + Conseequa (trading name). This cannot stand in the face of the use by P'an Chang-yao of "Consequa" as his trading name. See, for example, the signature on the Chinese text of the Petition of Conseequa, a Hong Merchant of the City of Canton in China, Canton, 10 February 1814, in *Despatches from 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 (hereafter "Canton Consular Letters"); on the letter from Consequa to Peter Dobell dated Canton 3 April 1813, Breck Family Papers, Library Company of Philadelphia, on deposit with the Historical Society of Pennsylvania, Philadelphia, Pennsylvania; and on a receipt included in the Edward Carrington Papers in the Rhode Island Historical Society, Providence, Rhode Island (see Appendix, "An Incomplete Tabulation of Consequa's Loans to Americans and Debt to the British East India Company," note 6).

3. From documentary evidence, it is clear that Consequa was in business no later than 1794. See Appendix. However, in his deposition given in February 1807 in the case *Girard v. Biddle*, Consequa states that he has resided in Canton for eleven years. Deposition of Consequa, 24 February 1807, in *Girard v. Biddle*, an action commenced in the Court of Common Pleas for Philadelphia County, Pennsylvania, in September Term 1806, Stephen Girard Papers, Estate of Stephen Girard, deceased, microfilm copies on deposit with the American Philosophical Society, Reel 439. The case for an earlier date is supported by Bryant P. Tilden's account of a visit to Consequa's "splendid residence" on the Canton side of the river, in which he described numerous French decorative objects "which though now out of date as to fashion, having been presented to him by French officers of some distinction in the happier days of Louis the 16th—say—thirty odd years ago; he values them very highly." Bryant P. Tilden's journal, "Ship Canton 1st Voyage to China, 1815-1816," pp. 75-76, Peabody Museum, Salem, Massachusetts. The hong merchants were a group of private traders at Canton, China, nomi-



In a painting of the famous criminal trial of the *Neptune* sailors held at Canton on April 9, 1807, Consequa appears on the right side, closest to the defendants, as one of four seated hong merchant observers. This painting, possibly by Spoilum, may be the only surviving identified portrait of Consequa. (Reproduced by courtesy of the Peabody Museum of Salem.)

These business operations might either have been on his own, or possibly in cooperation with and under the cover of Puankequa's Tung-wen hong.

In late 1796, Consequa's "extensive business with Europeans," notably the British East India Company, "& his reputed wealth . . . attracted the notice of Government." He was arrested in December for trading without a hong chop, subjected to a heavy fine, and was obliged to assume hong status, with its attendant responsibilities, taxes, and additional exactions.⁴ The new Li-ch'uan hong engaged in business with the British

nally thirteen in number, licensed by the government to conduct all of the seaborne foreign trade of China. See Ann B. White, "The Hong Merchants of Canton," Unpub. Diss., History, University of Pennsylvania, 1967.

4. Morse, *Chronicles*, Vol. II, p. 283.

East India Company on a large scale.⁵ The size of Consequa's American business is not so easily measured, but surviving records (primarily of transactions that resulted in disputes) establish a large American trade.

Consequa spoke French well, "having learned it when young from officers of French ships which came to Canton in former years much more frequently than they do now."⁶ His English, the pidgin or business English of the Canton trade, was less polished.⁷ Consequa com-

5. Morse, *Chronicles*, Vol. II, pp. 282, 297, 317, 348, 391, 419, Vol. III, pp. 60, 105, 159, 191, 207, 244, 313, 350, and 371.

6. Journals of Bryant P. Tilden 1815-1829, p. 93, Peabody Museum, Salem, Mass.

7. Letter, Consequa (Canton) to Peter Dobell, 3 April 1813, Breck Family Papers, Library Company of Philadelphia, on deposit with the Historical Society of Pennsylvania.

plained that he had "too much plenty piece daughters." He had at least one son.⁸

Foreign merchant estimation of Consequa was mixed. The French thought highly of Consequa, and his Canton residence was decorated with many gifts presented by French officers.⁹ Felix Renouard de Sainte-Croix described "Consequois" in November 1807, "c'est un des meilleurs."¹⁰ The American view was more guarded. An agent of Thomas Handasyd Perkins of Boston described him as "very lavish of promises, very shuffling but rich and doing much business. Very liberal credit."¹¹ The Salem merchant Thomas W. Ward, writing in 1809 as Consequa's business crumbled, was more blunt. "Rich—roguish—insinuating—polite—sends some excellent cargoes—some bad Cargoes—not attentive enough to business and a man with whom you cannot talk with safety, as he will promise everything & perform what he pleases—not to be seen always."¹² Sullivan Dorr reported to Captain Amasa Delano on his frustrations obtaining tea in January 1803. "I have call'd and sent to Conseequa twenty times nearly with his acceptance for 40 Chests Sou-chong Tea not being able to procure the same I have left the Acceptance with William F. Megee Esqr. who will if the tea is obtaind ship the same to your address."¹³ Nevertheless, if for no better reason than the freedom with which he was willing to provide credit, Consequa continued to do a great deal of business with Americans, and some Americans thought well of him. Consequa was friendly with Americans including Benjamin Chew Wilcocks, the Philadelphia merchant who was United States Consul at Canton from 1812 through the early

1820's, who expressed a high opinion of Consequa.¹⁴

The first quarter of the nineteenth century was a period of particularly high risk and reward for merchants engaged in foreign trade. Added risk came from years of Napoleonic Wars, of American Embargo, and the War of 1812. The blossoming of international commerce that followed this cycle of war folded into depression in 1819, which greatly reduced the volume of the renewed American trade. Revolts in Spanish America from 1809 to 1821 disrupted the flow of specie to Canton upon which the trade had so long depended.¹⁵

These strains made the weak position of the monopoly merchants of Canton still more difficult. Except for a few strong firms, whose owners were frustrated in their desire to retire from the trade, the consistent pattern of the hong merchants was one of financial insecurity. While they were officially limited in number to thirteen, the hong merchants were rarely in full strength at that number, and the size of the body was regularly reduced by bankruptcies. New merchants would be invited and not infrequently forced to join the monopoly in turn. Regular problems of the hong merchants included inadequate business capital, excessive debt, heavy taxes, and "squeeze"—official exactions for public emergencies, special projects, birthdays, and other worthy causes. While they were commanded not to borrow from foreign merchants, certain hong merchants found such loans impossible to avoid. With cash needed for advance purchases of teas, expenses of a going business, and duty and other payments to the officials at Canton, hong merchants sought money where it could be found.¹⁶ The British East India Company and other foreign creditors, desiring both the continuation of the trade and the maintenance of positions of advantage in it, often found it in their interest to meet requests for credit.

8. Journals of Bryant P. Tilden 1815-1829, p. 95, Peabody Museum, Salem, Mass.; Morse, *Chronicles*, Vol. IV, p. 74; *Consequa v. Fanning*, 3 Johns. Ch. 587, 607 (N.Y. 1818). Consequa's feeling for his son impressed Chancellor Kent, who wrote, "His letters which have been read, so far from affording ground for crimination, may rather be cited as proofs of a frank and manly character. We have seen, in the case of his son, that he evidently cherishes tender feeling."

9. See Bryant P. Tilden's journal, "Ship Canton 1st Voyage to China, 1815-1816," pp. 75-76, Peabody Museum, Salem, Mass.

10. Renouard de Sainte-Croix, *Voyage*, Vol. III, p. 100.

11. Carl Seaburg and Stanley Paterson, *Merchant Prince of Boston: Colonel T. H. Perkins, 1764-1854* (Cambridge, Mass.: Harvard University Press, 1971), p. 101.

12. Thomas W. Ward, "Remarks on the Canton Trade and the Manner of Transacting Business," *Essex Institute Historical Collections* 73 (1937), pp. 303, 307.

13. Letter, Sullivan Dorr (Canton) to Amasa Delano, 17 January 1803, reprinted in Howard Corning, ed., "Letters of Sullivan Dorr," *Proceedings of the Massachusetts Historical Society* 67 (1941-1944), pp. 178, 361.

14. Deposition of Benjamin Chew Wilcocks, Philadelphia 5 December 1810, in *Consequa v. Joshua and Thomas Gilpin*, October term 1809, No. 9, Records of the Circuit Court of the United States for the District of Pennsylvania, Federal Archives and Records Center, Philadelphia (hereafter "Records of the Circuit Court for the District of Pennsylvania").

15. John D. Forbes, "European Wars and Boston Trade, 1783-1815," *New England Quarterly* 11 (1938), p. 709; Herbert J. Wood, "England, China, and the Napoleonic Wars," *Pacific Historical Review* 9 (1940), p. 139; Charles C. Stelle, "American Trade in Opium to China, Prior to 1820," *Pacific Historical Review* 9 (1940), pp. 425, 443; W. E. Cheong, "The Beginnings of Credit Finance on the China Coast: The Canton Financial Crisis of 1812-1815," *Business History* (Liverpool) 13 (1971), p. 87.

16. See W. E. Cheong, "Trade and Finance in China: 1784-1834: A Reappraisal," *Business History* (Liverpool) 7 (1965), pp. 36-37.

Hong bankruptcies invariably involved foreign merchant creditors.

