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Cover calligraphy Yan Zhenqing 顏真卿, Tang calligrapher and statesman

H. A. GILES *versus* HUANG CHENGYI: SINO-BRITISH CONFLICT OVER THE MIXED COURT, 1884–85

史 Motono Eiichi 本野英一

The Sino-British Tianjin Treaty of 1858 had embodied many rights and privileges for British merchants, but they never ceased complaining that in spite of that treaty they did not enjoy “free trade” conditions in China. Following the economic crisis of 1866, these merchants took every opportunity to demand of the Chinese authorities that the country’s socio-economic structure be reformed along the lines they desired. Their attempts to achieve this reform produced, in the 1880s, serious commercial clashes with organisations of prominent Chinese merchant groups (*hanghui* 行會), supported by local Qing government officials.¹ The British grievances were finally addressed and solutions embodied in the Chinese-British commercial treaty of 1902, known as the “Mackay Treaty.”

Despite the fact that the most important article of the Treaty—Article 8, which stipulated the abolition of the *lijin* 釐金 tax in return for an increase in the rate of duty—was not put into effect, recent Japanese researchers have tended to regard the Mackay Treaty as a watershed in modern Chinese history because its terms forced the Chinese authorities to introduce many political, institutional, and economic reforms modelled on the Western nation-state system.² Due to the lack of relevant sources in English, however, with the exception of Article 8, researchers have yet to reveal and study the historical background to the other articles of the Treaty.³

By examining Chinese-British clashes under the Mixed Court system in Shanghai during the years 1884–85, this article attempts to uncover the background to Article 12 of the Mackay Treaty, of which the English text reads as follows:

China having expressed a strong desire to reform her judicial system and to bring it into accord with that of Western nations, Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish

¹ These commercial conflicts, which mainly broke out in Shanghai, eventually led to the collapse of the commercial organization of the Chinese merchant groups in the 1890s and of the organization of Chinese chambers of commerce in the early twentieth century. A full analysis of these conflicts is attempted in my D.Phil. dissertation, “Chinese–British commercial conflicts in Shanghai and the collapse of the merchant control system in late Qing China, 1860–1906” (University of Oxford, 1994), of which this article is a by-product. The original draft of this paper was read as a seminar paper in the Division of Pacific and Asian History, Australian National University, on September 4, 1991.

² Hamashita Takeshi, *Chūgoku kindai keizaishi kenkyū—Shinmatsu kaikan zaisei to kaikōjō shijōken* [Economic history of modern China—Maritime Customs finance and open port market zones in late Qing China] (Tokyo: Institute of Oriental Culture, University of Tokyo, 1989), p.3; Ijima Wataru, “1903 nen Chūnichichi kaitei tsūshō jōyaku no teiketsu ni tsuite—‘Mackay jōyaku taisei’ to Chūgoku” [The conclusion of the Chinese–British Revised Treaty of Commerce of 1903—the ‘Mackay Treaty regime’ and China], *jinbun kenkyū* 44.12(1992): 125–45; “Sairika-zei’ mondai to Shinmatsu Chūgoku zaisei—1902 nen Chūei Mackay jōyaku kōshō no rekishiteki ichi” [The ‘abolition of *lijin* tax and the increase in duty’ question and the fiscal structure of late Qing China: the /OVER

/historical position of the 1902 Mackay Treaty," *Shigaku zasshi* 102.11 (Nov.1993): 1-32.

³ Most of the Chinese sources on the Mackay Treaty negotiations are published in *Yuzhai cunqao 愚齋存稿* and *Qingji waijiao shiliao 清季外交史料*. A special collection of Chinese documents concerning the negotiations has been published in Hong Kong: see Wong Erh-min and Chan Sin-wai, eds, *Qingmo yiding Zhongwai shangyue jiaoshe—Sheng Xuanhuai wanglai handiangao* [Documents on commercial treaty negotiations between China and the West in the late Ching: correspondence and telegrams to and from Sheng Xuanhuai] (Hong Kong: Chinese University Press, 1993). On the other hand, most of the relevant documents in English, collected in the Foreign Office Confidential Prints (FO881, Public Record Office, Kew), have not yet been published.

⁴ Motono Eiichi, "Arō sensō go no chōkō Chūka ryūiki no shin'yō kōzō to sekai shijō, Amerika nanboku sensō no eikyō o chūshin ni" [The credit system of Central China and the world market after the Arrow War, with special reference to the influence of the American Civil War], *Shigaku zasshi* 93.10 Oct. 1984): 35-67; idem, "1860 nendai Shanhai ni okeru baiben tōroku seido no zasetsu to yushutsu torihiki kikō no kaihen, Jardine Matheson shōkai no katsudō o chūshin ni" [The failure of the compradore registration system and the changes to the export sales system in Shanghai during the 1960s, with special reference to the commercial activities of Jardine, Matheson & Co.], *Shigaku zasshi* 99.7 (July 1986): 75-102.

⁵ Motono Eiichi, "The traffic revolution: remaking the export sales system in China, 1866-1875," *Modern China* 12.1 (Jan.1986): 75-102.

her extra-territorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other considerations warrant her in so doing.

At first glance, the article appears somewhat strange: to relinquish extra-territorial rights in return for giving every assistance to China in reforming her judicial system to bring it into line with that of western nations would seem to be politically too high a price to pay for such a vacuous assurance of assistance.

This assumption, however, is wrong. British merchants of the time claimed that the extra-territorial system was not entirely effective in protecting their commercial interests in China. They pointed out two defects in the system as it affected their economic activities. First, British merchants were responsible for guaranteeing the whole debt of their native agents, known as compradors (*maiban* 買辦), irrespective of whether the debt was incurred by the merchants' business or by business transacted by the compradors in their private capacity. Such a situation had arisen because Chinese merchants who carried on business relationships with compradors regarded the latter's British employers as their *de facto* surety, while on top of this, British merchants could not always know what their compradors were doing behind their backs.

This problem was exposed when a civil case, "E-kee *v.* Jardine, Matheson & Co.," arose in the wake of the economic crisis of 1866. The crucial issue in the case was whether E-kee, who was a comprador of the Shanghai branch of Jardine, Matheson & Co., was to be defined as a servant of the defendant or an independent broker. If the Chief Judge of His Majesty's Supreme Court in Shanghai were to rule that the comprador was a servant of the defendant, Jardine's would be obliged to guarantee E-kee's huge debt of Tls. 80,000 to his forty-seven creditors; if, on the other hand, E-kee were to be judged an independent broker, such an obligation would not apply. Intervention by the British Shanghai Consul, Charles A. Winchester, who managed to persuade the Shanghai branch of Jardine, Matheson & Co. to pay the debt on condition that E-kee withdraw his suit, forestalled the hearing of the matter, however, with the result that the legal status of compradors remained officially undefined.⁴ Thus, to avoid similar troubles reoccurring, the reform of the settlement system became an important issue for the export trade, and led to the change in the export settlement system in 1875.⁵

The issue of the legal status of the compradores also arose in the import trade. When the Mixed Court and H.B.M.'s Supreme Court in Shanghai defined the legal status of a British mercantile firm's compradores in the judgment of the "Swatow Opium Guild" case of 1879 and the "Wong Gan-ying *v.* David Sassoon Sons & Co." case of 1884, British merchants in Shanghai were indignant, and succeeded in forcing the chief judge to abandon the earlier definition of a comprador's legal status in another civil case, "Wu Yu-shan *v.* David Sassoon Sons & Co.," which effectively released British agents from the responsibility of guaranteeing the debts of these employees.⁶

Another defect of the extra-territorial system was that British merchants could not collect their liabilities, through legal proceedings, from Chinese merchants to whom they sold imported goods when those merchants had become bankrupt. A British consul pointed out this problem as early as the 1860s:

When a native indebted to a foreigner shirks his obligation, no means exist of enforcing a prompt settlement. The creditor, unable to exercise the moral pressure of custom or public opinion, so powerful with natives, is forced to apply to his Consul, who refers the case to the local authorities. The mandarins are averse to the presence of foreigners in their Courts, and either hear a case *ex parte*, or ignore the foreigner, and endeavour to set up the comprador of the latter as the real plaintiff. If the native defendant proves obstinate, and happens to possess money or influential friends, the settlement of a case within a reasonable time is simply impossible. This state of affairs strikes at the root of mercantile credit, and is a serious injury to foreign trade.⁷

As a previous study by Mark Elvin has revealed, the Mixed Court was established to remove the above defects in accordance with the terms of Articles 16 and 17 of the Sino-British Treaty of Tianjin.⁸ However, this Court proved ineffectual in settling financial disputes between British and Chinese merchants, a situation that came to a head in the Mixed Court during the years 1884–85, and led to the inclusion of Article 12 in the Mackay Treaty of 1902.

The conflict took the shape of a personal dispute between Huang Chengyi 黃承乙, the second Mixed Court magistrate, and the British assessor, Herbert Allen Giles. As is well known, the latter became a noted orientalist and on his return to England was appointed the second professor of Chinese at the University of Cambridge. However none of his official biographies have touched on his time as a British assessor,⁹ nor have previous studies of the Shanghai Mixed Court referred to his activities in this capacity.¹⁰ This, therefore, is not only a case study of the historical background to the Mackay Treaty, but also contributes additional material for the biographical study of this well-known Sinologist.

The primary sources for this article are the Chinese and English archives of the British Foreign Office,¹¹ including Giles's own reports, together with additional material concerning the proceedings of the Mixed Court and Naval Court published in the *North-China Herald*.

Giles's reports, however, are not entirely reliable on account of his own prejudice against Chinese merchants and local bureaucrats. Moreover, since no relevant records left by Huang or other Chinese bureaucrats have yet been found, it has not been possible to correct the distortion by comparing material from the Chinese side. Therefore, while essentially following the course of events as given in Giles's reports, the article will critically re-examine these alongside other contemporary documents in English and Chinese housed in the Foreign Office archives and reports appearing in the press.

⁶ Motono Eiichi, "Anshō, yūkō yōkō tai Shanhai chōkei kaikan jiken—Chifū kyōtei go no ahen bōeki funsō ni kansuru ichi kōsatsu" [The Swatow Opium Guild case: a study of the opium traffic conflict after the Chefoo Convention], *Chūgoku kindaiishi kenkyū* 6 (Sept. 1988): 33–64; idem, "A study of the legal status of compradors during the 1880s, with special reference to the three civil cases between David Sassoon Sons & Co. and their compradors, 1884–1887," *Acta Asiatica* 62 (Feb. 1992): 44–70.

⁷ "Commercial report on China, 1866–68," in *Irish University Press Area Studies, British Parliamentary Papers*, vol.8, *Commercial Reports*, 24.

⁸ Mark Elvin, "The Mixed Court of the International Settlement at Shanghai (until 1911)," *Papers on China* 17 (Dec. 1963): 133–5.

