

The Petition of Bah Fook of Sofala, 1866

© 2013 Kate Bagnall

Abstract: This article introduces an unusual and significant historical document from the goldfields of colonial New South Wales – a petition to the Governor of New South Wales signed by more than 270 Chinese men, predominantly goldminers, living at Sofala on the Turon River goldfields in 1866. The petition concerned the unfair conviction of Bah Fook (百福), a fellow miner, for injuring a young white girl in a fight with her mother. The petition provides an interesting window into race relations on the Australian goldfields of the 1860s, highlighting the close and personal interactions of Chinese and white residents and the agency demonstrated by Chinese in addressing perceived injustices. This article was prepared with the assistance of the Hill End and Tambaroora Gathering Group.

Keywords: petition, the law, goldfields, archives, local history, New South Wales

Introduction

In the late summer of 1866, Bah Fook (百福), a Chinese goldminer from Sofala in central-western New South Wales, was arrested for stabbing a four-year-old white girl, Charlotte Barrett¹, during a disagreement with her mother. On 7 February 1866, a week after being taken into custody, Bah Fook appeared before district court judge Henry Cary in the Court of Quarter Sessions at Bathurst.² The court heard testimony from the prosecution – in the form of Charlotte's mother, Anne, her twelve-year-old sister, Fanny, and a friend of Anne's, an Italian man named Antonio Auri – and from witnesses for the defence – two Chinese men, Hooken and Ah Tin. Medical testimony also described the very serious injury that Charlotte had suffered. The jury found Bah Fook guilty of unlawfully wounding a child and he was sentenced to three years' imprisonment with hard labour on the roads or other public works of the colony.³

Soon after his conviction, however, residents of Sofala rallied behind Bah Fook, preparing a petition to present to the Governor of New South Wales, Sir John Young, and the members of the Executive Council. The petition, submitted to the Executive Council in early March 1866, is now held by State Records New South Wales among the Colonial Secretary's correspondence. I was made aware of its existence by Lorraine Purcell, Convenor of the Hill End and Tambaroora Gathering Group after the petition was uncovered by a volunteer, Verna Little, during a project looking at petitions from miners on the Turon River goldfields.⁴ Bah Fook's petition, together with other petitions from Chinese residents, show that the Chinese were active and engaged in addressing perceived injustices of colonial life.⁵

¹ The court records describe Charlotte as being four years old in February 1866, but according to her birth registration she was born at Erskine Flat, Sofala on 17 June 1860, meaning she was really five and a half: Birth Registration for Charlotte Berrett, Sofala, 1860, NSW Registry of Births, Deaths and Marriages, 12337/1860.

² Unless otherwise noted, details of Bah Fook's case are taken from "Memorial of Inhabitants of Sofala re Bah Fook," 66/1430, Colonial Secretary's Correspondence, State Records New South Wales.

³ "Return of Prisoners Tried at the Criminal Court and Different Courts of Quarter Sessions, 1866," *New South Wales Police Gazette*, 7 March 1866, p. 85. The only press report I have located on the case is a brief mention in the *Sydney Morning Herald*, 12 February 1866, p. 4, <http://nla.gov.au/nla.news-article13126257>, viewed 24 May 2013.

⁴ My sincere thanks to Lorraine Purcell and Verna Little of the Hill End and Tambaroora Gathering Group (<http://heatgg.org.au>) for their help in researching this article.

⁵ On Chinese petitions in Victoria, see Anna Kyi, "The Most Determined, Sustained Diggers' Resistance Campaign: Chinese Protests Against the Victorian Government's Anti-Chinese Legislation, 1855–1862" and "Finding the Chinese Perspective: Locating Chinese Petitions Against Anti-Chinese Legislation During the Mid to Late 1850s," *Provenance: The Journal of Public Record Office Victoria*, 8 (2009): 35–49, 133–40, available online at <http://prov.vic.gov.au/wp-content/uploads/2011/05/Provenancelssue8.pdf>, viewed 30 May 2013; Elizabeth Denny, "Mud, Sludge and Town Water: Civic Action in Creswick's Chinatown," *Provenance: The Journal of Public Record Office Victoria*, 11 (2012), available online at <http://prov.vic.gov.au/publications/provenance/mud-sludge-and-town-water>, viewed 30 May 2013.