The scale of Consequa's credit engagements with foreign traders, in the face of a shortage of cash at Canton,¹⁷ led to financial problems. Traders at Canton sought top quality "first chop" teas, but such better grade teas were generally traded on a cash basis. Complaints about the quality of teas furnished on credit were common, and in turn provided an excuse not to pay the notes given for teas provided. Sullivan Dorr spoke of the British East India Company rejecting teas supplied by Consequa in 1798, describing Consequa as "a good adept at mixing teas."¹⁸ Stephen Girard, one of the greatest of the Philadelphia merchants engaged in foreign trade by sea, described the problems involved in credit purchases of tea.

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 payable at 2 or 3 years, consequently the difference in price will apparently be in his favor but in quality it will perhaps prove to be sum fifty to 60 Per cent worse than the tea purchased by the Chinese merchant of good repute.¹⁹

As one of the few hong merchants who provided credit to foreigners, Consequa experienced difficulties in his credit transactions with Americans from an early date. Captain Joseph Ingraham's note to Consequa, made in 1793 on behalf of Thomas H. Perkins and other Boston merchants, was in default in the amount of \$43,821 by May 1795. In his report of this default, and of his efforts to pay debts incurred by the late Captain Kendrick, John Howel stated that it was "absolutely necessary some steps should be taken to retrieve the character [i.e., reputation] of the Americans here. Such villanies have been practised as have sickened the Chinese from having any dealing with them on that liberal scale they would otherwise adopt."²⁰ Some five

17. See W. E. Cheong, "The Beginnings of Credit Finance on the China Coast: The Canton Financial Crisis of 1812-1815," *Business History* (Liverpool) 13 (1971), pp. 87, 95-96.

18. Letter, Sullivan Dorr (Canton) to Ebenezer Dorr, 10 September 1799, reprinted in Howard Corning, ed., "Letters of Sullivan Dorr," *Proceedings of the Massachusetts Historical Society* 67 (1941-1944), pp. 178, 180.

19. Letter, Stephen Girard (Philadelphia) to Edward George and Samuel Nichols, 3 January 1810, Letter 428, Letterbook 11, Stephen Girard Papers, Estate of Stephen Girard, deceased, microfilm copies on deposit with the American Philosophical Society.

20. Letter, John Howel (Canton) to Joseph Barrell and others, 11 May 1795, reprinted in Frederic W. Howay, ed., *Voyages of the "Colum-*

years later Sullivan Dorr warned his father, "Consequa holds Jo. Ingraham's note. Warn your Captains of putting themselves in his power."²¹

In both 1800 and 1801 Consequa made at least thirty thousand dollars in loans to Americans.²² Both years were remarked as unusual for the amounts of underweight and bad quality teas at market,²³ and 1800 saw Consequa fined as the security merchant for a British vessel that had been caught smuggling. A 50,000 tael (\$69,400)²⁴ fine assessed by order from Peking made it impossible for Consequa to meet at least one commitment in 1801.²⁵ No records survive of loans made by Consequa in 1802, and there is some indication that Consequa was under financial pressure in that year. Sullivan Dorr wrote in February 1802 that the ship *Active* "still remains here in consequence of some difficulty with Consequa the Hong Merchant who in every respect has behaved like a Scoundrel. The *Active* is the fourth Ship that has experienced a long detention from him."²⁶ Consequa made a \$20,000 loan in 1803, and over \$12,000 in loans to Americans in 1804.²⁷

EFFORTS TO COLLECT FROM AMERICAN DEBTORS

As his credit transactions grew more extensive, Consequa enlisted the aid of merchants to collect debts in the United States. The greatest number of his debtors were in Philadelphia, but Consequa also collected debts in New York and elsewhere through John Jacob Astor and in Boston through an attorney named Sullivan.

bia to the Northwest Coast, Massachusetts Historical Society, *Collections*, 79 (Boston: Massachusetts Historical Society, 1941), pp. 489, 490; Seaburg and Paterson, *Merchant Prince*, pp. 100-101.

21. Letter, Sullivan Dorr (Canton) to Joseph Dorr and John Dorr, 9 November 1800, in Corning, "Letters," pp. 178, 231.

22. These are minimum totals calculated on the basis of surviving records located by the writer, many of which are in court files. See Appendix, "An Incomplete Tabulation of Consequa's Loans to Americans and Debt to the British East India Company."

23. Morse, *Chronicles*, Vol. II, pp. 401-403, 417.

24. During the period covered by this article, the Spanish dollar (which traded as the silver equivalent of an American dollar) was treated in the accounts of the British East India Company as equivalent to taels 0.72. A tael therefore traded for 1.388 dollars. Morse, *Chronicles* (table of "Conventional Equivalents" at the front of each volume); Frank H. H. King, *Money and Monetary Policy in China 1845-1895* (Cambridge: Harvard University Press, 1965), p. 82. For a discussion of the complex and evolving relationship of the tael and the Spanish dollar, see King, pp. 69-90.

25. Morse, *Chronicles*, Vol. II, pp. 354, 365.

26. Letter, Sullivan Dorr (Canton) to Joseph Dorr and John Dorr, 28 February 1802, in Corning, "Letters," pp. 178, 306.

27. See Appendix.

Sullivan.²⁸ Explanation for the concentration in Philadelphia lies in that city's great importance as a mercantile center,²⁹ and perhaps also in the individual venture character of the China trade from Philadelphia, which tended toward one or two voyages generally, rather than continuing trade relationships over many years.

Merchants who assisted Consequa in Philadelphia included Peter Dobell, who advised Consequa initially in Canton, and later aided in collections at home.³⁰ Consequa's collection work in Philadelphia was also handled by George Emlen, whose Account Current for Consequa for the period 1805 to 1808 survives. Emlen records collections from April 1805, and various disbursements including the fees of the lawyer Charles Willing Hare.³¹ In 1808 Consequa shifted his local collection work to Benjamin Chew Wilcocks. Emlen then held Consequa's power of attorney, which Wilcocks had witnessed when it was prepared at Canton, and under which John Jacob Astor of New York acted through a substitution. Astor indicated that he wished to substitute Wilcocks for himself in turn, "but counsel at New York were of opinion that Mr. Astor could not substitute," and Emlen would not make the substitution. In this year three merchants attached one half million dollars' value of Consequa's Philadelphia notes receivable through the Court of Common Pleas for Philadelphia County. Astor and Wilcocks retained three of the greatest Philadelphia lawyers of the era to defend the action, which continued until May, 1809.³² Emlen did no more collection work for Consequa.

28. Deposition of Benjamin Chew Wilcocks, Philadelphia, 5 December 1810, in Consequa v. Joshua and Thomas Gilpin, October term 1809, No. 9, Records of the Circuit Court for the District of Pennsylvania; Consequa v. Roger Smith, April term 1820, No. 6 (promissory note endorsed to John Jacob Astor), Records of the Circuit Court for the District of Pennsylvania; Entry dated September 1805 in Consequa's Account Current with George Emlen, Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania.

29. Jonathan Goldstein, *Philadelphia and the China Trade 1682-1846* (University Park: Pennsylvania State University Press, 1978), p. 67.

30. Letter, Edward Carrington (Canton) to William F. Megee, 25 November 1804, China Letterbook B, Edward Carrington Papers, Rhode Island Historical Society, Providence, Rhode Island; Letter, Consequa (Canton) to Peter Dobell, 3 April 1813, Breck Family Papers, Library Company of Philadelphia, on deposit with the Historical Society of Pennsylvania.

31. Consequa's Account Current with George Emlen, Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania.

32. Deposition of Benjamin C. Wilcocks, Philadelphia, 5 December 1810, and Declaration (Complaint) in Consequa v. Joshua and Thomas Gilpin, October term 1809, No. 9, Records of the Circuit Court for the District of Pennsylvania (the lawyers were Alexander Dallas, Jared Ingersoll, and Charles Jared Ingersoll).

Consequa's adventures in the American courts began in the April 1804 term of the Circuit Court of the United States for the Eastern District of Pennsylvania. Making plain their intention to collect debts from reluctant Americans, Consequa and two other merchants, Eshing and Youqua, filed individual actions in this federal trial court seeking to collect on several notes made at Canton in 1801 by the firm of Morris, Greeves & Mifflin. Pleadings filed in these actions by the hong merchants' lawyer, John Hallowell, made use of a jurisdictional fiction which placed the City of Canton in Philadelphia, reciting agreements made "at Canton, to wit, at Philadelphia in the District aforesaid."³³ This fiction was used, without recorded challenge, in every American action brought by or against a hong merchant. Consequa sued on a note for \$25,000, and the conclusion of the suit was a bad omen. Two of the defendants (not Morris) entered a plea in April 1805 "that they are certified Bankrupts, and that the cause of action accrued before their Bankruptcy."³⁴

By the year 1805 Consequa appears to have recovered from earlier exactions and to be standing at the peak of his commercial powers. There are records of some \$43,680.89 in new loans to Americans in this year,³⁵ and Emlen's lawyer, Charles Willing Hare, commenced three new actions in federal court in Philadelphia.³⁶ Each of these actions, brought on small notes made at Canton in late 1800 and early 1801, was concluded suc-

33. Initiated in the case of *Mostyn v. Fabrigas*, Cowper 161, 98 Eng. Rep. 1021 (1774) (Lord Mansfield, J.), which considered the Island of Minorca part of the City of London, in the parish of Saint Mary Le Bow in the Ward of Cheap, this legal fiction served to make Canton, China part of the City of Philadelphia, for the purpose of establishing jurisdiction in actions involving the commercial activities of Chinese merchants. See Alan Harding, *A Social History of English Law* (Gloucester, Mass.: Peter Smith, 1973), pp. 308-309; William Blackstone, *Commentaries on the Laws of England* (1765-1769; rpt. Chicago: University of Chicago Press, 1979), Vol. III, p. 107 ("This [fiction] the citizens exclaim against loudly, as inequitable and absurd; and Sir Thomas Ridley hath very gravely proved it to be impossible . . . But our lawyers justify this fiction, by alleging before, that the locality of such contracts is not at all essential to the merits of them: and that learned civilian himself seems to have forgotten how such fictions are adopted and encouraged in the Roman law."); Robert W. Millar, *Civil Procedure of the Trial Court in Historical Perspective* (New York: The Law Center of New York University, 1952), p. 7 ("Few would question . . . the real value for the time and place . . ." of this fiction).