⁹ Official biographies of Giles are as follows: Samuel Couling, ed., *The encyclopedia sinica* (London, Oxford University Press, 1917), 205; Fu Shanglin, "One generation of Chinese studies in Cambridge: an approach of Professor H. A. Giles," *The Chinese Social and Political Science Review* 15.1 (Apr. 1931), 78–91; J. C. Ferguson, "Obituary: Dr Herbert Allen Giles," *Journal of the North China Branch of the Royal Asiatic Society* 64 (1935): 134–6; "Obituary: Dr H. A. Giles: a great Chinese scholar," *The Times*, Feb. 14, 1935.

¹⁰ Besides the article by Elvin quoted in note 8, see A. M. Kotenev, *Shanghai: its Mixed Court and Council* (Shanghai, North-China Daily News & Herald, 1925); Ueda Toshio, *Shina ni okeru sokai no kenkyū* [A study of foreign concessions in China] (Tokyo: Ganshōdō Shoten, 1941).

¹¹ Now deposited in the British Public Record Office, Kew, and filed as FO 228, Embassy and Consular Archives, Correspondence (hereafter referred to as FO 228). Permission for the reproduction and quotation of unpublished crown-copyright material in this article has been granted by the Controller of Her Majesty's Stationery Office.

¹² “The Mixed Court,” *North-China Herald* (hereafter cited as *NCH*), Feb. 27, 1884, p. 219. However, Kotenev indicated that Chen was an ill-tempered man and a typically haughty Chinese mandarin, whose behaviour frequently caused much indignation among Westerners (Kotenev, *Shanghai: its Mixed Court and Council*, p. 78).

¹³ FO 228/760, P. J. Hughes to Harry S. Parkes, No. 108, Nov. 14, 1883. Another source indicated that he had been a tea merchant before his appointment (“The New Mixed Court Magistrate,” *NCH*, Nov. 14, 1883, pp. 566–7). Also, Giles pointed out that the Shanghai Daotai 上海道台, Shao Youlian 邵友濂, forced the resignation of Chen Fuxun in order to appoint his “needy” relative, Huang, to the post (FO 228/805, Inclosure in Mr Hughes’ No. 131).

¹⁴ The English text of Article 1 reads as follows:

An Official having the rank of a Sub-Prefect will be deputed to reside within the Foreign Settlement. He will have a jurisdiction in commercial and civil and criminal cases, generally within the Foreign Settlements. He will have an official residence, and will be furnished with the cangue, the bamboo, and the minor means of punishments. He will provide a lodging for prisoners. He will decide all civil and commercial suits between Chinese residents within the Settlements and also between Chinese and foreign residents, in cases where Chinese are defendants, by Chinese law. He will be authorized to examine Chinese judicially, to detain them in custody, and to punish them by putting them in the cangue, by flogging and by other minor punishments.

¹⁵ “The new Mixed Court Magistrate,” *NCH*, Nov. 14, 1883, pp. 566–7.

¹⁶ “The Mixed Court,” *NCH*, Feb. 27, 1884, p. 219.

¹⁷ “The Mixed Court,” *NCH*, Aug. 8, 1884, pp. 151–2.

¹⁸ FO 228/805, Inclosure in Mr Hughes’ No. 131 of 1885.

1. *The New Mixed Court Magistrate*

On November 12, 1883, the first Mixed Court Magistrate, Chen Fuxun 陳福勳, who had held the post since 1867, retired. Although he had occasionally been criticized for his “somewhat erratic judgments,” he was basically respected for his “honest desire to act fairly to everybody.” His retirement was therefore much regretted by Anglo-American residents in Shanghai.¹² By contrast, they were disappointed in his successor, Huang Chengyi, who was reported to be inferior to Chen in official rank and personality. He had once belonged to the gate-police in the city of Suzhou 蘇州, and later assisted in the collection of *lijin* revenue at that port.¹³ Moreover, although Article 1 of the Mixed Court Rules stipulated that the Mixed Court Magistrate must bear the rank of the fourth-class button (that is, the rank of *tongzhi* 同知), the new appointee held only the sixth rank.¹⁴

Probably on account of his humble career, Huang did seem to be quite ignorant about legal procedures in the Mixed Court. At his first trial of thirty men arrested in a gambling den on Peking Road, he made a mistake: though assisted by the Deputy Acting British Assessor, J. N. Tratman, he ruled that the proprietor of the gambling saloon be fined \$100 and the other defendants \$5 each, while the seized property was to be given back to the owners. According to the practices of the Mixed Court, however, all seized money should have been confiscated. On being informed of this, Huang altered his judgment to fine the gambling saloon \$100 and the gamblers \$10 each, while the money seized was to go to the Yellow River Flood Fund.¹⁵ Although his had been a trivial error, the incident seems to have foreshadowed the unhappy future course of his career.

Three months later, fierce criticism of his “ill-conduct” in the Mixed Court broke out among Western residents. According to them, Huang first garrisoned three soldiers within the International Settlement so that he could arrest and send Chinese residents to Shanghai city without the formal permission of the Municipal Council. After he succumbed to requests to remove them, he employed numerous unpaid runners (*xunding* 巡丁) to carry out his orders.¹⁶ In addition, he accepted bribes from Chinese defendants to prevent the enforcement of judgments in civil cases involving foreign creditors.¹⁷ As a result, foreign merchants could no longer easily obtain settlement in their favour of civil cases brought against Chinese debtors. In his final report as British assessor, Giles summed up the situation thus:

Under Huang, the [Mixed] Court completely changed its character . . . Large numbers of unpaid runners were imported into its executive, and with them came greatly increased difficulties in securing justice for British suitors. They would report Chinese debtors as “gone away, no address” or “dangerously ill in bed,” when the absentees or dying men might be met openly walking about the [International] Settlement. They would allow prisoners who could pay for the luxury to live at their own houses and otherwise enjoy themselves. All this with the full knowledge of Huang, who, it was notorious, had the lion’s share of the spoil.¹⁸

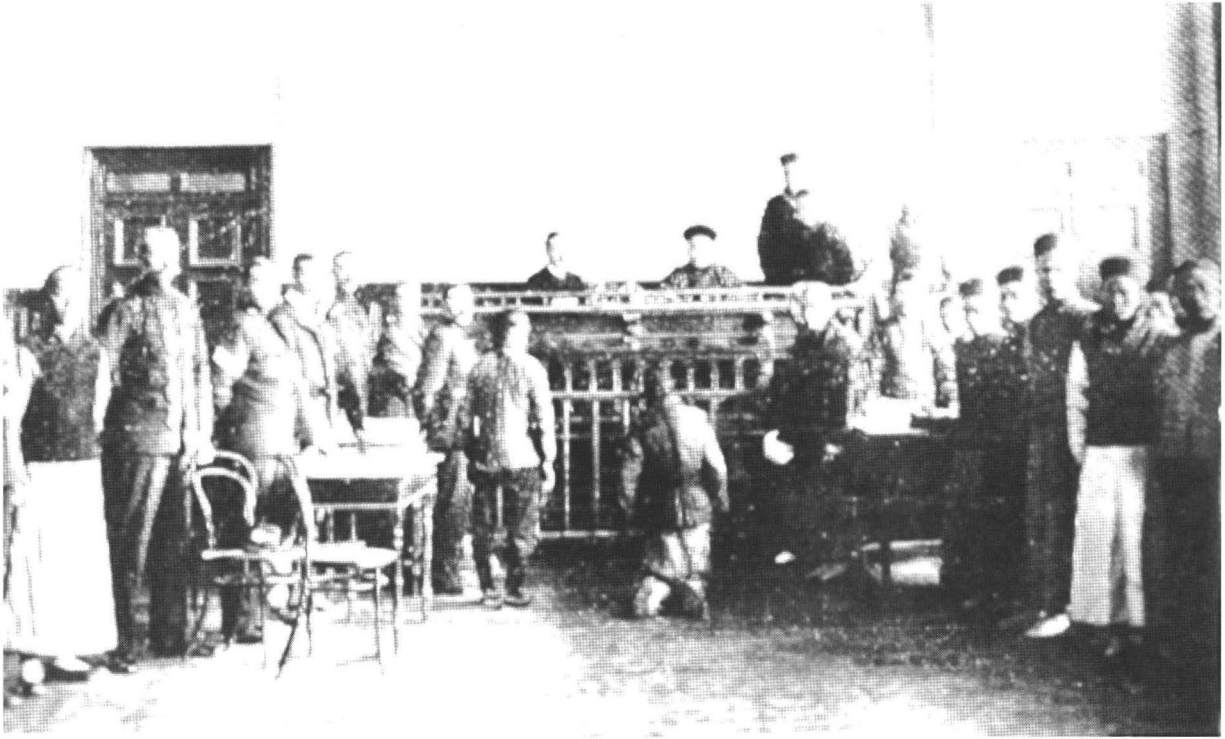


Figure 1

Typical opening of proceedings in the Mixed Court (source: Lynn Pan, Shanghai: a century of change in photographs, 1843–1949 [Hong Kong: Hai Feng Publishing, 1993], p.40)

Besides the records of several civil cases produced by Giles himself, only one concerning a criminal case supported the fierce criticism of Giles and the foreign residents. The proceedings of this case took place on May 21, 1904. The accused, Chu K'un (the Chinese characters of his name are not known), a runner employed at the Mixed Court, was charged with having unlawfully arrested three women in a Chinese brothel on May 17 and 18, and further, with attempting to extort from them the sum of \$150.

From the very start Huang tried to prevent the case from being heard. He objected to Giles's ordering Chu K'un to kneel down in front of them (see Figure 1), on the grounds that the defendant was one of his own servants. When Giles pointed out that Chu K'un had come under the jurisdiction of the Mixed Court due to a misdemeanour, Huang objected no further—a move, however, that was merely tactical. Upon the entry of the detective who had arrested Chu K'un into the Mixed Court on behalf of the prosecution, Huang loudly insisted that *he* should kneel down, claiming that he ought to be treated as a prisoner himself because he had committed the indiscretion of arresting a Mixed Court runner. Giles had to explain to Huang that the prosecutor was never required to kneel in the Mixed Court.

Although the hearing proved the fact that the three women had been arrested merely in order to extort \$150 from the brothel-keepers, Huang did not find Chu K'un guilty, still claiming that the Municipal Police had no right to arrest a Mixed Court runner. Though Giles strongly urged him to punish

¹⁹ "Mixed Court," *NCH*, May 23, 1884, pp.599-600.

²⁰ FO 228/761, Inclosure in Mr Hughes' 101 of Aug.1, 1884.