In his petition Bah Fook stated that, although he had been found guilty of wounding the four-year-old child, he had “no knowledge of ever seeing her” and that he “had not and could not have had any malicious feeling” towards her. He stated that he was a native of China and had arrived in New South Wales more than nine years earlier, working as a gold digger at Sofala all the time since. He said he was well known by the people of Sofala and had never before been charged with an offence. He asked the Governor for a remission or some mitigation of his sentence.

The Chinese at Sofala

Bah Fook’s claim to being well known and respected was backed up by the signatures of more than 270 fellow residents of the district who signed their names to the following statement:

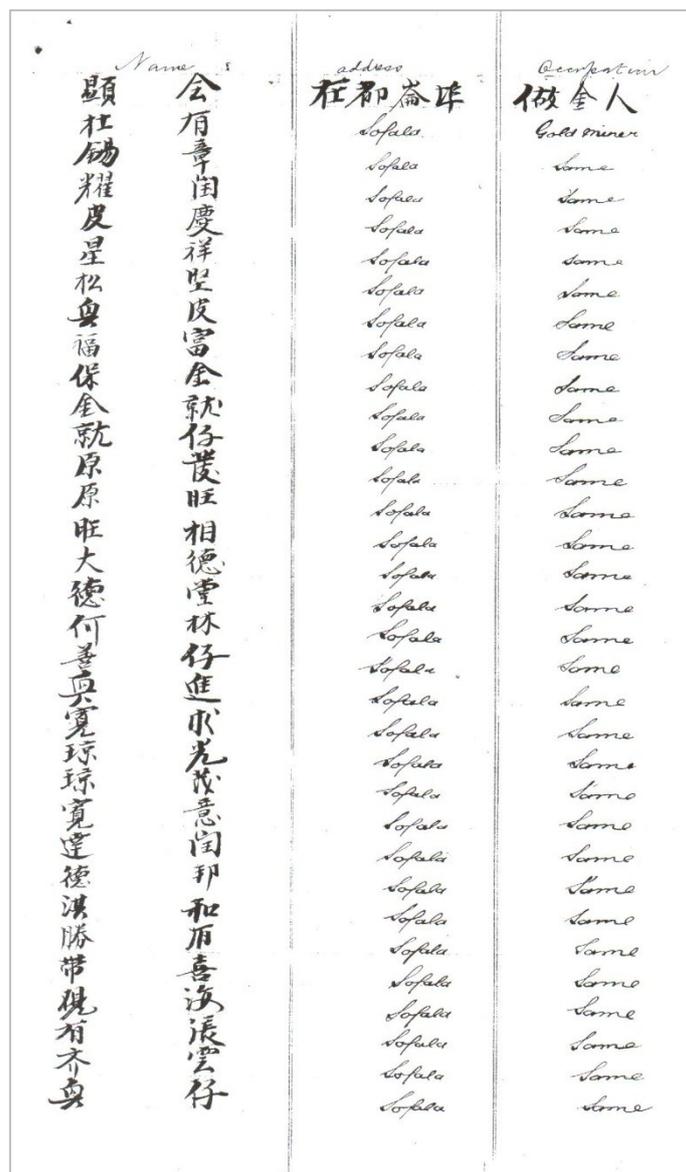
We the undersigned whose name and addresses are as hereunder written, certify that the Petitioner Bah Fook has been known to use for many years and we have always found him to be a respectable and industrious Gold miner in Sofala and with its neighbourhood.

Thirty-two of those who signed the petition were white, including local storekeepers, publicans, tailors, bootmakers, an auctioneer, an undertaker, a saddler and a mail contractor. Most of the Chinese who signed the petition were goldminers, although there were also six storekeepers from Sofala, one storekeeper from Bathurst (Sun Quong Fong 新广丰) and one apothecary from Sofala (see Table 1 for names of the Sofala businesses). It is interesting to contemplate the logistics of preparing the petition – had one of the local Chinese community leaders called together a meeting of his countrymen, encouraging them to sign their names then and there, or had someone walked through the town and along the river, from hut to hut and claim to claim, to seek support?