34. Consequa v. Morris, April term 1804, No. 37; Eshing v. Morris, April term 1804, No. 38; Youqua v. Morris, April term 1804, No. 39, Records of the Circuit Court for the District of Pennsylvania.

35. See Appendix.

36. Consequa v. Edward Yard, April term 1805, No. 46; Consequa v. Hilary Baker, April term 1805, No. 47; Consequa v. Thomas Wiles, October term 1805, No. 60, Records of the Circuit Court for the District of Pennsylvania.



Benjamin Chew Wilcocks, third United States consul at Canton and a friend of Consequa, assisted the hong merchant in his efforts to collect amounts due from his American debtors. Portrait by George Chinnery. (Reproduced by courtesy of The Hongkong and Shanghai Banking Corporation.)

cessfully.³⁷ In November 1805 Consequa told William Read, a supercargo (ship's commercial officer) for the Philadelphia firm of Willings & Francis, that he was willing to make loans of from \$100,000 to \$150,000.³⁸ In the following months Consequa made one of the few clearly recorded purchases of opium by a hong mer-

37. Reflected in payments in 1807 carried in Consequa's Account Current with George Emlen. Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania.

38. Letter, William Read (Canton) to Willings & Francis, 9, 27 November 1805, Willings & Francis Papers, 1805 folder, Historical Society of Pennsylvania.

chant, nine boxes for the price of \$11,972 from Willings & Francis' ship *Bingham*.³⁹ In the year 1806 Consequa made new loans and consignments of not less than \$138,976.56,⁴⁰ and his Account Current with George Emlen shows almost \$40,000 in payments on earlier notes for which no other records have been found.⁴¹ This prosperity continued into the year 1807, the year in which Consequa was described by a French writer as one of the "better" hong merchants,⁴² when he made over \$50,000 in recorded new notes and consignments.⁴³

EMBARGO AND ATTACHMENT THREATEN THE LI-CH'UAN HONG

Consequa's decline dates from late 1807. He was growing cross with the delays of his American debtors, and decided to hand overdue notes to his friend Benjamin C. Wilcocks at Canton, to bring them to America and see that they were collected. The Rhode Island merchant Edward Carrington, later United States Consul at Canton, described Consequa's resolve in a letter to Samuel Snow, one of Consequa's debtors, at Providence. Carrington had explained Snow's situation to the hong merchant, 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 Ama. 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 oppy. to Messrs. R. H. Wilcocks & B. C. Wilcocks at Phila for Collections. Consequa is very much out with the Ama. in consequence of heavy claims that have been urged against him for

39. Account of sales of opium from the Ship *Bingham* dated Canton 28 December 1805, Willings & Francis Papers, 1805 folder, Historical Society of Pennsylvania, reproduced in Jonathan Goldstein, "Resources on Early Sino-American Relations in Philadelphia's Stephen Girard Collection and the Historical Society of Pennsylvania," *Ch'ing-shih wen-t'i* 4 (1980), pp. 114, 121. Consequa's friend Gregory Baboom attended the sale on behalf of the hong merchant, and received an allowance on the sale for four boxes which he found "to be of a very inferior Quality." Statement of Gregory Baboom, dated 28 December 1805, Willings & Francis Papers, 1805 folder, Historical Society of Pennsylvania.

40. See Appendix.

41. Consequa's Account Current with George Emlen, Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania.

42. Renouard de Sainte-Croix, *Voyage*, Vol. III, 100.

43. See Appendix.

Goods furnished to them—he has become the most obstinate, pernicious Mercht. of the Hong, & it is almost impossible to move him when he takes a stand. I have been this particular part you should think I had not attended to your requests.⁴⁴

Wilcocks either travelled with or followed the notes to Philadelphia, where he “made application to” several debtors who provided him with \$9,000 for Consequa. These funds, with other monies due to Consequa, were then sent to Canton, but Wilcocks believed that a “great part thereof was prevented by capture from getting into Consequa’s hands.” He turned over unpaid notes to the lawyer Charles Jared Ingersoll. Wilcocks later received more notes and a power of attorney from Consequa. Finding that the makers of these notes had no money, he turned the notes over to Ingersoll.⁴⁵

The year 1808 brought two large frustrations for Consequa’s efforts to recover his money. On 22 December 1807 President Jefferson signed the Embargo Act, which was to hold American shipping in port until March 1809. Equally frustrating was the legal response by Consequa’s debtors to his collection initiative. Edward Dunant and Joshua and Thomas Gilpin, who had claims against Consequa arising from poor quality teas furnished to them in 1805, caught wind of the hong merchant’s new collection effort and immediately acted to hold Consequa’s assets in Philadelphia. They brought two actions in the Court of Common Pleas for the First District of Pennsylvania, in Philadelphia, founded on claims of \$20,000 and \$30,000 respectively, and secured a writ of foreign attachment. On 2 April 1808 the Sheriff proceeded to attach and did attach “all the goods chattels rights and credits of the said Consequa” in the hands of twenty merchants, with property in the hands of a twenty-first merchant being reached two days later. The value of that attachment was a half million dollars, ten times the amount of damages claimed in the Common Pleas actions. This figure is important historically both as a statement of the great size of hong merchant credits in one city, and as a certain indication that Con-

44. Letter, Edward Carrington (Canton) to Samuel Snow, 19 January 1808, China Letterbook F, Edward Carrington Papers, Rhode Island Historical Society. In contrast, the hong merchant Mouqua agreed to hold Snow’s notes until the next season. See Jacques M. Downs, “A Study in Failure—Hon. Samuel Snow,” *Rhode Island History* 25 (1966), pp. 1, 5. As Snow’s firm, Munro, Snow & Munro, had failed over a month before Carrington wrote Snow, it is unlikely that either Consequa or Mouqua were ever repaid in full.

45. Deposition of Benjamin C. Wilcocks in *Consequa v. Joshua and Thomas Gilpin*, October term 1809, No. 9, Records of the Circuit Court for the District of Pennsylvania.

sequa’s outstanding loans were far greater than indicated by surviving records. The attachment, which prevented the merchants from paying, and Consequa’s agents from collecting, any of the amounts due, was maintained until 22 May 1809.⁴⁶

Between attachment and embargo, Consequa’s business found itself under severe strain. While there are records of a \$50,000 consignment and of a loan of almost \$40,000 in 1809,⁴⁷ Consequa’s debt to the British East India Company that year reached the staggering total of 670,769 taels (\$931,027.37).⁴⁸ Legal threats during the attachment period took their toll. Edward Gray, a merchant who had been subject to the attachment both individually and in the name of his business partnership, and paid his debt to Consequa, wrote to the hong merchant Chunqua in March. “Consequa will have no more business with this place. You and Houqua will do all.”⁴⁹

After the attachment was lifted in May 1809, Wilcocks tried to collect as many of the debts as he could and send the funds to Canton. Charles Jared Ingersoll commenced nine actions for Consequa in federal court in Philadelphia in the October term of 1809.⁵⁰ Three suits were filed against Consequa in the same term.⁵¹ Wilcocks received more notes from Consequa, and on failure to collect these he turned them over to Ingersoll, who initiated a second round of still less successful collection actions in 1810 and 1811.⁵²

46. Declarations (complaints) in *Consequa v. Joshua and Thomas Gilpin*, October term 1809, No. 9, and *Consequa v. Edward Dunant*, October term 1809, No. 33, Records of the Circuit Court for the District of Pennsylvania. The declarations specifically list the merchants summoned as garnishees by the sheriff, but offer little detail of the underlying common pleas action. The records of the Philadelphia Court of Common Pleas for this period, which should be in the Office of the Prothonotary, Philadelphia, do not appear to have survived.