Chu K'un, Huang declined to do so, laying the blame instead on the detective who had arrested Chu, insisting that it was he who deserved punishment for failing to report to the Police that the accused was in the employ of the Mixed Court. By means of this clever tactic Huang succeeded in obtaining the immediate release of Chu K'un. According to the records of this case, Giles objected to the proceedings and refused to sign the charge-sheet, appending a note to that effect.¹⁹

Giles attributed Huang's "ill-conduct" in the case to the low rank and status of the incumbent of the magisterial post, which, according to him, was largely responsible for the defects of the Court.²⁰ In support of this he noted that Liu Kunyi 劉坤一, the Jiangsu 江蘇 governor-general, had also pointed out the low rank of the Mixed Court Magistrate, and although he had proposed in October 1880 that Chen Fuxun be promoted from the rank of Sub-Prefect (*tongzhiyong* 同知用) or Assistant Sub-Prefect (*houbu zhixian* 候補知縣) to the rank of Department Magistrate (*tongzhi* 同知) or District Magistrate (*zhifuyong* 知府用), the Qing court had turned down this proposal two months later.²¹ In consequence, such a man as Huang, who was a cousin (*gubiao xiongdi* 姑表兄弟) of Shanghai Daotai Shao Youlian, had been appointed to succeed Chen.²²

Giles went on to say that Huang came under the influence of the Daotai because of the terms of his appointment. His salary, which was nominally fixed at Tls.840 per month, was quite sufficient to defray the working expenses of the Mixed Court and leave a handsome balance for his private use, even though he was obliged to provide "gifts" for his superiors from it. Since Tls.140 were deducted from Huang's salary to provide Chen Fuxun with a pension, however, he actually received only Tls.700 per month. As a result, Huang thought his post insufficiently lucrative and eagerly sought bribes in dealing with criminal and civil cases. His behaviour soon influenced the Mixed Court runners, and corruption became rife in the handling of criminal cases: those who could afford to buy off the runners or soldiers of the Mixed Court were able to escape punishment, while criminals without money or influential friends met with their just deserts.

A more serious effect of corruption was apparent in the conduct of civil cases, particularly those between foreign plaintiffs and Chinese defendants with regard to the collection of debt. Although it had been the custom for the Magistrate to hand down his judgment of a civil case in writing, Huang neglected to do this, merely delivering his judgment to the foreign plaintiff verbally via the assessor. In so doing, he could protect the Chinese defendant from whom he had taken a bribe, because he could repudiate any accusation of having done so by claiming to have been misunderstood by the assessor. Having seen such a repudiation occur, Giles asked Huang in future to pass judgments to him in writing, and although Huang refused this request at first, Giles eventually succeeded in ensuring that all judgments be confirmed to him by letter within twenty-four hours of the conclusion of the case.

After this arrangement was in place, Giles and Huang dealt with a civil

case that ran from July 14 to 28, 1884, between a British merchant named Westall and a Chinese firm for the settlement of a rent-related debt of Tls.1,600. Although the terms of the lease provided that the property of the defendant might be re-entered by the lessor (Westall) if the rent remained unpaid ten days after it fell due, Huang was maintaining that Westall should reduce the rental. Giles, on the contrary, urged Huang to give judgment that the amount be paid within seven days, otherwise the property of the defendant would revert to Westall. At the same time, however, he advised Westall to reduce his rental as soon as the money was handed over.

Huang did not yield easily to Giles. Four days after the trial he proposed to Giles a “garbled” judgment which would allow the claimed Tls.1,600 to be reduced to a sum to be approved by himself. Although Giles refused to accept this judgment Huang did not consent to alter it until Giles threatened to leave without even making an appearance in Court.

Nonetheless, the defendants still refused to pay the debt. Even after Giles compelled Huang to rule that the property now revert to the plaintiff and to promise to issue a Mixed Court order to that effect, the defendants were allowed a further extension of seven days because Huang, by postponing the issue of the order, had failed to keep his promise.²³ Having finally delivered his judgment, however, Huang prolonged its execution until the foreign plaintiff grew tired of waiting and accepted a compromise payment of about half his original claim.

By the terms of Articles 16 and 17 of the Sino-British Treaty of Tianjin, if the judgment and its execution by the Mixed Court proved unsatisfactory to foreign plaintiffs they could appeal to the Daotai through the Consul of their nationality.²⁴ However, even though these officials might reverse the original Mixed Court judgment in favour of the foreign plaintiffs, it would have no effect unless executed within a certain time, and unless the money to offset the debt was deposited in the safe-keeping of the Mixed Court by the debtor or his surety *before* the judgment was handed down. Because of such loopholes, Giles concluded that the Mixed Court system needed to be entirely reformed.

While Giles was locked in battle with Huang and proposing the reform of the Mixed Court, the Municipal Council in the International Settlement responded to the “rude behaviour” of Huang and his runners. They first thought it enough to replace Huang with a Chinese official equal in rank to a county magistrate in order to block any interference by the Daotai, and planned to ask the foreign ministers in Peking to forward their proposal to the Chinese central government. However, criticism in the *North-China Herald* convinced them that the appointment of a higher-ranking official alone would not effect the necessary improvements to the Mixed Court system.

The editor of the *North-China Herald* propounded two ideas. In order to ensure that the Mixed Court remained independent from the Daotai and other superior local Chinese bureaucrats, he suggested that any appeals against judgments handed down in the Mixed Court be referred directly to the foreign

²¹ Ibid.; “駐湖會審委員異常出力 逆請優獎摺” and “上海會審公廨 委員酌擬改,” Liu Kunyi, *Liu Kunyi yiji* [The posthumous works of Liu Kunyi] (Beijing: Zhonghua Shuju, 1959), pp.573–4.

²² FO 228/761, Inclosure in Mr Hughes’ 101 of Aug.1, 1884.

²³ Ibid.

²⁴ Elvin, “The Mixed Court of the International Settlement at Shanghai,” pp.135–6.

²⁵ "The Reform of the Mixed Court," *NCH*, Mar.5, 1884, p.251; "Mixed Reform for the Mixed Court," *NCH*, Apr.16, pp.436-7.

²⁶ Elvin, "The Mixed Court of the International Settlement at Shanghai," p.40. As evidence for this, the *North-China Herald* printed a letter which proposed the following four legal reforms: all orders of the Chinese Court should be carried out by persons appointed by the consuls and paid regular salaries by the Municipal Council; a European official should be similarly appointed and paid to issue and stamp all warrants issued from the Chinese Court; in judging cases in the Settlement, the Chinese magistrate should sit as an assessor and had the right to appeal, but it was the foreign judge who should make judgments on all cases; finally, all crimes committed within the foreign settlement should be tried there by some foreign official of adequate rank. ("The Mixed Court: a ratepayer interested in the good order of the settlements," *NCH*, May 30, 1884, p.625.)

²⁷ Elvin, "The Mixed Court of the International Settlement at Shanghai," pp.134-5.

²⁸ "The Mixed Court," *NCH*, May 23, 1884, pp.579-80.

²⁹ "The Mixed Court," *NCH*, June 20, 1884, pp.700-1; "The Mixed Court," *NCH*, Aug.8, 1884, pp.151-2.

ministers and the Zongli Yamen 總理衙門 in Peking, with the corresponding abolition of appeals to the Shanghai Daotai and the Consul of the nation of the foreigner concerned. Moreover, in order to ensure that the Mixed Court Magistrate would respect "intricate cases, cross-examining native witnesses, and sifting conflicting evidences," a proper person of long residence in China, who had a full knowledge of not only the British and American legal systems but also that of China, was required to serve as an assessor. The paper advocated that an appropriate candidate for the post should be trained and be granted a rank not lower than that of Vice-Consul in the British Consular Service.²⁵ What was in effect being suggested in these articles was the establishment by the Municipal Council of extra-territoriality in the International Settlement.²⁶

British and American diplomats in China did not approve of this policy. Since the 1860s they had been opposed to plans to make the International Settlement a self-governing precinct. They were aware that it was by no means feasible to assume jurisdiction over the Chinese who lived in the Settlement with whatever determination they might endeavour to do so.²⁷ Probably at the instigation of these diplomats, the *North-China Herald* published an article which argued the difficulty of establishing extra-territoriality within the International Settlement due to the nature of the duties of the foreign assessor appointed to the Mixed Court.

According to this article, a foreign assessor was neither a court interpreter nor a counsel for the foreigner or foreign interest. His duty was to attend cases in which foreigners or foreign interests were involved, for the purpose of confirming that all the evidence was properly presented before the Mixed Court Magistrate, and preventing the miscarriage of justice in any shape or form. Nonetheless, since too many assessors assumed the role of public prosecutors or counsels acting for the foreigner, the Mixed Court Magistrate had been forced to act as counsel for the other side. As a consequence, the Mixed Court Magistrate and the foreign assessor ended up in fierce opposition to one another on behalf of their "clients." In order to avoid such problems, the article emphasized that assessors should keep strictly to the above-stipulated role.²⁸

Subsequent articles in the *North-China Herald* did not support this position. They pointed out various reasons why foreign assessors could not confine themselves to being the kind of arbitrator stipulated in the treaties. First, as indicated by Huang's handling of affairs, the Mixed Court Magistrate by no means necessarily commanded a sound knowledge of Chinese law, let alone Anglo-American law. In order to prevent the magistrate from neglecting the most obvious evidence, or from shielding a criminal from whom he had accepted a "bribe," it was reiterated that assessors should possess comprehensive legal knowledge. They should also be invested with the authority to pass judgment on all crimes committed within the International Settlement, because once embezzlement, conspiracy, or swindling by the Mixed Court Magistrate was allowed, it was reasoned, the order and well-being of the foreign residents could not be maintained.²⁹

Another important argument against extra-territoriality was the ambiguous content of the Mixed Court Rules. Those who advocated the extra-territoriality of the International Settlement complained about four articles in the Rules that had brought about the specific issues over which disputes between the Municipal Council and the Chinese authorities had arisen.³⁰

Of these, Article 1 merely stipulated that the Mixed Court Magistrate had jurisdiction over commercial suits and civil and criminal cases generally, without clearly distinguishing between cases in which foreigners alone were involved, and those in which the defendants were Chinese. As a result, the Mixed Court Magistrate exercised jurisdiction over all civil and criminal cases.

At the same time, by the terms of Articles 2 and 3, the foreign assessor, the consul, or his deputy had no right to interfere with any cases in which Chinese alone were concerned, or where no foreign interest was thought to be involved.³¹ The deficiency of these two articles was that they did not clearly define what “foreign interest” was. For instance, even though a Chinese might pay a comprador or a native banker dwelling in the International Settlement with counterfeit money and the payment eventually prove damaging to the foreign merchant, the assessor could not interfere in his trial if the plaintiff and the defendant in the case were both Chinese. Moreover, since the Mixed Court Rules did not specify who was to decide whether or not foreign interests were involved in a given criminal case, when the Municipal Police arrested Chinese for gambling, using forged currency, or violent crimes, their punishment could not be enforced if the Mixed Court Magistrate and the foreign assessor were in any disagreement over whether or not these crimes threatened the foreign interest.