Table 1. Chinese businesses in Sofala, c.1866⁶

Name	Alternative spelling	Chinese characters	Type of business	Address	Signed petition
Ah Chong	–	羅秋付	Boarding house	Denison Street	Yes
Ap Long	–	合隆勝記	Store	Sofala	Yes
Joh Lang Tong	–	佐容堂	Apothecary	Sofala	Yes
Sam Yap	–	三益	Store	Sofala	Yes
Seng Chai	–	–	Interpreter	Church Street	No
Su Po Long	Sue Bo Long	蘇寶隆	Store	Bowen Street	Yes
Sun Kum Wah	Sun Kim Wah	新金華	Store	Denison Street	Yes
Sun Kum Hing	–	–	Store	Denison Street	No
Sun Ut Long	Sun Hap Long	新悅隆	Store	Davis Street	Yes
Ti Long	Sun Tye Long	泰隆福記	Store	Denison Street	Yes
Sin Yee Fah	–	–	Boarding house	Denison Street	No

⁶ Data taken from “Memorial of Inhabitants of Sofala re Bah Fook”; Matthew Higgins, *Gold and Water: A History of Sofala and the Turon Goldfield* (Bathurst: Robstar Pty Ltd, 1990), p. 73; Robert G. V. Baker, *Historic Sofala: A Goldfield that Changed a Nation, 1851–1943* (Cronulla: Centrepak Research, 1985), p. 37. Baker claims these men were “head men” of the Sofala Chinese community.



A page of signatures from Bah Fook's petition, 66/1430, Colonial Secretary's Correspondence, State Records New South Wales

The first Chinese miner appeared on the Turon River soon after the discovery of gold there in 1851, with small numbers arriving in the following few years.⁷ In July 1856, however, a group of 150 Chinese arrived and by 1861 a significant proportion of the local population was Chinese, primarily occupied with alluvial mining.⁸ In 1861 Sofala itself had 642 Chinese residents (39 percent of the total population) and Chinese on the surrounding goldfields numbered 1877 (42 per cent of the total population).⁹ A correspondent for the *Bathurst Times* newspaper wrote in 1861 that:

It is an undoubted fact that the Chinese are taking the lead here ... Only imagine that in the small township of Sofala there are thirteen Chinese to fifteen European stores! and, that, in a radius of six miles there are no

⁷ On the history of the Chinese at Sofala see Higgins, *Gold and Water* and Baker, *Historic Sofala*. A detailed firsthand account of Sofala from 1865 can be found in "Random Notes by a Wandering Reporter," *Sydney Morning Herald*, 30 September 1865, p. 4, viewed 31 May 2013, <http://nla.gov.au/nla.news-article31125454>.

⁸ "The Gold Fields," *Empire* (Sydney), 21 September 1863, p. 2, viewed 31 May 2013, <http://nla.gov.au/nla.news-article60548588>.

⁹ Baker, *Historic Sofala*, pp. 20 and 25.

less than six hundred [Chinese] ... while the European population does not number more than one-half! Wattle Flat is principally occupied by Chinamen whose numbers are increasing daily; in fact, from the Lime Kilns to the Turon you see no working parties but these "pilgrims from the land of tea".¹⁰

As well as many Chinese stores, Sofala had a joss house, described by a Christian visitor to the town in 1861 as "a large tent ... gaudily decorated inside and out, with tapers lighted on a table inside at noonday, and an unmistakable Chinese flag flying over the doors".¹¹ The joss house was at Erskine Flat, a gold-working settlement on the river about a mile east of the main township. Some European residents objected to the Chinese presence, organising anti-Chinese petitions in 1858 and 1861, but Sofala was spared the kinds of vicious anti-Chinese protests and attacks experienced on other goldfields, most notably at Lambing Flat, in the early 1860s. And, in fact, in 1870 one visitor to the area commented that:

Sofala is to a certain extent a celestial township, and terrestrials and celestials appear to hob-nob together with that degree of intimacy which naturally comes of long acquaintance.¹²

Part of that intimacy came in the form of sexual relationships between white women and Chinese men. The births of twenty-one babies were registered with Chinese men listed as the father at Sofala between 1860 and 1870.¹³ During the same period at least four white women married Chinese men in Sofala.¹⁴ One of these, Olive Alcock, was later charged with bigamy after marrying again, at which point details of her first marriage to Wong Hoy Loy in 1863 were made public.¹⁵ The marriage, which had been arranged by Olive's mother, took place when the bride was just thirteen and still a student at the Church of England school in Sofala. Olive's sister Jane was married to Tommy Hoy, a government interpreter and friend of Wong Hoy Loy, at Bathurst the same year.¹⁶ It seems that neither girl remained in her marriage for long. Although curious and remarkable to their contemporaries, as demonstrated by the press coverage of Olive's bigamy case, the circumstances and fluid nature of these young women's relationships with Chinese men were not unusual in the early goldfields communities of New South Wales and Victoria.