47. See Appendix.

48. Morse, *Chronicles*, Vol. III, p. 100. Morse does not indicate Consequa’s debt in the years before 1809.

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

50. *Consequa v. Joshua and Thomas Gilpin*, No. 9; *Consequa v. John Meany*, No. 11; *Consequa v. Caleb Ash*, No. 26; *Consequa v. Henry Toland, Jr.*, No. 27; *Consequa v. Ash & Toland*, No. 28; *Consequa v. Edward Dunant*, No. 33; *Consequa et al. v. Benjamin Wilcocks et al.*, No. 38; *Consequa v. Willings & Francis*, Nos. 49 & 50; *Consequa v. Ralph Peters*, No. 71, October term 1809, Records of the Circuit Court for the District of Pennsylvania.

51. *Redwood Fisher v. Consequa*, No. 30; *Joshua and Thomas Gilpin v. Consequa*, No. 31; *Edward Dunant v. Consequa*, No. 32, October term 1809, Records of the Circuit Court for the District of Pennsylvania.

52. *Consequa v. Francis Pasquier*, No. 10; *Consequa v. Robert Bridges*, No. 33; *Consequa v. George Howell*, No. 52, October term

CLAIMS UNDERLYING THE PHILADELPHIA ATTACHMENT

Remarkable among the actions filed in 1809 were suits against Dunant and the Gilpins for damages arising from the attachment, and suits brought to recover the damages that had initially occasioned the attachment. Consequa's declarations in his suits recite the fact of the sweeping attachment, the only surviving account due to the loss of the records of the Court of Common Pleas and lack of newspaper coverage, as it had been "maintained and continued falsely, maliciously and without cause" for over thirteen months. In each action, Consequa sought \$100,000 in damages plus \$50,000 in lost interest.⁵³

The actions which Dunant and the Gilpins pressed in turn against Consequa were all founded on claims for poor quality teas furnished in late 1805.⁵⁴ The merchants had invested in a cargo of about \$80,000 in specie and \$14,000 in ginseng on the *Pennsylvania Packet*, which reached Canton late in the season of 1805 with two supercargoes, Redwood Fisher and James Read, Jr., who had never been to China before. The ship was secured by Consequa, and agreements were made with him to supply the ship with a cargo of top quality teas, intended for the Amsterdam auction market via Philadelphia. Benjamin C. Wilcocks, who was then at Canton, stated in his deposition that

The *Pennsylvania Packet* arrived late in the season after most of the regular ships had sailed. There were teas of very bad quality at market that year, and most of the good teas had been bought up and shipped away in regular season, before the *Pennsylvania Packet* arrived. Wilcocks described Redwood Fisher's abortive attempt at ginseng smuggling, "without as deponent believes the consent or participation of James Read Junior the other Supercargo." Fisher's agents were caught by the authorities. Consequa could have settled the matter for a small fine, probably a few hundred dollars, if Fisher would only have admitted his involvement, but instead he "continued to deny it most positively to Consequa, during a considerable time, until the transaction became

1810; *Consequa v. John Ansley*, No. 39, October term 1811, Records of the Circuit Court for the District of Pennsylvania.

53. Declarations in *Consequa v. Joshua and Thomas Gilpin*, No. 9, and *Consequa v. Dunant*, No. 33, October term 1809, Records of the Circuit Court for the District of Pennsylvania.

54. *Joshua and Thomas Gilpin v. Consequa*, No. 31; *Edward Dunant v. Consequa*, No. 32, October term 1809, Records of the Circuit Court for the District of Pennsylvania.

so notorious that it was impossible to conceal it longer when finally Redwood Fisher confessed to it." At this time the authorities had halted the business of the ship, and Consequa "was compelled to pay the hoppon custom house, a large Sum of money according to deponent's recollection, between sixteen and eighteen thousand dollars, but deponent is not certain as to the precise sum which money was afterwards repaid by Redwood Fisher to Consequa."⁵⁵

Of these several actions, which appear to have been treated as joint cases by counsel and the court, the resolution of the suits between Dunant and Consequa is not recorded. Consequa's action against the Gilpins was discontinued at the time the Gilpin suit went to trial.⁵⁶ The jury gave the Gilpins a verdict for \$5,556, considerably less than the \$22,000 sought in the federal court action, or the \$30,000 sought in the initial Common Pleas suit. No appeal was taken.⁵⁷

CLAIMS ASSERTED BY WILLINGS & FRANCIS

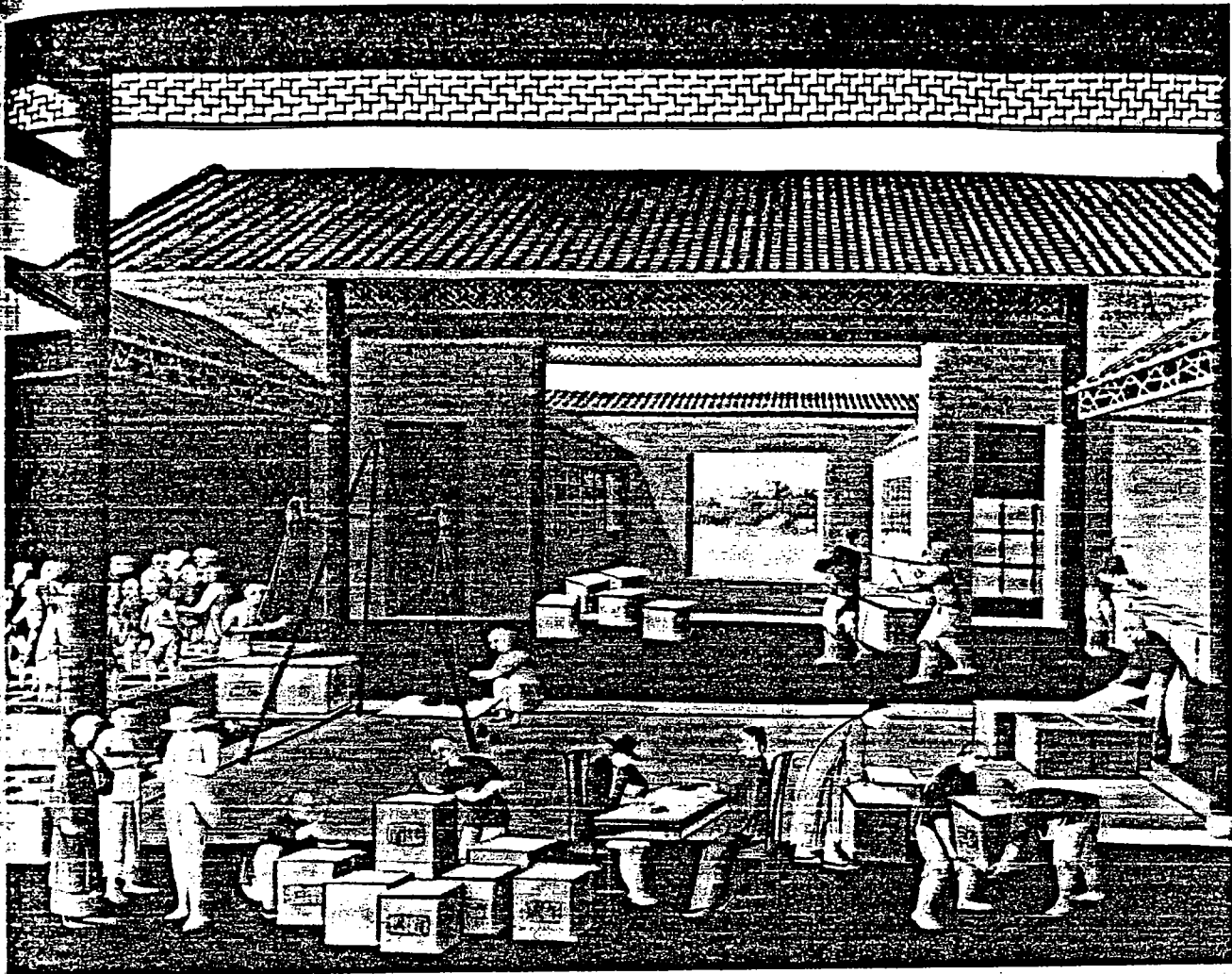
One other extended litigation grew out of Consequa's several actions brought in 1809. His suit against the firm of Willings & Francis on several notes inspired three countersuits the following year, and remained in court until 1816.⁵⁸ The disputes grew out of the alleged provision of poor quality teas, and are unusual in that two of the three voyages at issue were very poorly managed. One set of problems arose from teas furnished to the ship *Ganges*, which reached Canton after unsuccessful efforts to trade elsewhere, without sufficient funds. In a deposition by Benjamin Chew Wilcocks, who was at Canton when the *Ganges* arrived, he states that there had been a disagreement between Mr. Miller the supercargo and another officer, and that they arrived "on bad terms, and neither of them had ever been at Canton before this occasion." Wilcocks introduced Miller to Consequa as the merchant who had previously done the

55. *Gilpins v. Consequa*, 10 F. Cas. 420, 421 (C.C. D. Pa. 1813) (No. 5, 452); Deposition of Benjamin C. Wilcocks, Philadelphia, 5 December 1810, in *Consequa v. Joshua and Thomas Gilpin*, October term 1809, No. 9, Records of the Circuit Court for the District of Pennsylvania.

56. Notice of discontinuance dated 12 April 1813, in *Consequa v. Joshua and Thomas Gilpin*, October term 1809, No. 9, Records of the Circuit Court for the District of Pennsylvania.