In addition, the Mixed Court Rules failed to define the term “criminal” precisely. The Mixed Court Magistrate could create considerable ructions with the Municipal Police if a Chinese was arrested who had fled into the International Settlement without permission. Since such a refugee was usually regarded by the Municipal Police as “a person who was suspected or accused of a crime,” they were therefore obliged to petition the Mixed Court Magistrate, by the terms of Article 5, to seek their official “aid” in making such arrests.³² However, since this Article, as rendered into Chinese, read: “a Chinese accused of crime, who shall fly for refuge to the foreign settlements, may be arrested by the Mixed Court Magistrate without any warrant from the Municipal Police,” such a request was invariably ignored.

Even if the Mixed Court Magistrate did have sufficient knowledge of the Chinese legal system, troubles could arise from the above causes. If he turned out to be an inefficient and “notorious” man like Huang, Article 10 stipulated that he could be denounced and removed from office and another appointed in his place.³³ Since it was not specified in this Article who would be qualified to judge his inefficiency and notoriety, however, the Shanghai Daotai who appointed Huang could overlook the Magistrate’s unpopularity with the foreign residents of the International Settlement.³⁴ Therefore, in order to maintain law and order within the International Settlement with such an

³⁰ The issues are pointed out in Elvin, “The Mixed Court of the International Settlement at Shanghai,” pp.141–2.

³¹ The English text of Articles 2 and 3 reads as follows:

Article 2: Where a foreigner is concerned in a cause to be tried, a Consul or his Deputy shall sit with the Sub-Prefect at the trial; but where Chinese only are concerned the Sub-Prefect shall adjudicate independently—the Consul shall not interfere.

Article 3: Where a defendant is a native in foreign employ, the Sub-Prefect will first communicate particulars to the Consul (of the nationality concerned), who will be bound to place the parties before the Court without attempting to screen or conceal them. A Consul or his Deputy may attend the hearing, but he shall not interfere if no foreign interest is involved. The servants of non-trading Consuls shall not be arrested unless with the sanction of their masters.

³² The English text of Article 5 reads as follows:

A Chinese criminal escaping to the Foreign Settlements, can be summarily arrested by the Sub-Prefect without warrant from the District Magistrate or aid from the Municipal Police.

³³ The English text of Article 10 reads as follows:

When the Sub-Prefect has tried a case, should it be ascertained that plaintiff’s charge was false or exaggerated, the said plaintiff, whether a native or a foreigner, shall on conviction be mulcted by the Sub-Prefect in accordance with Rules which will be jointly drawn up by the Sub-Prefect and Consuls, and submitted for the Daotai’s approval, and, in the interests of justice, native and foreigner must in this respect be treated with perfect impartiality.

³⁴ “The Mixed Court,” *NCH*, May 30, 1884, p.611.

³⁵ FO 228/761, P.J. Hughesto Harry S. Parkes, No.101, Aug.1, 1884.

³⁶ P. D. Coates, *China consuls: British consular officers, 1843-1943* (Hong Kong: Oxford University Press, 1988), pp.206-7. Even after Giles became a professor at the University of Cambridge, he did not appear to be on friendly terms with his academic colleagues and students. He bitterly criticized many contemporary Western sinologists in his book, *Adversaria Sinica* (Shanghai: Kelly & Walsh, 1914), and treated his students very rudely (information from Dr Igor de Rachewiltz). As a result, he enjoyed a bad reputation in the circle of sinologists in Cambridge (information from Dr Joseph P. McDermott).

³⁷ FO 228/805, Inclosure in Mr Hughes' No. 131 of July 22, 1885.

³⁸ For the hearings on April 25, two barristers appeared for the Shanghai branch of David Sassoon Sons & Co., and for Chen and Fan: Wainwright for the plaintiff, Latham for the defendant.

³⁹ FO 228/762, Inclosure 29 in Mr Hughes' 157 of Sept.18, 1884.

⁴⁰ FO 228/804, Enclosure C of Inclosure 1 (sic) in Mr Hughes, No.79 of June 1, 1885. The English translation of the contract, which is recorded in FO 228/804, Part B of Inclosure 1 of Mr Hughes' No.79 of June 1, 1885, reads as follows:

Guarantee

By the present bond the Firm called Te Sheng Chen guarantee Ch'en Yin-t'ang, a native of the district of Hsiang Shan in Kwangtung as Compradore to Messrs D. Sassoon and Company. The surety will be implicated in (or, responsible for) the settlement of any cases of defalcation which may arise. Losses through commercial failures will be regarded as the act of God and as having no concern with the surety. The present Bond is drawn up as documentary evidence, May 28, 1878.

⁴¹ FO 228/762, Inclosure 28 in Mr Hughes' 157 of Sept.18, 1884.

⁴² FO 228/805, Inclosure in Mr Hughes to N. R. O'Connor, No.131 of July 22, 1885.

inadequate legal body as the Mixed Court, the Western residents required an assessor with ability and experience.

It was Giles who, when British Minister Parkes instructed the British Consulate in Shanghai to investigate the workings of the Mixed Court following a request by Western residents of the International Settlement that this be done, carried out the investigation and produced the aforementioned report.

Consul-General Hughes, who ordered Giles to carry out this task, did not, however, have such a dim view of Huang's ability as Giles. He argued that the defects of the system pointed out by Giles were "no doubt exaggerated under the regime of the present incumbent [Huang Chengyi], who although not wanting in ability and industry, labours under the disadvantage of having little or no previous experience of magisterial duties or of official relations with foreigners."³⁵ According to Hughes, Giles had not viewed the role and ability of Huang with impartiality. In order to assess this comment, an examination of Giles's personality is therefore called for.

2. *The British Assessor*

Just as the Western residents of the International Settlement found Huang Chengyi to be an unsatisfactory Mixed Court Magistrate, so H. A. Giles was seen to be unsuitable as an assessor by the Chinese merchants and local bureaucrats. Although he possessed evident ability as a scholar of the Chinese language and culture, his quarrelsome personality was by no means suited to British consular service in China. While posted to Amoy, he had had petty quarrels with the Commissioners of Customs and American diplomats, while much later on, in private life, he broke off relations with three of his own sons.³⁶ After he took up the post of British assessor in April 1884, he created a serious rift with Chinese authorities over his misconduct in two cases, as detailed below.

As stated in his final report to Hughes, the conflict with Huang started with the trials of the "David Sassoon Sons & Co. v. Chen Yintang 陳蔭堂 and Fan Desheng 范德盛" case and the "Posang 寶星" case.³⁷

The first was a civil dispute between a British mercantile firm, and their comprador and his surety for collecting the debt. It was triggered by the bankruptcy of Chen Yintang, a comprador of the Shanghai branch of David Sassoon Sons & Co., at the end of 1883. Since Chen could not afford to pay back his debt of Tls.12,603.38 to his employers, the Shanghai branch of Sassoons attempted to obtain repayment by suing him and his surety, Fan Desheng, at the Mixed Court.

The case was heard between April 21 and 26, 1884. On the first day, Fan sent a man named Wang to Court on his behalf, whereupon Giles protested against "the concealment of the defendant's real status," and persuaded Huang to adjourn proceedings until the following day. Subsequently, Giles succeeded in conducting the case as he liked, advising Huang to make Fan

pay the debt and forcing him to agree to a postponement of the hearing until April 25.

When that day came, the defendant admitted the amount of the debt as stated by the plaintiff³⁸ in return for setting it off with the sum of Tls.12,500, which Chen had reimbursed to the plaintiff between 1868 and 1873 on the condition that it would be paid back when Chen retired. Fan claimed, in addition, that the debt should be further set off by the amount of unpaid salary to the total of Tls.5,000.³⁹

At the hearing on April 26, the defendants raised a critical matter, questioning the validity of the surety contract between Fan and Chen (see Figure 2).⁴⁰ They argued that the term *li she* 理涉 implied only that the signatory (Fan) would interest himself in securing the settlement of any claims, but did not imply that he himself was pecuniarily responsible.

The judgment at the Mixed Court rejected the arguments of the defence, Huang and Giles concluding that their claim for the setting off of the debt by Tls.12,500 was baseless in the absence of any evidence to prove that the amount would be repaid to Chen on his retirement. As to the claim for unpaid salary, the judgment stated that Chen should have sued the plaintiff in H.B.M.'s Supreme Court in Shanghai. Finally, with regard to the interpretation of the term *li she* in the surety contract, they announced that the phrase *shang bao ren li she* 尚保人理涉 would be the equivalent of *wei bao ren li she* 為保人理涉, meaning that Fan was still responsible for paying the debt from his own resources.⁴¹

However, as Giles himself noted, this judgment was passed by Huang under pressure from him.⁴² Although Giles did not record in his final report why Huang was reluctant to issue this judgment, the reason for his disapproval could be accounted for by the legal status of compradors and the facts recorded in the rehearing of the case.

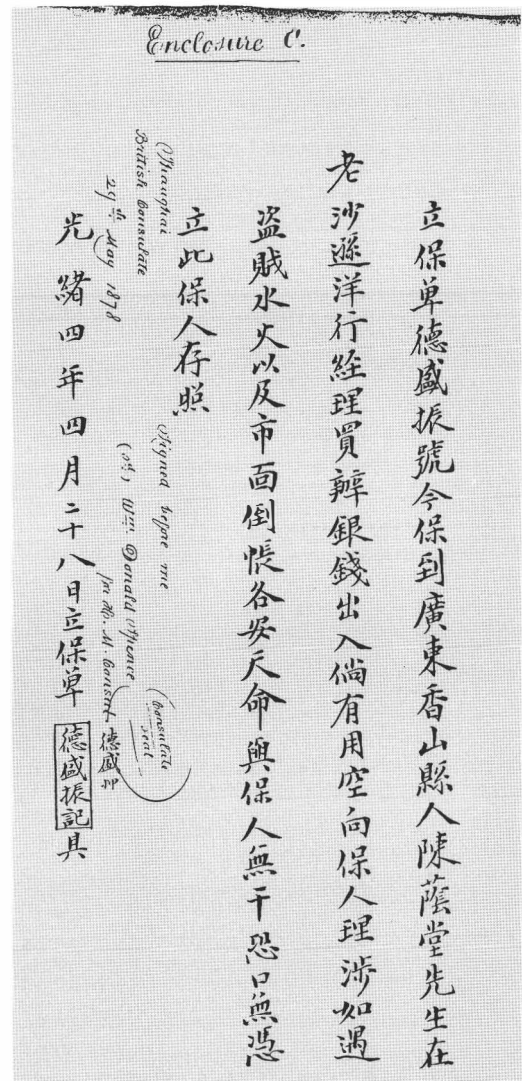
For Western merchants in China, cooperative compradors were indispensable for the smooth transaction of business. It was taken for granted that the compradors would guarantee any loss suffered in the course of their business activities as well as collect debts from clients. The fact that the Shanghai branch of David Sassoon Sons & Co. could compel Chen Yintang to reimburse the loss of Tls.12,500 between 1868 and 1873, and the company insisted on the right to collect the debt of Tls.12,602.38 from Chen or Fan, clearly reflected the assumptions of these foreign firms.