¹⁰ "Local and Provincial," *Goulburn Herald*, 21 August 1861, p. 2, viewed 31 May 2013, <http://nla.gov.au/nla.news-article105778116>.

¹¹ "Lecture on the Chinese Question," *Sydney Morning Herald*, 9 December 1861, p. 2, viewed 31 May 2013, <http://nla.gov.au/nla.news-article13058052>. Those who ran the Sofala joss house strongly opposed the establishment of a Chinese mission in Sofala by the Presbyterian Church in 1864: "Synod of Australia in Connexion with the Established Church of Scotland," *Sydney Morning Herald*, 19 November 1864, p. 5, viewed 31 May 2013, <http://nla.gov.au/nla.news-article13101131>.

¹² "Jottings by the Way," *Australian Town and Country Journal*, 30 July 1870, p. 10, viewed 31 May 2013, <http://nla.gov.au/nla.news-article70461026>.

¹³ See Birth Registrations 13013/1861, 13665/1863, 13703/1863, 13706/1863, 13709/1863, 13724/1863, 14909/1864, 14937/1864, 14960/1864, 15253/1865, 15285/1865, 15324/1865, 15063/1866, 16290/1867, 16306/1867, 16551/1868, 16555/1868, 18203/1869, 18224/1869, 18270/1869, 18274/1869, 17273/1870, NSW Registry of Births, Deaths and Marriages.

¹⁴ See Marriage Registrations for Sarah Peaus and A Chin, 3016/1862; Alice Ann Cross and Ah Lee, 2903/1863; Olive Alcock and Wong Hoi Loi, 2907/1863; Ellen Jones to Chong Sing, 3108/1866, NSW Registry of Births, Deaths and Marriages. One further marriage took place between William Ah Lang and Elizabeth Long Poy, 1866/3114.

¹⁵ See, for example, "General News," *Maitland Mercury & Hunter River General Advertiser*, 20 November 1869, p. 5, viewed 1 June 2013, <http://nla.gov.au/nla.news-article18741264>.

¹⁶ Marriage Registration for Jane Alcock and Thomas Hoy, Bathurst, 1863, NSW Registry of Births, Deaths and Marriages, 1407/1863.

The Evidence For and Against

In response to Bah Fook's petition, on 14 April 1866 Judge Henry Cary, who had presided over Bah Fook's hearing, was asked to prepare a report on the case for the Attorney General.¹⁷ Cary duly did so, interviewing the Sofala police magistrate, William Johnson¹⁸, and police sergeant, Walter Cassels Casey, who had arrested Bah Fook. In delivering his report on 27 July 1866, Judge Cary gave a detailed statement of "all important particulars", concluding that the story told by the prosecution was a fabrication while that of the defence was true. He believed that the jury had found Bah Fook guilty because they considered the defence "too revolting to be credited". Cary recommended the case "to the merciful consideration of His Excellency".

So what exactly had Judge Cary heard during the trial, and in his interviews with the police magistrate and sergeant, that prompted him to disbelieve the mother of the injured four-year-old white girl in favour of a Chinese gold digger?

Anne Barrett's version of events – which was backed by her older daughter and Antonio Auri – was that Bah Fook had come to her home at Erskine Flat to bring her some peaches. She said she then asked Auri to turn Bah Fook out because he was "a bad man". She claimed that Bah Fook later returned, pushed open the door of the house, stated that he would kill them all, and hit little Charlotte with a stone or bottle that he had in his hand. Auri had gone away after turning Bah Fook out of the house and didn't witness the incident, only returning after he heard a scream and had gone to fetch the sergeant.