57. *Gilpins v. Consequa*, 10 F. Cas. 420, 424 (C.C. D. Pa. 1813) (No. 5, 452).

58. *Willings & Francis v. Consequa*, No. 26; *Willings & Francis and Charles Kuhn v. Consequa*, No. 27; *Willings & Francis and Joseph Curwen v. Consequa*, No. 28, April term 1810, Records of the Circuit Court for the District of Pennsylvania.



Packing, inspection, and negotiation for the purchase of teas by Western merchants at Canton, China. Gouache on paper by an unknown Chinese artist. (Reproduced by courtesy of the Peabody Museum of Salem.)

business of Willings & Francis at Canton, and Consequa secured the *Ganges* and provided it with a cargo. Miller annoyed Consequa by rejecting quantities of tea that he recommended, "because he did not like their quality."⁵⁹ Another deponent, who arrived at Canton and secured with Consequa in 1805 while the *Ganges* was still in port, described part of the transaction.

On one occasion a very considerable quantity of black teas was spread out on the floor of the hong, in tiers, to be examined, marked and numbered for the *Ganges*—Deponent saw the

teas spread out, occupying very nearly the whole hong, so as to prevent deponent from doing any business there for two or three days—The hong or pack house is a large store, several hundred feet long and fifty or sixty feet wide, the lower floor of which was nearly all occupied by the said teas . . . And deponent heard Consequa complain that Mr. Miller after occupying the hong so long had refused to take some of the teas, which he/Consequa/recommended and had taken others in their stead of his own/Miller's/preference.⁶⁰

Wilcocks understood that not only had Miller taken a very large credit to acquire the teas, but that before the

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

60. Deposition of Charles Ross, Philadelphia, September 5, 1810, in *Consequa v. Willings & Francis*, October term 1809, No. 49, Records of the Circuit Court for the District of Pennsylvania.

Ganges sailed there had been "a disagreement between Miller and Conseequa as to the extent of the credit, which Conseequa said he did not expect would be so large."⁶¹

A second set of claims resulted from poor quality teas furnished to William Read, supercargo of the *Bingham*, in late 1805. Read wrote Willings & Francis on arrival at Canton that he had rejected Mr. Rabinel the tea examiner's two percent fee, as "far beyond what I thought the services to be rendered merited." He felt confident of an ability to make "such a selection of Teas as will render his assistance of little consequence."⁶² Read wrote again on the day the *Bingham* was to sail. "The Cargo I have no doubt will prove a good one as I have taken great pains in the choice of my teas and I have every reason to be satisfied with the conduct of the security merchant Conseequa." Read had not used Rabinel's services because he would not reduce the fee, and innocently reported that Rabinel "however 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."⁶³

Sizeable claims were presented by Willings & Francis, based on poor quality teas alleged to have been furnished to their ships, as offsets to the amounts of notes given for the teas. The Willings & Francis litigation produced three reported decisions in the federal court,⁶⁴ and concluded with a jury verdict on 6 November 1816, allowing no damages for the *Ganges*, \$46,502 in damages for the *Bingham*'s cargo, and \$13,632 damages and interest for the cargo of the *Asia*. Willings & Francis still owed Conseequa \$71,183.57.⁶⁵

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

62. Letter, William Read (Canton) to Willings & Francis, 9 November 1805, Willings & Francis Papers, folder 1805, Historical Society of Pennsylvania.

63. Letter, William Read (Canton) to Willings & Francis, 10 December 1805, Willings & Francis Papers, folder 1805, Historical Society of Pennsylvania.

64. *Willings v. Conseequa*, 30 F. Cas. 52 (C.C.D. Pa. 1815) (No. 17, 766); *Conseequa v. Willings*, 6 F. Cas. 336 (C.C.D. Pa. 1816) (No. 3, 128); *Willings v. Conseequa*, 30 F. Cas. 55 (C.C.D. Pa. 1816) (No. 17, 767).

65. *Willings & Francis v. Conseequa*, October term 1810, No. 28, Records of the Circuit Court for the District of Pennsylvania (statement of jury award dated 6 November, 1816); *Willings v. Conseequa*, 30 F. Cas. 55, 62 (C.C.D. Pa. 1816) (No. 17, 767).

CONTINUED LITIGATION AND EFFORTS OF THE HONG TO SURVIVE

After the questionable success of the round of litigation commenced in 1809, Conseequa commenced four new lawsuits in 1810 and 1811.⁶⁶ One new action was brought against him in a state court in 1811.⁶⁷ The poor results of these lawsuits were predictable. One was against Francis Pasquier, who had made a \$3,627.50 note at Canton on 8 August 1801, and one \$1,210.54 payment on 9 May 1805. In April, 1811 Pasquier confessed judgment in the amount of \$5,782.37, and by the following June had been imprisoned for debt. Pasquier successfully petitioned Judge Richard Peters for the benefit of the Act for the Relief of Persons Imprisoned for Debt, pleading lack of property, and the marshal was directed to release him from prison on 12 July 1811.⁶⁸ An action against the administrator of the estate of Robert Bridges, on his \$10,000 note made in 1804, brought a plea of no assets.⁶⁹ The result of the suit brought against George Howell on his \$3,410.50 note made on 26 November 1798 is not recorded,⁷⁰ but the age of the note alone suggests that it too was probably unsuccessful. The action brought against John Ansley on his \$1,752 note in October term 1811 brought a confession of judgment in the amount of \$2,430.90, with a stay of execution until December, 1812.⁷¹

The slow and indifferent results of the actions commenced in 1809, and the poor results of the litigation cycle of 1810-1811, are reflected in continued hard times

66. *Conseequa v. Francis Pasquier*, No. 10; *Conseequa v. Robert Bridges*, No. 33; *Conseequa v. George Howell*, No. 52, October term 1810; *Conseequa v. John Ansley*, No. 39, October term 1811, Records of the Circuit Court for the District of Pennsylvania.

67. *Redwood v. Conseequa*, 2 Browne 62 (Pa. Dist. 1811).

68. *Conseequa v. Francis Pasquier*, October term 1810, No. 10, Records of the Circuit Court for the District of Pennsylvania; *Conseequa's Account Current with George Emlen*, Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania (entry dated 9 May 1805). Although the declaration in *Conseequa v. Pasquier* does not credit the 1805 payment, it is clearly reflected in the amount of the confession of judgment given in that action. Judge Peters had earlier declined an offer of appointment to the United States Supreme Court. Stephen B. Presser, "A Tale of Two Judges: Richard Peters, Samuel Chase, and the Broken Promise of Federalist Jurisprudence," *Northwestern University Law Review* 73 (1978), pp. 26, 100.

69. *Conseequa v. Robert Bridges*, October term 1810, No. 33, Records of the Circuit Court for the District of Pennsylvania.

70. *Conseequa v. George Howell*, October term 1810, No. 52, Records of the Circuit Court for the District of Pennsylvania.

71. *Conseequa v. John Ansley*, October term 1811, No. 39, Records of the Circuit Court for the District of Pennsylvania.

Consequa, it need hardly be said, was one of the Hong Merchants at Canton.

Canton April 3rd 1812

Dear Sir
I have the honor to acknowledge the receipt of your letter of the 21st inst. and to inform you that I have forwarded it to the proper authorities for their consideration. I am sorry to hear that you are in want of money, and I am sure that the British East India Company will do every thing in its power to assist you. I have also the pleasure to inform you that the ship which you ordered has been ordered to sail on the 15th inst. and I hope that you will be able to get your goods on board in time. I am, Sir, very respectfully,
Your obedient servant,
Alexander Pearson

Consequa

Mr. Alexander Pearson, of the British factory, whose letter to Mr. Dobell is annexed, was Consequa's surgeon, and wrote under his dictation [see Pearson's letter]. Mr. Dobell travelled from Kankhata to the Dept. for Sierra, and published a very good account of his travels. He was well known in the city of Canton.

The second page of Consequa's vandalized letter to Peter Dobell dated April 3, 1812, with the addition by Alexander Pearson, surgeon to the factory of the British East India Company and one of Consequa's British trustees. (Reproduced from the Breck Family Papers, on deposit with the Historical Society of Pennsylvania, by permission of the Library Company of Philadelphia.)

for Consequa in Canton. While there are records of consignments and loans to Americans totalling \$71,198 in 1810 and \$35,711 in 1811,⁷² Consequa's debt to the British East India Company stood at 610,626 taels (\$847,548.88) in 1810.⁷³ In August, 1811 Peter Snow described the condition of the hong merchants 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 Chunqua are unable to pay their duties, and some of them I am told are in want even of the common necessities of life." He spoke of an outside shopman. "Old Tuckee pays me a visit about once a week—he says that China Man this time to muche hot for money—and chin

chins hard for your ship to come—I tell him no fear. He heaves a heavy sigh and departs."⁷⁴

By the end of 1812 the Li-ch'uan hong was on the verge of collapse, with its debt to the British East India Company alone standing at \$822,906.⁷⁵ In January, 1813 Consequa and four other junior hong merchants were obliged to appeal to their foreign creditors, who agreed to a plan placing their affairs in the hands of three trustees. In return for an agreement to stop calculating interest on the hong merchants' debts, which by Chinese law could not be collected if in excess of the principal amount, the junior merchants agreed to devote all the profits of their businesses to reducing these

72. See Appendix.
73. Morse, *Chronicles*, Vol. III, p. 130.

74. Letter, Peter W. Snow (Canton) to Edward Carrington, 11 August 1811, Edward Carrington Papers, Box 13, Rhode Island Historical Society.
75. Morse, *Chronicles*, Vol. III, pp. 183, 247.

it is
low
I was
poc
was
27.5
10.5
con
ry the
quie
r the
oned
shall
July
state
1804,
: sui
note
it the
rably
nsley
con
with a
com
ation
imes
Robert
term
eds of
p. 10,
onse
x 44,
1805),
lit the
ion of
offer
en B.
ad the
ersity
p. 33,
p. 52,
cord

debts.⁷⁶ That June, due to continued business difficulties and new official exactions, Consequa again found himself obliged to appeal for aid to meet duty payments. The junior merchants were under such pressure that some were borrowing at forty percent interest.⁷⁷

In April, 1813 Consequa wrote his friend Peter Dobell in Philadelphia, complaining about his financial and legal problems. The letter, in pidgin English with an addition by Alexander Pearson (one of Consequa's trustees),⁷⁸ survives in vandalized condition.