On the other hand, the problem for those firms was that they could not supervise the business transactions their compradors became involved in with Chinese merchants; there was no way of preventing their compradors from conducting business in

⁴³ At the judgment of another civil case, "Wu Yu-shan *v.* David Sassoon Sons & Co." of 1884, H.B.M.'s Supreme Court in Shanghai abandoned the former definition of a comprador as the servant of a foreign firm, and defined him as an independent broker. See Motono Eiichi, "A study of the legal status of compradors," pp.51-3.

Figure 2

The Surety Contract between Fan Desheng and Chen Yintang (source: FO228/804, Enclosure C of Inclosure 1 in Mr Hughes' No.79 of June 1, 1885)



⁴⁴ Niida Noboru, *Chūgoku hōseishi kenkyū —tochihō torihikihō* [A study of Chinese legal history: land law and transaction law] (Tokyo: University of Tokyo Press, 1960), pp.554–60.

⁴⁵ The section in question read as follows:

(iii) It is agreed that whenever a crime is committed affecting the person or property of a British Subject, whether in the interior or at the open ports, the British Minister shall be free to send officers to the spot to be present at the investigation.

To the prevention of misunderstanding on this point, Sir Thomas Wade will write a Note to the above effect, to which the Tsungli Yamèn will reply, affirming that this is the course of proceeding to be adhered to for the time to come.

It is farther understood that so long as the laws of the two countries differ from each other there can be but one principle to guide judicial proceedings in mixed cases in China, namely, that the case is tried by the official of the defendant's nationality; the official of the plaintiff's nationality merely attending to watch the proceedings in the interests of justice. If the officer so attending be dissatisfied with the proceedings, it will be in his power to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case. This is the meaning of the words *Ibuit'ang*, indicating combined action in judicial proceedings in Article XVI of the Treaty of Tientsin, and this is the course to be respectively followed by the officers of either nationality.

private sheltering under the name, and employing the credit, of their Western employers. Accordingly, Chinese creditors demanded that the frozen debt of the compradors be guaranteed by their Western employers, since they regarded the latter as the *de facto* surety underpinning their transactions.

In order to avoid the responsibility of guaranteeing frozen debt accrued by compradors in the course of their private business, once they had begun to earn large profits in their sideline business activities foreign merchants no longer treated them as employees. As long as the definition by H.B.M.'s Supreme Court in Shanghai of a comprador as the servant of a foreign firm remained unchanged, at least until 1884, this was the only feasible way for the Western merchants to avoid such risk.⁴³

The Shanghai branch of Sassoons, to signal a change in the status of their comprador, had stopped paying a salary to Chen. For Chen, this meant that his Western employers no longer stood surety for his business activities with Chinese merchants. If the judgment Giles forced Huang to issue was put into effect, Chinese compradors could no longer expect their Western employers to guarantee debt to their Chinese clients; on the contrary, *they* had to run the high risk of guaranteeing commercial loss or debt to their employers.

Furthermore, the interpretation of the phrase *shang bao ren li she* in the judgment clearly ignored the distinction between the two types of responsibility involved in the surety system as it operated in China. The first type, expressed in the term *li she* on the surety contract of a comprador, meant that the surety had the obligation to make every effort to make the comprador pay his debt, but he himself was not required to pay it. The second type of responsibility, expressed in the terms *daichang* 代償 and *peichang* 賠償 on the surety contract, bound the surety to pay the comprador's debt. Besides the surety contracts between foreign mercantile firms and their Chinese compradors, these two types of responsibility for surety prevailed in every kind of surety contract during the Qing period.⁴⁴ From the point of view of Chinese merchants, therefore, the defendant might quite well deny Fan's responsibility to pay the debt on behalf of Chen, based upon the surety contract which used the term *li she*. And it was quite natural that Huang was reluctant to issue a judgment which turned down the defendant's allegation.

During the hearing of the case, Giles made a number of mistakes. First of all he disregarded Section II, Part iii of the Chefoo Convention,⁴⁵ According to this, a civil case between British and Chinese subjects was to be tried by an official of the defendant's nationality, with an official of the plaintiff's nationality merely in attendance to watch the proceedings in the interests of justice. Had Giles been a genuinely impartial and fair assessor, he would have respected the terms of this Convention and restricted himself to the role of observer.

Giving too much weight to the commercial interests of the British community and obsessed with his low opinion of Huang, however, Giles gave no consideration to Chinese legal custom, and the judgment he forced Huang to deliver ignited anger and resentment among Chinese merchants

and local bureaucrats. As a result, the disposal of the case was eventually referred to the Zongli Yamen and British Minister Parkes, and when Parkes realized that Giles was at fault, he and the Zongli Yamen instructed Shao Daotai and the British Shanghai Consul-General Hughes to rehear it, with the result that the judgment of the Mixed Court was overturned.⁴⁶

The other case, mentioned by Giles in his report, that had worsened the relationship between him and Huang concerned a wrecked steamship, the *Posang*, belonging to Jardine, Matheson & Co. When the vessel ran aground at Yezishan 葉子山 near Ningbo at 3:12 a.m. on May 27, 1884, the ship's comprador, Lin Ganqing 林幹卿, sent all passengers ashore on boats with no opportunity to salvage their baggage.⁴⁷ Among the passengers were a Sub-Lieutenant (*qianzong* 千總) of the Sanjiang squadron of the Changjiang Naval Force stationed at Guazhou (*Changjiang shuisi Jiangnan Guazhou zhenbiao Sanjiangying* 長江水師江南瓜州鎮標三江營), Wu Zhengfa 吳正發, and his soldier-attendant, Liu Yuhe 劉裕和. At the time of the accident they were travelling as express messengers conveying a secret memorial to the Government post of Yangzhou (*Yangzhou jiangdouxian* 揚州江都縣), together with three thousand taels contained in two boxes with a letter addressed to the Wuhu 蕪湖 Daotai. Although Lin Ganqing told them that any money or property would be held in perfect security and could be collected when the ship was rescued, the safety of their valuables was not assured. After the passengers had been transshipped to lifeboats, Lin Ganqing together with the sailors, it was later alleged, gained access to the baggage and broke open the passengers' boxes with hammers and bars to steal valuables. Although Wu and other passengers tried to stop them, Lin Ganqing and the sailors, armed with swords, prevented them from returning to the ship.

When Liu Yuhe forced his way back onto the vessel, he found three sailors carrying away their boxes. Wrestling the two boxes back, he found that one thousand taels and other miscellaneous items were missing. Wu Zhengfa remonstrated at length with Captain Irvine of the *Posang* and Lin Ganqing over the lost property when they reached the safety of the rocks, but Irvine and Lin would not allow them to return to the ship. Outnumbered by the crew, they had no choice but to stay with what remained of their goods until they could be rescued by the Butterfield & Swire steamship *Hoibow* 海口 which was on its way from Swatow.

Proceeding to Shanghai, Wu, while on board, heard one of Lin Ganqing's cooks tell a soldier that the sailors would never have dared carry off the treasure had not Lin himself told them to do so, and that the passengers had presented a joint petition to Messrs. Jardine, Matheson & Co. to recover their lost property, which was rumoured to have been passed on to the British Consul.

Alarmed at this, Wu telegraphed the Changjiang Naval Force to report the loss of the money immediately on his arrival in Shanghai on May 29. He also requested Huang Chengyi, after conveying to him a report of the incident,

⁴⁶ See Motono, "A study of the legal status of compradors," pp.57-69.

⁴⁷ A ship's comprador was employed to administer the embarkation and disembarkation of cargo and passengers, as well as the sale of second-class tickets and of food on board. If the cargo on the ship suffered damage or deterioration by accident or disaster, it was his obligation to recover the loss for his employer. Moreover, he had the responsibility of securing the ticket sales and the activities of sailors, cooks, and coolies (Negishi Tadashi, *Baiben seido no kenkyū* [A study of the comprador system] (Tokyo: Nippon Tosho, 1948), pp.200-1.

⁴⁸ The investigation of piracy or robbery of a wrecked British ship within Chinese waters lay within the jurisdiction of the Chinese authority according to Article 19 of the Treaty of Tianjin. According to this Article, the Chinese authorities were obligated “to use every endeavour to capture and punish the said robbers or pirates, and to recover the stolen property.”

⁴⁹ FO 228/761, Inclosure 3 in Mr Hughes’ No.85 of July 18, 1884; *ibid.*, Inclosure 6 in Mr Hughes’ No.85 of July 18, 1884; FO 228/1005, Shanghai Chinese Nos 48 and 50 of 1884.

⁵⁰ FO 228/761, Inclosures 2, 4 and 5 in Mr Hughes’ 85 of July 18, 1884; FO 228/1005, Shanghai Chinese Nos 47 and 49 of 1884.

⁵¹ FO 228/761, Inclosures 7 and 8 in Mr Hughes’ 85 of July 18, 1884; FO 228/1005, Shanghai Chinese No.57 of 1884.

⁵² FO 228/761, Inclosure 1 in Mr Hughes’ 85 of July 18, 1884.

⁵³ The hearings in the Naval Court are recorded in the *North-China Herald*, June 27, 1884, pp.757–60.

to investigate the case in the Mixed Court,⁴⁸ and petitioned Shao Daotai to write to the British Consul to order Jardine, Matheson & Co. to recover the money.⁴⁹

Consul-General Hughes, upon learning that Shao Daotai and the Changjiang Naval Force had ordered Huang to investigate the case and had requested Jardine, Matheson & Co. to recover the one thousand taels, he communicated this intelligence to the company on June 3.⁵⁰ Jardines asked the Municipal Police to investigate the case, whereupon seven sailors from the *Posang*, followed by twenty-one others and Lin Ganqing, voluntarily surrendered themselves to the Police. The prosecution case on the part of five passengers was to be heard at the Mixed Court.⁵¹

When the first session of the hearing was held on June 13, only three out of the five prosecutors attended. Though they were able to identify the seven suspect sailors from among the crew, none of them had actually witnessed looting by these men or by the comprador. Though all five prosecutors attended the second session on June 16, the plaintiffs could not obtain any incriminating testimony from the defence. One of the prosecutors testified that he had seen the ship’s carpenter carrying off the box containing the Tls.1,000 on the morning of the wreck, which seemed to be decisive evidence for identifying the thief. Other prosecutors, however, alleged that it was eight firemen, none of whom was present on that day of the hearing, who were actually the guilty party.⁵²

The eight firemen under suspicion, in the hope of proving their innocence, attended the third session of the hearing on June 23 with other members of the crew, but as none of the prosecution appeared, the Municipal Police could not present any evidence in support of the firemen’s pillage. In ordinary hearings of a criminal case one might expect the prosecutors to attend every session, while parties under suspicion might well be expected to abscond. In fact, however, the reverse happened, for another investigation into the wreck of the *Posang* had been held at the Naval Court, with hearings on June 19 and 20 that uncovered quite a different course of events in the case from that alleged by Wu Zhengfa.⁵³

According to the captain of the *Posang*, at the time of the wreck he had immediately given orders for lifeboats to be got ready and the passengers loaded into them. This task, which took forty-five minutes, was superintended by Edwin Allason, chief officer, William Mitchell, second officer, and Isaac Roberts, second engineer of the ship. In recounting how the passengers were transferred into the boats, Allason, Mitchell, and Robert Fraser, the third engineer, emphasized that there had been no confusion nor any looting of baggage. While the captain and other crew members were busy making every effort, up to 11 a.m. on May 27, to refloat the ship, the passengers and other crew members, including the cook and Lin Ganqing, were ordered to wait alongside the ship on lifeboats, and were finally landed at daylight on nearby rocks, from where they were later rescued by the passing steamship *Hoibow*, an operation that took place that afternoon and the following morning.