The version of events presented by the two Chinese witnesses for the defence reveals, however, why Judge Cary doubted Anne Barrett's evidence. The first witness, Hooken, stated that on that particular day he had "called on Anne Barrett and used her as his wife", remaining in her house for about ten minutes. He had then hung around outside in order to see two of his countrymen whom he knew were also coming to pay her a visit. One of them, Ah Tin, went in. Then, after Ah Tin had departed, Antonio Auri went in, followed shortly after by Bah Fook. Hooken then saw Auri shove Bah Fook out the door and Anne Barrett strike him on the back. He saw nothing in Bah Fook's hand, but did see someone fall on top of little Charlotte Barrett. Similarly, the second witness, Ah Tin, said that after he left Anne Barrett's house he saw Antonio Auri go in, followed a few minutes later by Bah Fook. Three or four minutes later he saw Auri push Bah Fook out of the house, followed by Anne Barrett who struck Bah Fook on the back. He didn't see Bah Fook strike Charlotte Barrett, but he did see a "woman, man and child fall all on a heap".

Judge Cary stated that if no witnesses had been called for the defence, the jury would probably have found in Bah Fook's favour. But Hooken and Ah Tin's frank testimony about Anne Barrett's prostitution, her Chinese clientele and her young daughters' presence in her home while she was working – stories "too revolting to be credited" – seem to have turned the jury against him.

Anne Barrett was well known to both the Sofala police magistrate and sergeant.¹⁹ Sergeant Casey told Judge Cary that "Mrs Barrett is a prostitute for Chinese" and that Antonio Auri, "her husband's mate", was also her "reputed paramour".²⁰ The magistrate, William Johnson, was even more forthcoming, telling Judge Cary that Anne Barrett was frequently before the court for drinking, abusive language and petty theft. Her house was

¹⁷ On Henry Cary, see K. J. Cable, "Cary, Henry (1804–1870)," *Australian Dictionary of Biography* (Canberra: National Centre of Biography, Australian National University), <http://adb.anu.edu.au/biography/cary-henry-3175/text4755>, viewed 24 May 2013.

¹⁸ "Appointments," *Sydney Morning Herald*, 13 January 1855, p. 5, <http://nla.gov.au/nla.news-article12964265>, viewed 24 May 2013.

¹⁹ Anne Barrett (born c. 1832) and her husband Thomas (born c. 1828) were both natives of Wiltshire, England where they had married in 1853 before emigrating to Australia: Birth Registration for Charlotte Berrett, Sofala, 1860, NSW Registry of Births, Deaths and Marriages, 12337/1860.

²⁰ In court testimony in May 1869 Anne Barrett described Antonio Auri as "the man with whom I live". "Conviction of a Quack Doctor," *The Empire* (Sydney), 10 May 1869, p. 4, <http://nla.gov.au/nla.news-article60834473>, viewed 4 May 2013.

said to be a brothel, with her husband “conniving at his wife’s prostitution for the purpose of obtaining money”. Johnson said that her moral character was bad and that he would not believe her on oath. His interpretation of events was that she had mistakenly struck her own daughter when she had attacked Bah Fook.

Anne Barrett was arrested for stabbing Bah Fook at the same time as he was arrested for wounding Charlotte Barrett.²¹ Yet, despite her frequent association with the law, the crown prosecutor did not take the case to trial because of the “supposed perjury” of the Chinese witnesses in the first case. As the jury in Bah Fook’s case had not believed Hooken and Ah Tin – thereby implying that they had lied under oath – it is likely that their testimony in a subsequent case against Anne Barrett would also have been disbelieved.

The Outcome

As a result of the petition, on 15 August 1866 authority was given for two years to be taken off Bah Fook’s sentence. Although it was noted that a pardon may have been warranted by the evidence presented in Judge Cary’s report, the sentence was not remitted altogether because, with the absence of any new evidence, remission would have been too direct an interference in the function of the jury system. What actually happened to Bah Fook is uncertain, as at the time of writing I have been unable to locate concrete evidence of his fate after his conviction. A list of prisoners compiled by the Sheriff’s Office in Sydney on 27 February 1866 shows that he was to be sent to Darlinghurst Gaol or Cockatoo Island in Sydney to serve his sentence, but I have not found gaol records that obviously relate to him, nor have I found any mention of his release in the *New South Wales Police Gazette*, nor have I located a likely death registration.²²

²¹ “Apprehensions,” *New South Wales Police Gazette*, 14 February 1866, p. 57.

²² “List of Prisoners Tried and Convicted at the Quarter Sessions Held at Bathurst on the 7th February 1866 Proposed to be Detained at Bathurst Gaol,” 66/1971, Colonial Secretary’s Correspondence, State Records New South Wales.