I have very trouble because all that money America gentlemen owe for me. . . . I have see hardly any money, now I have very much trouble, owe so much money, no can pay I fear broke. Mr. Ingersoll I know very good man, very good head, only I fear [words deliberately obliterated] talk story so have spoil me too. Paper along with this can show how much money, who man owe, I chin chin you look—take care.

Pearson added,

For the foregoing I have served as an amanuensis to your friend Consequa. I cannot help thinking that he has met with a great deal of more harsh & ungrateful treatment for such liberality of accommodation (to some whom I hope you will not meet with in America) than it is for the credit of foreigners to this country & of human natives generally, that he should have been subjected to, however I need not amplify on that subject to you.⁷⁹

An estimate of Consequa's Philadelphia losses as of 1813 is supplied by a letter in the Jardine Matheson Archive in Cambridge, England, which states that Consequa lost his fortune because he had lent 300,000 liang of silver to the Wilcocks brothers.⁸⁰ A liang is the weight of silver equivalent to a tael, and the dollar equivalent for this quantity is \$416,400,⁸¹ an amount resembling the amount attached (of which good part doubtless became uncollectable) by Dunant and the Ginpins during the period of the American Embargo. The reference to the Wilcocks brothers is likely a confusion of their role in the collection of overdue accounts for the hong merchant, motivated perhaps by an animus result-

76. Morse, *Chronicles*, Vol. III, pp. 183, 311; George T. Staunton, *Ta Tsing Leu Lee* (1810; rpt. Taipei: Ch'eng-wen, 1966), p. 158.

77. Morse, *Chronicles*, Vol. III, pp. 195-197.

78. Pearson was surgeon to the factory of the British East India Company. Morse, *Chronicles*, Vol. III, p. 183.

79. Letter, Consequa (Canton) to Peter Dobell, 3 April 1813, Breck Family Papers, Library Company of Philadelphia, on deposit with the Historical Society of Pennsylvania (several lines of text of the letter have been heavily lined over in black ink).

80. Fu, *Documentary Chronicle*, p. 610, note 166.

81. King, *Money*, p. 70. See note 24.

ing from Benjamin Chew Wilcocks' strong role in the vigorous American mercantile competition with the British East India Company.

CONSEQUA APPEALS TO PRESIDENT MADISON

In February of 1814 Consequa, perplexed by the American legal process and under mounting financial pressure, addressed an appeal directly to President Madison. This important letter survives in the National Archives in its Chinese original, together with contemporary English and Portuguese translations. There is no record of action taken in response to the appeal, or that any reply was made to Consequa's letter.

The English text of "The Petition of Consequa, a Hong Merchant of the City of Canton in China," recites the fairness of Consequa's dealings, the willingness with which he had granted credit to Americans, and objects to the treatment he has received from his debtors. "Many who do not labour under inability to pay their debts, or who do not acknowledge that they are unable, object to pay them, as he thinks upon frivolous grounds, and involve the Claims upon them in tedious litigation. 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 he has placed in Subjects of the United States."⁸² A full modern translation of the Chinese text provides more detail of the Petition of P'an K'un (Consequa) than Madison could have read.

When the American merchants (who owe me money) come to Kwangtung and live in Canton, K'un cannot accuse them, because the law of our country prohibits Chinese subjects from accusing the barbarians. This is why K'un must beg Your Excellency, the President of the United States, since K'un hears that the law of your noble country is impartial, and that no matter whether a man is rich or poor, an American or an alien, everyone is equal before the law. K'un is an alien from a remote region and ignorant of the usages and forms proper to presenting his case to your honorable country. Again, because great distance lies between us, I cannot present all my evidence (that the American merchants owe me money) to you. Therefore, your decision on this case may reach me after an interval of several years. The reason for presenting this petition is to appeal to Your Excellency for an impartial judgment.

I hope Your Excellency will not listen to the one-sided story of your dishonest merchants, but judge the issue fairly. . . . If

82. Petition of Consequa, a Hong Merchant of the City of Canton in China, Canton, 10 February 1814, Canton Consular Letters: Dennett, *Americans*, p. 86.

value of the article, and the extensive business in which the parties were engaged, I should infer, that this cow was intended, and received, as a gift, and that the defendants had, afterwards, most ungraciously turned it into a charge."⁸⁹ Chancellor Kent upheld the assessment of interest according to the twelve percent rate prevailing at Canton, citing in support the then-recent translation by Sir George Staunton of the Ch'ing dynasty statutes.⁹⁰

It is no wonder that the plaintiff should think so seriously of the failure to pay interest, since the non-payment of interest subjects the debtor, by the Chinese laws, to corporal punishment. (*Staunton's Ta Tsing Lew Li*, s. 149.) He, also, in that letter, admits, that he insisted on twelve, instead of 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.'⁹¹

Kent upheld the Master's report with minor changes. On appeal, the award of interest at the Canton rate was reduced by the New York Court of Errors to the seven per cent allowed in New York, under a holding that the place of performance will determine the rate of interest. The rule continues to bedevil foreign creditors to the present day.⁹²

Conditions in Canton grew more bleak. Five years after Consequa and four other junior merchants had submitted their affairs to trustee control, the trustees concluded that conditions had not improved sufficiently.

The considerate and judicious support, which the Hongers so unhappily circumstanced have received from the Hon'ble Company may be considered to have re-established them; but instead of having employed their restored credit wisely and correctly, we apprehend they have, in this season especially, perverted it to their own Detriment and that of their Creditors.

The British East India Company at the same time resolved to restrict advances to the junior hong merchants to amounts necessary for current affairs only.⁹³ In March 1818 Consequa's debt to the Company stood at

321,516 taels (\$446,264.20).⁹⁴ That season the Company decided to end its practice of nearly a decade of advancing money to the hong merchants for purchases of tea for the coming season. A number of reasons were advanced for this change, including the problem that advances to the tea districts had driven prices up while discouraging attention to quality, and the difficulty of policing this great investment. A "very strong case of necessity" was made out by the British East India Company, echoing Consequa's problems in the United States, that "it would be impolitic to hazard the Company's Property in a Country where our footing is at all times precarious and where there is no mode of counteracting or of punishing the misconduct of the Merchants on whose behalf the advances may be made, but such as involves the subversion of the system we are desirous to uphold."⁹⁵

Consequa continued to trade and had some success in controlling his debt to the East India Company. In March, 1819 he owed 201,851 taels (\$280,169.18), which crept up to 257,299 taels (\$357,131.01) the following July.⁹⁶ At this moment the depression of 1819 hit the China trade, driving the American trade totals for 1820 to half the amounts attained the preceding year.⁹⁷ Samuel Russell, founder of Russell & Company, one of the preeminent American firms of the China coast, wrote Edward Carrington in Providence in June, 1820 that Consequa had been "very anxious to make a contract with us," but that his lowest prices for teas could not compare with those offered by the outside merchant Paunqua, from whom Russell made a \$25,000 purchase.⁹⁸ The following year Russell described the season of 1820 as "by no means a lucrative one to the Hong Merchants generally, but on the contrary a very losing business, owing to the unusually heavy importations of foreign produce & manufactures, which have generally declined in value, on the hands of the Hong Merchants."⁹⁹

89. *Consequa v. Fanning*, 3 Johns. Ch. 587, 603, 605, (N.Y. 1818).

90. George T. Staunton, *Ta Tsing Lew Lee* (1810; rpt. Taipei: Ch'eng-wen, 1966). This may be the first citation of Chinese law in a western judicial opinion.

91. *Consequa v. Fanning*, 3 Johns ch. 587, 607 (N.Y. 1818).

92. *Fanning v. Consequa*, 17 Johns. 511, 523 (N.Y. Court of Errors 1820); *Baring v. Fanning*, 2 F. Cas. 791 (C.C.D.N.Y. 1826) (No. 982); *Banco Nacional de Cuba v. Chase Manhattan Bank*, 505 F. Supp. 412, 448 (S.D.N.Y. 1980) (citing *Fanning v. Consequa*).