If the course of events was precisely as the captain and the officers of the *Posang* related, who could have stolen the money? According to the chief officer, as the passengers were being guided to the boats, some attempted to take their luggage with them but were prevented from doing so by him and Lin, manning the gangway, as there was insufficient room in the boats. The alleged stealing could have occurred at this juncture.

Some of the passengers who were prevented from taking luggage into the lifeboats with them personally employed fishermen, who happened to be at work near the wreck, to take them and their belongings to the shore. Although the captain refused to allow these fishermen on board, the latter noticed that a great deal of valuable luggage remained on the ship, and returned to loot it after the *Hoibow* had rescued the passengers and most of the crew. The captain and his remaining officers tried to beat them off with gunfire, but the fishermen succeeded, during the night of May 28 between 11 p.m. and 2 a.m. the next morning, in stripping the ship's saloon and carrying off many things. Even after an armed Chinese junk was sent from Ningbo to protect the distressed vessel, the fishermen persisted in taking every chance to board it for looting. In concluding the hearing, the Naval Court ruled that the Captain and his officers had conducted the ship in an orderly and proper manner, and that there was no evidence to support the allegation of pillage by the crew.

Judging from the records of the hearings in the Mixed and Naval Courts, Lin Ganqing probably had done his best to supervise the crew and secure the passengers' valuables against loss, but because of the confusion surrounding the bringing of the luggage to shore by both ship's personnel and fishermen, compounded by the later looting of the vessel by the fishermen, some goods, including the Tls.1,000, were genuinely lost.⁵⁴

Since the Municipal Police could produce no evidence against the eight firemen and other suspects, and with the findings of the Naval Court in mind, Giles and the Municipal Council proposed to Huang that he release the prisoners. But Huang, who attached much importance to Wu Zhengfa's allegation, would not do so, and Lin Ganqing and the crew of the *Posang* were taken back into custody at the Municipal Police Station.⁵⁵

At the fourth session of the hearing on 27 June, another significant discrepancy between Wu Zhengfa's allegation and the testimony of other witnesses came out. While Wu and Liu Yuhe had alleged that Lin and the sailors had raided the baggage and threatened Liu at sword-point in the sinking ship, Captain Irvine and Second Engineer Roberts stated that Lin had in fact gone ashore shortly after the passengers and refused to return for fear that the ship would sink. In addition, a Chinese passenger named Wang, who had remained on board after the others had left, stated that he had not seen the comprador nor had he observed any interference with the baggage by the crew. Furthermore, Wu, under cross-examination by Giles, admitted that he had not, when they reached the rocks, remonstrated with Captain Irvine about returning to the ship to rescue the baggage because he was unable to

⁵⁴ FO 228/761, Inclosure 16 in Mr Hughes' 85 of July 18, 1884; FO 228/1005, Shanghai Chinese No.58 of 1884.

⁵⁵ "Mixed Court," *NCH*, June 27, 1884, p.760.

⁵⁶ “Mixed Court,” *NCH*, July 4, 1884, p.21–22.

⁵⁷ FO 228/761, Inclosure 1 in Mr Hughes’ 85 of July 18, 1884. The English text of Article 4 of the Mixed Court Regulations reads as follows:

In cases where Chinese subjects are charged with grave offenses punishable by death and the various degrees of banishment, where, by Chinese law, a local officer with an independent seal would send up the case for revision by the Provincial Judge, who would submit it to the high authorities to be by them referred to His Majesty or the Board of Punishment, it will still be for the District Magistrate of Shanghai to take action.

⁵⁸ FO 228/761, Inclosure 9 in Mr Hughes’ 85 of July 18, 1884; *ibid.*, Inclosure 10 in Mr Hughes’ 85 of July 18, 1884; FO 228/1005, Shanghai Chinese No.52 of 1884.

⁵⁹ FO 228/761, Inclosures 11 and 12 in Mr Hughes’ 85 of July 18, 1884; FO 228/1005, Shanghai Chinese Nos 53 and 54 of 1884.

⁶⁰ FO 228/761, P. J. Hughes to Harry S. Parkes No.75; *ibid.*, Inclosure 16 in Mr Hughes’ 85 of July 18, 1884; FO 228/1005, Shanghai Chinese No.58 of 1884.

⁶¹ FO 228/761, P. J. Hughes to Harry S. Parkes No.85, July 18, 1884.

speak English. On account of the testimony of these new witnesses and his own cross-examination, Wu’s allegation lost all credibility.⁵⁶

There being thus no longer any reason to continue hearing the case, and convinced of the innocence of Lin Ganqing and the crew, Giles again proposed that they be released. Huang, however, was still strongly opposed to this, intending, on the contrary, to send them for further trial in the Chinese court in Shanghai city in accordance with Article 4 of the Mixed Court Regulations⁵⁷; and tension between the two men grew. Meanwhile, since no evidence to prove the looting by the crew had been presented to either the Mixed or the Naval Courts, Jardine, Matheson & Co. asked Consul-General Hughes, on June 24, to arrange for the release of the seven sailors and Lin Ganqing, a request that was communicated to the Daotai on the same day.⁵⁸

However, since Huang and Shao Daotai were convinced of the truth of Wu’s allegation, they were still refusing to release them on June 29 and 30.⁵⁹ A critical re-examination of the records of the *Posang* case may suggest the reason for this: if the fishermen had done the looting, why did Wu Zhengfa and the Changjiang Naval Force not simply ask the local Ningbo bureaucrats to arrest them instead of referring the case to Huang for investigation? Why did not all the prosecutors attend the first session of the hearing at the Mixed Court? Even if Wu had sued falsely, why did the seven sailors and Lin Ganqing not testify to the fishermen’s looting at that session to save their own skins—surely a more straightforward way to prove their innocence than going through the complicated process of appearing before the Naval Court?

Although the hearings at the Mixed and Naval Courts appeared to have revealed all, those important questions remained unanswered. It was quite plausible that the crew of the *Posang* and Lin Ganqing had hidden the truth in the case, and for this reason Huang and Shao Daotai persisted in demanding a further trial at the city’s Chinese court.

It was at this point that Giles made a serious error. While Consul-General Hughes was negotiating with Huang and the Daotai over whether Lin and the sailors should be released or sent to the Shanghai court for further trial, Giles arbitrarily instructed the Municipal Police to release them on June 27. The release of prisoners without the consent of the Mixed Court Magistrate was apparently in contravention of the rules, and Giles’s action thus made his own position embarrassing. Being informed of this the next day, Hughes hurriedly ordered that the prisoners be retained in custody, but it was already too late.⁶⁰

Even though Hughes was also confident about the innocence of Lin Ganqing and the *Posang* sailors and therefore supported Giles in opposing the further retrial of the prisoners in Shanghai city, he could not help concluding that Giles’s ordering of their release was wrong. According to Hughes, Giles should have reported to him that they could not reach a consensus on how to deal with the case, after which he would then have been able to represent it to the Daotai; and if the Daotai refused either to re-hear the case or to release the prisoners, they would then have been in a much

stronger position to let the prisoners out on bail.⁶¹ But Giles was so wedded to his own view that he failed to take due process into consideration.

Upon discovering that the prisoners had been released, Huang raised a strong protest.⁶² Calling on the authority of the Liangjiang Viceroy 兩江總督 and the Zongli Yamen, Huang and Shao Daotai repeatedly requested the Municipal Police to re-arrest the sailors and send them to the Shanghai city court for trial.⁶³ Claiming that no evidence against them had been found, however, Hughes continued to deny this request from the Chinese authorities.⁶⁴ But it was clear that the British side had taken the wrong action as far as legal procedure was concerned.

On account of his arbitrary conduct in the “David Sassoon Sons & Co. *v* Chen Yintang and Fan Desheng” and “*Posang*” cases, Giles was certainly humiliated by Huang and the Daotai. More unfortunate for Giles, however, was that even Consul-General Hughes had lost trust in him, though Giles did not realize it at the time.

3. *Enmity between Huang and Giles*

About one month after the *Posang* case, Giles began to interfere openly in the trials of criminal cases conducted by Huang. Even though the cases had nothing to do with foreign residents in the International Settlement nor with any kind of foreign interest, he did not hesitate to intervene. This conduct was seen to be a deviation from the assessor’s role, and not only Huang but Hughes too wished to put an end to it.

Giles did not restrict his intervention to trials in the Mixed Court. Assuming that the jurisdiction of the Municipal Police was superior to that of the local Chinese authorities, he insisted that a Chinese criminal, once having come under the jurisdiction of the Municipal Police, could not thereafter be handed over to the Chinese authorities. The first case of this kind was “Chen Deshun 陳德順 *v*. Tian Rulin 天汝林,” in which the defendant, on Huang’s orders, was about to be taken into custody of the Mixed Court. Giles, however, suddenly took action, asking that the defendant and the prosecutor be brought back into the court for re-trial with him present. When Huang adamantly refused to do so, Giles consented to the defendant’s remand. This was, however, a tactic to get around the prisoner’s being taken into the custody of the Mixed Court. By recording “remand till 4th August” on the Municipal charge sheet, his intention was to transfer him instead to the Municipal Gaol, and he justified his decision by pointing to the fact that no remanded prisoner had ever been left in the custody of the Mixed Court. In this tactic Giles was successful.⁶⁵

Fearing a worsening of the relationship with Huang and the Daotai, Consul-General Hughes warned Giles against further interference with the case since it concerned only Chinese and involved no foreign interest.⁶⁶ From

⁶² FO 228/761, Inclosure 14 in Mr Hughes’ 85 of July 18, 1884; FO 228/1005, Shanghai Chinese No.56 of 1884.

⁶³ FO 228/761, P.J. Hughes to Harry S. Parkes No.94, July 26, 1884; *ibid.*, P.J. Hughes to Harry S. Parkes No.125 of Aug. 27, 1884; FO 228/1005, Shanghai Chinese No.61 of 1884.

⁶⁴ FO 228/761, Inclosures 13 and 15 in Mr Hughes’ 85 of July 18, 1884; FO 228/1005, Shanghai Chinese Nos 55 and 57 of 1884.

⁶⁵ FO 228/761, Inclosure in Mr Hughes’ 105 of Aug.5, 1884.