93. Morse, *Chronicles*, Vol. III, pp. 311-312.

94. Morse, *Chronicles*, Vol. III, p. 330.

95. Morse, *Chronicles*, Vol. III, pp. 332-333.

96. Morse, *Chronicles*, Vol. III, pp. 346, 353.

97. Stelle, "American Trade in Opium to China, Prior to 1820," *Pacific Historical Review* 9 (1940), pp. 425, 443.

98. Letter, Samuel Russell (Canton) to Edward Carrington, 9 June 1820, Letterbook 1, Container 15, Russell & Company Papers (Samuel Russell Papers), Library of Congress.

99. Letter, Samuel Russell (Canton) to Edward Carrington, 13 November 1821, Letterbook 1, Container 15, Russell & Company Papers (Samuel Russell Papers), Library of Congress.

The years 1820 and 1821 were also bad in the American courts. A new suit was filed in federal court in Philadelphia in the April 1820 term, against Roger Smith on his \$2,766.15 note made in 1806. This was another fruitless effort. The note had been endorsed in January 1809 to John Jacob Astor, who had given it in turn to Benjamin Chew Wilcocks for collection. Smith had made one \$600 payment. The confession of judgment provided by the incarcerated debtor to Consequa at the time the action was filed, reciting lack of means to satisfy the debt, proved of little utility in recovering the \$6,353.15 admitted due.¹⁰⁰ A second action was filed in the October, 1821 term, on Henry B. Stewart's \$4,900 note made in 1817, seeking \$10,000 in damages. Stewart's confession of judgment was entered on 27 May 1822, "being assured that no harsh measures will for the present be taken against me."¹⁰¹

In 1822 Consequa's answer to William Read's countersuit, "sworn to by the defendant at Canton, in April last," reached Philadelphia. Consequa had initially brought an action against Read in 1816 on over \$35,000 in notes made in the years 1805 and 1806,¹⁰² which Read met with a bill in equity for an injunction to stay the proceedings. The injunction was finally granted in 1821, because no answer had been received from Canton, and receipt of the answer in 1822 promised to reopen the proceedings. Consequa's answer came before the Court in support of a motion to dissolve the injunction. Consequa's answer was objected to as insufficient, and Circuit Justice Washburn agreed. "This is not sufficient. According to the practice of the English courts of chancery . . . the answer ought to have been taken and sworn to under a *dedimus potestatem*."¹⁰³ The motion to dissolve the injunction was accordingly overruled, with the "order that a *dedimus* issue to a commissioner at Canton, in conformity with the ninth rule of the court, as now existing, directing the oath to

be administered in the most solemn form observed by the laws and usages of China."¹⁰⁴

The Li-ch'uan hong failed in 1821. In March Consequa's debt to the East India Company stood at 417,649 taels (\$579,696.81), and credit transactions he had entered into in the season went poorly. In September his total liabilities stood at 400,000 taels (\$555,200), and Consequa was unable to meet his commitments.¹⁰⁵ Samuel Russell reported the suspension of Consequa's business in a letter in November, 1821.¹⁰⁶ The business of the embarrassed hong was assumed by the other nine hong merchants, who delivered a bond undertaking to pay the debt in five annual installments.¹⁰⁷ Consequa was left in day-to-day charge of the business.

Consequa again found himself in serious straits in 1823. On 29 April 1823 he appealed to the British East India Company for a loan of 18,800 taels (\$26,094.40), and he repeated the request on 23 May 1823. The Company refused both requests, and "resolved to convey to him their continued determination to abstain from affording him any relief for the difficulties his conduct has exposed him to." No further appeal was received and on 5 August 1823 the broken hong merchant died, leaving an insolvent business that required further assumption of debt by the other hong merchants.¹⁰⁸ Consequa's debt to the East India Company was thereafter paid off in regular installments, making its last appearance in the annual accounts of the Company in 1826.¹⁰⁹

CONCLUSION: THE DANGERS OF FOREIGN TRADE

Surviving records establish that the Li-ch'uan hong was an important member of the thirteen hong of Canton. One distinction in its activities was the significant volume of trade that it conducted on a credit basis, an accommodation that Consequa made for foreign merchants long before he assumed hong status. Consequa enjoyed great business success, grew rich, and traded on a large scale with the British East India Company, the French, and the Americans.

100. *Consequa v. Roger Smith*, April term 1820, No. 6, Records of the Circuit Court for the District of Pennsylvania.

101. *Consequa v. Henry B. Stewart*, October term 1821, No. 44, Records of the Circuit Court for the District of Pennsylvania.

102. See Appendix.

103. A *dedimus potestatem* is a "writ or commission issuing out of chancery, empowering the persons named therein to perform certain acts, as to administer oaths to defendants in chancery and take their answers, to administer oaths of office to justices of the peace, etc." Henry C. Black, *Black's Law Dictionary* (4th ed. St. Paul, Minn.: West Publishing Co., 1968), p. 501.

104. *Read v. Consequa*, 20 F. Cas. 353 (C.C.D. Pa. 1822) (No. 11, 607).

105. Morse, *Chronicles*, Vol. IV, pp. 1, 8.

106. Letter, Samuel Russell (Canton) to Edward Carrington, 13 November 1821, Letterbook I, Container 15, Russell & Company Papers (Samuel Russell Papers), Library of Congress.

107. Morse, *Chronicles*, Vol. IV, p. 8.

108. Morse, *Chronicles*, Vol. IV, p. 73.

109. Morse, *Chronicles*, Vol. IV, pp. 70, 87, 102, 122.

Precisely how Consequa grew wealthy is unclear. He may simply have bought low and sold high. Perhaps he just did well, by taking and actually collecting a normal profit in extraordinary times. Possibly Consequa took a thin profit on a high volume of trade, and relied on additional income from interest to make him wealthy. Also unclear is the amount of capital of the Li-ch'uan hong, but it probably did not much exceed the approximately \$500,000 attached by its debtors in Philadelphia in April, 1808. This fund was reduced not only by the attachment, which prevented Consequa's agents from collecting debts for the duration, but also by the American Embargo of 1807-1809, which ruined many of the firms and individuals that owed Consequa money.

Before the attachment, Consequa had instructed his American agents to collect his debts, and to take necessary steps to that end. The threat was then made to enforce these obligations in court, a step common in the United States but scorned as a means of debt collection in China. Collection efforts provoked countersuit and attachment, and gave rise to extended litigation in the United States courts. In the "tedious litigation" (his term) in which Consequa thus found himself ensnared, he fell victim to formalistic and tactical errors, and to a legal system ill-adapted to effective resolution of disputes arising in international trade. Neither exceptionally skilled American legal counsel nor appeal to President Madison helped him. Consequa's inability to recover much of the money he lent to Americans in the first decade of the nineteenth century led directly to the weakening and collapse of his Li-ch'uan hong through 1813, 1821 and 1823.

The Li-ch'uan hong failed because it risked much or all of its capital in loans to private Western traders in an

era when there was little protection for such extensions of credit. The limited protections offered to merchants by the Chinese legal system did not extend to problems of Chinese merchants engaged in foreign trade. The American courts, in contrast, did not hesitate to hear complaints brought by and against the hong merchants of Canton, China. In one action brought by Consequa in New York, Chancellor Kent noticed charges made by the defendants "against the tyranny and oppression of *Consequa*, and the other *Hong* merchants, at *Canton*," but stated his belief that the plaintiff was a man "more sinned against than sinning." The court had to give him a fair hearing.

When such a man, from such a people, comes as a suitor into our courts, he ought not to be heard with a mist of prejudice hanging over his name, his character, and his country. His claims should be received with candour, and treated with impartiality. It is no more than common justice; but the sense of our responsibility cannot fail to be more lively, when we reflect that the people to whom he appeals, are in possession of gifts denied to the *Chinese*; I mean the blessings of freedom, and the light of science, and the still brighter light of the christian revelation.¹¹⁰

As impartially as the American courts might have attempted to hear actions brought by and against Chinese merchants, the interests of Chinese litigants suffered from court delays, from delays for communication over long distances by sea, and from unfamiliarity with the American legal system. The record of the Li-ch'uan hong demonstrates how trade disruptions, distance, and the unfamiliar practices of American courts in the early nineteenth century placed the Chinese merchant litigant at a ruinous disadvantage.

110. *Consequa v. Fanning*, 3 Johns. Ch. 587, 606-607 (N.Y. 1818).

APPENDIX

AN INCOMPLETE TABULATION OF CONSEQUA'S LOANS TO AMERICANS
AND DEBT TO THE BRITISH EAST INDIA COMPANY

	<i>Notes Made and Consignment Shipments</i>	<i>Payments Received on Notes Other- wise Not Known</i>	<i>East India Company Debt as of the March Opening of Books</i>
1793	\$ 43,821.00 ¹		
1794			
1795			
1796			
1797			
1798	3,410.50 ²		
1799			
1800	33,142.33 ³		
1801	30,827.50 ⁴		
1802			
1803	20,000.00 ⁵		
1804	12,189.00 ⁶		
1805	43,680.89 ⁷	\$ 5,420.18 ⁸	
1806	138,976.56 ⁹	39,206.00 ¹⁰	
1807	50,724.63 ¹¹		
1808	1,365.00 ¹²		
1809	89,690.63 ¹³		931,027.37 (Tls. 670,769) ¹⁴ 847,548.88 (Tls. 610,626) ¹⁷
1810	71,198.86 ¹⁵	8,688.00 ¹⁶	822,906.00 ¹⁹
1811	35,711.50 ¹⁸		
1812			
1813			
1814			
1815			317,720.14 (Tls. 228,905) ²⁰
1816			
1817	4,900.00 ²¹		333,126.00 ²² 446,264.20 (Tls. 321,516) ²³
1818			280,169.18 (Tls. 201,851) ²⁴
1819			
1820			
1821			579,696.81 (Tls. 417,649) ²⁵
1822			376,685.15 (Tls. 271,387) ²⁶
1823	"Estate of Conseequa"		342,630.57 (Tls. 246,852) ²⁷
1824	"Estate of Conseequa"		256,972.93 (Tls. 185,139) ²⁸
1825	"Estate of Conseequa"		171,315.28 (Tls. 123,426) ²⁹
1826	"Account of Conseequa"		85,657.64 (Tls. 61,713) ³⁰

NOTES TO APPENDIX

1. Letter. John Howel (Canton) to Joseph Barrell and others, 11 May 1795 (stating that there has been a \$43,821 default in the payment of Captain Joseph Ingraham's debt to Consequa, without identifying either the date or amount of the original obligation), reprinted in Frederic W. Howay, ed., *Voyages of the "Columbia" to the Northwest Coast*, Massachusetts Historical Society, *Collections*, p. 79 (Boston: Massachusetts Historical Society, 1941), pp. 489, 490; Seaburg and Paterson, *Merchant*, p. 101 (Ingraham reached Macao at the beginning of 1793).
2. Consequa v. George Howell, October term 1810, No. 52 (promissory note in the amount of \$3,410.50 dated 26 November 1798), Records of the Circuit Court for the District of Pennsylvania.
3. Consequa v. Hilary Baker, April term 1805, No. 47 (promissory note in the amount of \$1,130.50 dated 11 December 1800); Consequa v. Thomas Wiles, October term 1805, No. 60 (promissory note in the amount of \$2,574.15 dated 8 November 1800); Consequa *et al.* v. Benjamin Wilcocks *et al.*, October term 1809, No. 38 (promissory note in the amount of \$29,437.58 dated 12 December 1800), Records of the Circuit Court for the District of Pennsylvania.
4. Consequa v. Anthony Morris *et al.*, April term 1804, No. 37 (promissory note in the amount of \$25,000.00 dated 28 November 1801); Consequa v. Edward Yard, April term 1805, No. 46 (promissory note in the amount of \$2,200.00 dated 30 January 1801); Consequa v. Francis Pasquier, October term 1810, No. 10 (promissory note in the amount of \$3,627.50 dated 8 August 1801), Records of the Circuit Court for the District of Pennsylvania.
5. Consequa v. Ralph Peters, October term 1809, No. 71 (promissory note in the amount of \$20,000.00 dated 4 November 1803), Records of the Circuit Court for the District of Pennsylvania.
6. Consequa v. Robert Bridges, October term 1810, No. 33 (promissory note in the amount of \$10,000.00 dated 13 December 1804), Records of the Circuit Court for the District of Pennsylvania; Edward Carrington's Consular Letter Book, Edward Carrington Papers, Rhode Island Historical Society, Providence, Rhode Island (record of Ephraim Prescott's promissory note in the amount of \$1,819.00 dated 6 October 1804); Consequa's signed receipt, dated Canton, 7 May 1809 and executed in duplicate, for \$370.00 payment by Munro, Snow & Munro on their otherwise unidentified promissory note of March, 1804, Edward Carrington Papers, Box 211, folder 1809, Rhode Island Historical Society, Providence, Rhode Island. See Downs, "A Study," pp. 1, 5.
7. Consequa v. William Read, October term 1816, No. 15 (six promissory notes dated 12 December 1805 in the respective amounts of \$5,612.86, \$8,442.30, \$1,553.69, \$1,593.81, \$1,593.80, and \$8,442.31); Willings & Francis v. Consequa, October term 1810, No. 28 (Statement of Jury Award indicating \$16,442.12 "Amot. of Note date 16 Nov. 1805 & Int. due thereon."), Records of the Circuit Court for the District of Pennsylvania.
8. Consequa's Account Current with George Emlen (indicating five payments in 1805, totalling \$5,420.18), Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania.
9. Consequa v. John Meany, October term 1809, No. 11 (promissory note in the amount of \$20,021.60 dated 18 November 1806); Consequa v. William Read, October term 1816, No. 15 (promissory note in the amount of \$3,922.79 dated 2 December 1806, promissory note in the amount of \$3,565.21 dated 15 December 1806, and promissory note in the amount of \$400.00 dated 16 December 1806); Consequa v. Roger Smith, April term 1820, No. 6 (promissory note in the amount of \$2,766.15 dated 5 February 1806); Willings & Francis v. Consequa, October term 1810, No. 28 (Statement of Jury Award indicating \$44,220.00 "Amot. of Note date Decem. 1, 1806 & Int. due thereon."); Records of the Circuit Court for the District of Pennsylvania; *Willings v. Consequa*, 30 F. Cas. 55, 59 (C.C.D. Pa. 1816) (No. 17, 767) (\$60,000 credit on cargo for ship *Asia*); *Consequa v. Fanning*, 3 Johns. Ch. 587, 589 (N.Y. 1818) (promissory note in the amount of \$4,080.81 dated 6 February 1806).
10. Consequa's Account Current with George Emlen (indicating four payments in 1806, totalling \$39,206.00), Gratz Collection, Box 44, Case 14, Historical Society of Pennsylvania.
11. *Consequa v. John Ansley*, October term 1811, No. 39 (promissory note in the amount of \$1,752.00 dated 24 November 1807), Records of the Circuit Court for the District of Pennsylvania; *Consequa v. Fanning*, 3 Johns. Ch. 587, 587-588 (N.Y. 1818) (consignments in the amount of \$19,837.00 on 22 December 1807 and \$29,135.63 on 21 December 1807).
12. "Captain Nathaniel Pearson in Account Current with Edward Carrington," dated 22 January 1811, Edward Carrington Papers, Box 211, folder 1811, Rhode Island Historical Society, Providence.
13. *Consequa v. Caleb Ash*, October term 1809, No. 26 (consignment in the amount of \$50,000.00 on 1 May 1809), *Consequa v. Henry Toland, Jr.*, October term 1809, No. 27 (same), *Consequa v. Ash & Toland*, October term 1809, No. 28 (same), Records of the Circuit Court for the District of Pennsylvania; *Consequa v. Fanning*, 3 Johns. Ch. 587, 588 (N.Y. 1818) (promissory note in the amount of \$39,690.63 dated in December 1809).
14. Morse, *Chronicles*, Vol. III, p. 100.
15. *Consequa v. Fanning*, 3 Johns. Ch. 587, 588 (N.Y. 1818) (consignments in the amount of \$64,828.65 on November 25, 1810 and \$6,370.21 on 29 November 1810).
16. Letter, Caleb Brintnall (New York) to Edward Carrington, 20 February 1810 (transmitting \$8,688.00 principal and interest due to Consequa), Edward Carrington Papers, Box 13, folder 1810-1811, Rhode Island Historical Society, Providence.
17. Morse, *Chronicles*, Vol. III, p. 130.
18. *Consequa v. Fanning*, 3 Johns. Ch. 587, 588, 590, 593, 608 (N.Y. 1818) (promissory note in the amount of \$35,711.50 dated 19 January 1811).
19. Morse, *Chronicles*, Vol. III, p. 247.
20. Morse, *Chronicles*, Vol. III, p. 234.
21. *Consequa v. Henry B. Stewart*, October term 1821, No. 44 (promissory note in the amount of \$4,900.00 dated 13 January 1817), Records of the Circuit Court for the District of Pennsylvania.
22. Morse, *Chronicles*, Vol. III, p. 247.
23. Morse, *Chronicles*, Vol. III, p. 330.
24. Morse, *Chronicles*, Vol. III, p. 346.
25. Morse, *Chronicles*, Vol. IV, p. 1.
26. Morse, *Chronicles*, Vol. IV, p. 52.
27. Morse, *Chronicles*, Vol. IV, p. 70.
28. Morse, *Chronicles*, Vol. IV, p. 87.
29. Morse, *Chronicles*, Vol. IV, p. 102.
30. Morse, *Chronicles*, Vol. IV, p. 122.



Frederic D. Grant, Jr., is an attorney with the firm of Gordon & Wise in Boston, Massachusetts. He has published "Merchants, Lawyers, and the China Trade of Boston," in *Boston Bar Journal* (1979) and, with Geoffrey C. Ward, "A Fair, Honorable, and Legitimate Trade," in *American Heritage* (1986). He delivered the paper "Litigation Brought by and Against Hong Merchants in the American Courts, 1800-1825" at the panel "Fresh Perspectives on Qing Dynasty Maritime Trade," Association for Asian Studies national meeting, Boston, Massachusetts, on 12 April 1987.