⁶⁶ FO 228/761, P.J. Hughes to Harry S. Parkes No.102, Aug.2, 1884.

⁶⁷ FO 228/761, Inclosure in Mr Hughes' 105 of Aug.5, 1884.

⁶⁸ FO 228/761, P. J. Hughes to Harry S. Parkes Nos 102 and 105; Aug.2 and 5, 1884.

⁶⁹ FO 228/762, P. J. Hughes to Harry S. Parkes No.134, Sept.3, 1884.

⁷⁰ FO 228/762, P. J. Hughes to Harry S. Parkes No.141, Sept.9, 1884; FO 228/762, *ibid.*, Inclosure 1 in Mr Hughes' No.141 of Sept.9, 1884.

⁷¹ FO 228/762, Inclosure 2 in Mr Hughes' No.141 of Sept.9, 1884.

⁷² FO 228/762, Inclosure 1 in Mr Hughes' 163 of Sept.23, 1884; FO 228/1005, Shanghai Chinese No.98 of 1884.

⁷³ FO 228/762, P. J. Hughes to Harry S. Parkes No.163, Sept.23, 1884.

Giles's point of view, however, he had taken the action so as not to "jeopardise one of the few remaining advantages foreigners still derived from the institution of the Mixed Court," that is, the right to administer justice within the International Settlement.⁶⁷ Although Hughes thought it unnecessary to lay down the rule for which Giles was pressing—that all prisoners on remand should invariably remain in the custody of the Municipal Police, he kept silent because he was unwilling to get drawn any further into the matter.⁶⁸

Giles remained intransigent, and went on to intervene this time in the administration of judgments. The first was in the criminal trial of Chen Wanbiao 陳萬標 and Lin Guisheng 林桂生 who were charged with having received ten balls of opium stolen from a P. & O. steamship, the *Thames*. According to the evidence of a quartermaster and a fifth officer of the ship, they were caught red-handed buying the opium from a British lamp-trimmer on the vessel for 60 rupees and \$5. The lamp-trimmer having been sentenced to three months' imprisonment, Giles claimed that Chen and Lin deserved the same punishment. Huang, on the contrary, insisted that they were not even guilty because they had not known that the opium was stolen. After a long and heated argument, Huang reluctantly consented to sentence them to three months' imprisonment, while still prevaricating over whether the prisoners should be taken to the Municipal Gaol or placed in the custody of the Mixed Court. In the end, Huang refused to record the judgment that Giles had tried to insist upon.⁶⁹

After the trouble was settled in his favour through arbitration by Consul-General Hughes,⁷⁰ Giles took it upon himself to intervene again in sentencing, in another criminal case, "W. C. Law v. Li Maonong 李毛弄." Li, a coxswain on a opium hulk, the *Corea*, of which Law was master, was charged with having stolen ten cakes of opium from the hulk, from which eleven cakes of the substance had been found missing some days previously. It having been confirmed that Li was in possession of four of the stolen cakes, Huang sentenced him to one month's imprisonment—which Giles thereupon claimed was insufficient punishment. Huang insisted, however, that since Chen Wanpiao and Lin Guisheng had received three months' imprisonment for stealing ten balls of opium, one month was appropriate for the stealing of only four cakes of the substance. Indignant at this constant interference by Giles, Huang ended the trial by curtly sentencing Li to "a month."⁷¹ Giles continued to try to have his say by ordering the Municipal Police to take Li back to the Municipal Gaol, despite the Regulations that stipulated that a Chinese prisoner once sentenced by the Mixed Court Magistrate was to be held in the custody of the Mixed Court.⁷²

Exasperated by the high-handed interference of Giles, Huang refused to attend the Mixed Court with him for any further trials.⁷³ On top of this he asked Consul-General Hughes, through Shao Daotai, to send the prisoners held in the Municipal Gaol back into the custody of the Mixed Court and to

instruct Giles "to act in accordance with the Treaty and regulations, in a spirit of justice and in conjugation with the Magistrate."⁷⁴

Though unwilling to become further drawn into the conflict between Huang and Giles, Consul-General Hughes had to insist that the two men attend the trial of certain Chinese charged with assault on a British subject, Mr Elwin, reminding and warning Giles, in order that the proper functioning of the Mixed Court be restored, that the assessor had no authority to administer the punishment or the release of any accused person, and that in the event of a disagreement with Huang over these matters, he should register any protest to the Daotai through Hughes.⁷⁵ At the same time Hughes took Giles's strong feelings into consideration and requested that the Daotai replace Huang with an officer of a higher rank and with more experience in judicial matters.⁷⁶ The Mixed Court was thus able to be reconvened, but amicable relations between Huang and Giles were not restored.

Their worsened relationship finally collapsed on May 29, 1885, during the trial of three Chinese charged with loitering for unlawful purposes in an alleyway in the British Settlement. Although the Chinese told the police constable who approached them that they were *lijin* runners, when taken to the Municipal Police station for inspection, one was identified as Chen Asi 陳阿四, who had been imprisoned two years before; they were also found to be in the possession of two pilfered *lijin* runners' passes as well as a *lijin* office uniform jacket, and were arrested on May 26. Though the men were suspected of having committed a crime, in the absence of any proof that they had done so, both Huang and Giles decided to discharge them. However, when Giles proposed that they be released with a caution, Huang lost his temper. Furiously rejecting that suggestion in the most intemperate terms, he suddenly punched Giles, a steel pen clasped in his fist, and when Giles responded by knocking him to the floor, Huang dealt Giles a blow on the shoulder and forced him out of the court.⁷⁷

Although this brawl arose out of a trivial matter, the incident had a considerable impact on both the British Consular establishment and the Chinese authorities. Consul-General Hughes protested to Shao Daotai about the outburst and asked him to dismiss Huang, and sent Giles's report on the incident to the Senior Consul of the consular body in Shanghai, the German Dr Lhürsen.⁷⁸ Meanwhile, Shao Daotai also protested against Giles's rudeness. Depending for his information on a report by Huang, he claimed that Giles was to blame because he had earlier threatened Huang by striking the table, abusing him, and knocking a pencil out of his hand. Reminding Hughes of the fact that Huang had never experienced trouble with any previous assessors or officials of other consulates, the Daotai urged that Giles be advised to change his attitude.⁷⁹

Hughes did not, however, consent to this request. Now that he had evidence of Huang's intemperate behaviour, he openly requested the Daotai to dismiss him and let Mixed Court trials be carried out by substitutes for the two men.⁸⁰

⁷⁴ FO 228/762, Inclosure 1 in Mr Hughes' 163 of Sept.23, 1884; FO 228/1005, Shanghai Chinese No.98 of 1884.

⁷⁵ FO 228/762, Inclosure 3 in Mr Hughes' 163 of Sept.23, 1884. However, Giles again insisted that he merely intended to pass judgment by legitimate methods. Based upon his own view of the Mixed Court system, he justified his intention on the grounds of validating the judgment of a case in which foreigners were involved, not to put the dispute out of the assessor's and Consul-General's reach (FO 228/762, Inclosure 4 in Mr Hughes' 163 of Sept.23, 1884).

⁷⁶ FO 228/762, Inclosure 2 in Mr Hughes' 163 of Sept.23, 1884; FO 228/1005, Shanghai Chinese No.99 of 1884.

⁷⁷ FO 228/804, Inclosure 1 in Mr Hughes' No.76 of May 30, 1885.

⁷⁸ FO 228/804, P. J. Hughes to N. R. O'Connor No.76, May 30, 1884 and Inclosure 2 in Mr Hughes' No.76 of May 30, 1885; FO 228/1005, Shanghai Chinese No.5 of 1885.

⁷⁹ FO 228/805, Inclosure 1 in Mr Hughes' No.85 of June 6, 1885; FO 228/1005, Shanghai Chinese No.19 of 1885. In fact, however, his claim was unreliable. According to the eyewitness report of J. P. Macuen, Captain Superintendent of the Municipal Police, it was Huang who first struck Giles on the shoulder with the palm of his hand (FO 228/805, Inclosure 3 in Mr Hughes' No.85 of June 6, 1885).

⁸⁰ FO 228/804, P. J. Hughes to N. R. O'Connor No.76; FO 228/805, Inclosure 2 in Mr Hughes' No.85 of June 6, 1885; FO 228/1005, Shanghai Chinese No.20 of 1885.

4. *The Dismissal of Huang and the Suspension of Giles*

⁸¹ FO228/804, Mr O'Connor to Consul-General Hughes No.47, June 5, 1885; No. 48, June 6, 1885; No.51 June 10, 1885.

⁸² FO 228/804, Mr O'Connor to Consul-General Hughes No.51, June 10, 1885. The content of the countercharge was not recorded in this despatch.

⁸³ FO 228/805, P. J. Hughes to N. R. O'Connor Nos 90 and 94, June 10 and 12, 1885; FO 228/1005 Shanghai Chinese Nos 21 and 22 of 1885.

⁸⁴ FO 228/805, P. J. Hughes to N. R. O'Connor No.103, June 20, 1885; FO 228/1005, Shanghai Chinese Nos 23 and 24 of 1885.

⁸⁵ FO 228/805, Inclosure 3 in Mr Hughes' No.103 of June 20, 1885; *ibid.*, P. J. Hughes to N. R. O'Connor No.106, June 22, 1885; FO 228/1005, Shanghai Chinese 25–27 of 1885.

⁸⁶ FO 228/805, P. J. Hughes to N. R. O'Connor No.109, June 25, 1885.

⁸⁷ FO 228/805, P. J. Hughes to N. R. O'Connor No.112, June 27, 1885; FO 228/1005, Shanghai Chinese Nos 33 and 34 of 1885.

⁸⁸ FO 228/804, O'Connor to Hughes No.56, July 1, 1885; FO 228/805, Inclosure 2 in Mr Hughes' No.118 of July 3, 1885; FO 228/1005, Shanghai Chinese No.31 of 1885.

⁸⁹ FO 228/805, Inclosure 3 in Mr Hughes' No.118 of July 3, 1885; FO 228/1005, Shanghai Chinese No.32 of 1885.

⁹⁰ FO 228/804, O'Connor to Hughes Nos 58 and 59, July 2, 1885, No.60, July 6, 1885; FO 228/1203, Semi Official No.68, Prince and Ministers of the Yamen to Mr O'Connor, July 7, 1885.

Fisticuffs involving a Mixed Court Magistrate and a British Assessor inevitably had repercussions on the diplomatic scene in Peking. Immediately on hearing of it from Hughes, the British Minister, Nicholas O'Connor, informed the Zongli Yamen of the incident. In order to settle the scandal as quietly as possible, he proposed that ministers of other foreign powers in Peking not be involved.

The Zongli Yamen undertook, in responding to O'Connor, that information concerning the incident would be gathered as soon as possible and the work of the Mixed Court in the meantime suspended.⁸¹ At this stage O'Connor was optimistic. He expected that Huang would be dismissed, while Giles would be allowed to remain. After reading Huang's countercharges, however, he realized that the dispute could not be resolved in that way.⁸²

Meanwhile, Hughes and Shao Daotai started negotiations to settle the trouble in Shanghai. Although they disagreed over who was at fault they agreed to grant Huang's personal application to leave the post. The problem then arose as to whether or not Giles should be replaced. While the Daotai pressed for this, Hughes did not at first intend to consent to it.⁸³

In an attempt to circumvent British obstruction, Shao Daotai instructed Huang to vacate his post for twenty days and appointed an official, Ge Shengxiao 葛繩孝, as Acting Mixed Court Magistrate in his place, intending, in that period, to try to negotiate with Hughes the appointment of a new British assessor to replace Giles. If Hughes failed to agree, Huang would be reinstated.⁸⁴ Hughes would not countenance this proposal, so the Daotai rescinded Ge's appointment and instructed Huang to return to the Mixed Court,⁸⁵ backing this up by ruling, on June 24, that Huang would not be allowed to resign unless Giles did likewise.⁸⁶

Confronted by such strong opposition from the Chinese authorities, Hughes offered the slight concession that Giles would sit with the new Mixed Court Magistrate on the understanding that if any trouble arose a replacement for him would be negotiated in Peking,⁸⁷ and strengthened by the news that the Zongli Yamen was determined to settle the matter in a satisfactory manner, he informed the Daotai that Giles would resume his duties in the Mixed Court on July 3.⁸⁸

His offer, however, had little effect, the news of Giles's return being met with the warning that no Chinese officials would have any dealings with him.⁸⁹ From Peking, O'Connor warned Hughes that an assessor to whom the Chinese authorities took great exception could not be forced back on them. Discussion with ministers of the Zongli Yamen had made it clear that the dispute could only be settled by replacing Huang and Giles simultaneously.⁹⁰ In order to allow the Mixed Court to re-open, therefore, O'Connor decided to appoint, in Giles's place, the interpreter at the Amoy consulate, M. H. Playfair, at the same time requesting the Zongli Yamen that Giles be allowed to sit with

the new Mixed Court Magistrate until Playfair took over the post, intending, by so doing, to make a distinction between the removal of Huang and the suspension of Giles.⁹¹

Although the above arrangement was approved in Peking, it was not easily accepted in Shanghai. Giles himself was fiercely opposed to the arrangement. He requested that the matter be left open until it could be referred home to the British Secretary of State, and sent a full and detailed report explaining how the trouble with Huang originated.⁹² The British merchants and Western residents in the International Settlement threw their support behind Giles, criticizing the removal of both him and Huang in correspondence to and articles in the *North-China Herald*,⁹³ in addition to sending official pleas to the British consulate for Giles's reappointment to his post.⁹⁴

Shao Daotai continued to express his dissatisfaction, and other Chinese officials connected with the Mixed Court refused to allow Giles to enter the premises.⁹⁵ As for O'Connor and Hughes, even to secure that temporary face-saving arrangement had required further pressure from the Zongli Yamen on Shao Daotai and Chinese officials to re-open the Mixed Court to Giles and the new Magistrate, Luo Jiajie 羅嘉杰,⁹⁶ so that they were in no position to heed the criticism and official pleas of the British merchants and foreign residents in the International Settlement.⁹⁷ The Mixed Court dispute thus came to an end, and no further reform of the institution was attempted until 1901.⁹⁸

5. Analysis

If we simply accept the facts as recorded by Giles and the editors of the *North-China Herald*, we fail to perceive fully the historical character of Chinese mercantile society lying beneath this conflict that arose in those two years. In order to understand the legal discipline that maintained this social order, historians should free themselves from such key concepts as "the equality of all before the law" or "fundamental human rights." Chinese society in the Qing period lacked any institution that ensured the property rights of every-one or gave them the right to engage in business with the aim of acquiring property.

Living in such a society, Chinese merchants were obliged to pay a reward to government officials or their runners each time they sought legal protection of their property or claimed their right to do business. In other words, no one could claim such rights without making this kind of payment to the officials; such was the mercantile discipline that underpinned the community.

Taking this into consideration, we can interpret the behaviour of Huang and his runners in the International Settlement and the proceedings in the Chu K'un case in a different light. Huang and his runners were merely trying to protect the property of Chinese merchants from seizure by British creditors

⁹¹ FO 228/1203, Semi Official No.62. To Prince and Ministers of Zongli Yamen, July 9, 1885; FO 228/804, Mr O'Connor to Consul-General Hughes, Nos 61 and 62, July 10, 1885.

⁹² FO 228/805, Inclosure in Mr Hughes No. 123 of July 10, 1885; *ibid.*, Inclosure in Mr Hughes' No.131 of July 22, 1885

⁹³ "The Mixed Court," *NCH*, July 17, 1885, p.64; "The Mixed Court Scandal," *NCH*, July 31, 1885, p.199; "The Mixed Court: Civis," *NHC*, July 31, 1885, p.129; "The Mixed Court: Justitia, A British Resident," *NHC*, Aug.7, 1885, p.153.

⁹⁴ FO 228/805, Inclosure of P. J. Hughes to N. R. O'Connor No.35, Aug. 17, 1885.

⁹⁵ FO 228/805, P. J. Hughes to N. R. O'Connor No.25; FO 228/1005, Shanghai Chinese Nos 33 and 34 of 1885.

⁹⁶ FO 228/804, N. R. O'Connor to P. J. Hughes No.63, July 15, 1885; FO 228/805, P. J. Hughes to N. R. O'Connor No.127 July 15, 1885; FO 228/1005, Shanghai Chinese No.35 of 1885.

⁹⁷ FO 228/804, N. R. O'Connor to P. J. Hughes, Nos 64 and 65, July 20, 1885; *ibid.*, No.68, July 31, 1885.

⁹⁸ FO 228/1409, B. Brennan to E. Satow, No. 48, June 27, 1901.

⁹⁹ In order to prove that he deserved such privilege, a Chinese bureaucrat had to pass the civil examination which required much knowledge about Confucianism. Since it was so difficult to pass this examination, some people, who could not do so but still wanted this privilege, were eager to be employed by the bureaucrats as their “slave servants” (*nupu* 奴僕). Huang and his runners held this kind of privilege among the Chinese in the International Settlement in Shanghai. I gained this insight from an article by Kishimoto Mio, “Min-Shin jidai no kyōshin” [Chinese gentry in the Ming-Qing periods], in *Sekaishi e no toi* [Enquiry into world history], vol.7: *Ken'i to kenryoku* [Dignity and power] (Tokyo: Iwanami Shoten, 1990), pp.41–6.

¹⁰⁰ See Motono, “A study of the legal status of compradors,” pp.44–70.

in return for having received a reward from them. Similarly, Chu K'un arrested the three prostitutes only because the brothel-keepers who employed them had failed to pay a reward in return for having him grant them the licence to conduct their business.

An important fact was, moreover, that only Chinese government officials and their runners had the privilege of granting these rights in return for receiving such a reward.⁹⁹ Huang was therefore understandably incensed at the arrest of Chu K'un by the Municipal Police and would never have agreed to find him guilty: in taking this stand, he and his men were merely endeavouring to maintain the social order of the Chinese residents in the International Settlement in accordance with accepted custom; and the latter welcomed it, predictably expressing, at the time, no criticism of Huang and his runners. Had there been any such criticism, neither Giles nor the *North-China Herald* would have overlooked it.

In fact, Giles and the British residents only found fault with Chinese practice because they assumed that the British legal system would also be effective in China. The suggestion in the *North-China Herald* that British assessors should be equipped with a full knowledge of not only Anglo-American but also Chinese law in order to prevent “embezzlement, conspiracy, or swindling” by the Mixed Court magistrate was, in consequence, clearly nonsensical. The discipline that governed Chinese mercantile society bore no resemblance to that of English-speaking countries.

Meanwhile, from the standpoint of the local Chinese officials, the criticism and interference by the Municipal Police, Western residents, and Giles was beyond comprehension. They therefore turned a deaf ear to it and developed a strong antipathy towards Giles. Of the British residents in the International Settlement who witnessed the behaviour of Huang and his runners, only Consul-General Hughes seems to have understood the social practices of the Chinese mercantile community. He was able to recognize Huang's ability as a Mixed Court Magistrate, and did not share Giles's and other Westerners' views of him and the Mixed Court. As far as understanding Chinese society was concerned, Giles was greatly inferior to Hughes.

Why the outburst by British residents in the International Settlement against Huang and the Mixed Court in 1884–85 that eventually led to Article 12 of the Mackay Treaty? The reason for it was, as mentioned at the beginning of this article, the financial panic at the end of 1883. Although many clashes between British and Chinese merchants over the collection of frozen debt must have occurred as a result, the records of only three civil cases—all between David Sassoon Sons & Co. and their Chinese creditors or debtors—have survived.¹⁰⁰ From these records, however, it can be seen how major an issue it was for the various parties at that time.

As I have repeatedly emphasized, the major concern for the British merchants was how to succeed in collecting liabilities from their Chinese counterparts or compradors. For well-off Chinese merchants in the International Settlement, many of whom were employed by foreign merchants as compra-

dors, however, the problem was the inverse: how to avoid such liability, for they risked losing all their possessions if they guaranteed the debts of their foreign employers in good faith. When they did get involved in such a case, it would be normal practice to have Huang protect their property from the British creditors in return for some pecuniary consideration. The British invariably viewed such dealings between Huang and their Chinese debtors as “embezzlement, conspiracy, or swindling” on the part of the Mixed Court Magistrate.

Sharing this view with the British firms and other foreign residents, Giles did his best to intervene in civil cases between British and Chinese merchants to settle them in favour of the British. Needless to say, as was clearly demonstrated in the proceedings of the two cases “David Sassoon Sons & Co. *v.* Chen Yintang and Fan Desheng” and “*Posang*,” this only made matters much worse, relations finally deteriorating to an exchange of fisticuffs that required diplomatic negotiation to resolve without too much adverse publicity.

This ludicrous final episode in effect camouflaged the essence of the 1884–85 Mixed Court conflict, concealing its true nature from the view both of contemporary players and of writers of history today.

Following the departure of both Giles and Huang Chengyi from the Mixed Court, the British mercantile and diplomatic establishments in China came to realise that there was little hope of recovering debt from their compradors or Chinese clients so long as extra-territoriality held sway. The best way to be rid of this institution was to introduce into China a legal system which the British, at least, deemed suitable—and this was the real object of Article 12 when the Mackay Treaty was eventually concluded. In fact, the relinquishment of extra-territorial rights in return for the reform of China’s judicial system to bring it into line with that of Western nations merely bolstered the commercial interests of the British in China: it was by no means a political compromise on Britain’s side.

With the signing of the Mackay Treaty, to what extent were improvements to the Mixed Court and the abolition of extra-territoriality effected? The investigation of that question will have to be the theme of another study.

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