# An unexpected welcome

When the *Taiyuan* sailed into Sydney Harbour on Thursday, 23 January 1908, there were around 50 passengers on board.[[1]](#footnote-2) Thirty-nine of these were Chinese men – four bound for Sydney and six for Melbourne, with the remainder travelling on to New Zealand, Tahiti and Fiji. James Minahan was one of those bound for Melbourne, but his name, as such, did not appear on the passenger manifest. Instead, he was listed as ‘James Kitchen’, aged 31, storekeeper. His race was given as ‘Chinese’ and, under the column for nationality, it was noted that he had a birth certificate, ‘no. 23003’. Sydney Customs Inspector J.T.T. Donohoe was on the wharf to meet the *Taiyuan* and, after inspecting the passengers’ papers, he decided to give Minahan the Dictation Test. This was the passage he read:

A large part of the cheapening of steel has been brought about by this one device for using cheap inferior fuels. In the iron trade it was discovered many years ago that it paid to produce more of this particular gas than could be used in the purely metallurgical operations.[[2]](#footnote-3)

Minahan was unable to complete the test, but as his ultimate destination was Melbourne not Sydney, he was allowed to continue on with his fellow Chinese passengers. He and the other five men were handprinted and transhipped to the SS *Wollowra*, and they sailed at 5.30 pm on Friday, 24 January, for the final stage of their journey to Melbourne.

As the men made their way south on the *Wollowra*, Donohoe advised the Melbourne Collector of Customs and the Secretary of the Department of External Affairs of their coming, forwarding their handprints and documents, including Minahan’s birth certificate, to assist Melbourne Customs with the men’s identification. After the *Wollowra* arrived at the Australian Wharf in Melbourne on Sunday, 26 January 1908, the six men were briefly seen by Customs Officer Hugh Mercer. But, since it was a Sunday and Mercer had no Chinese interpreter with him, he decided to return the following day to formally examine them. Mercer returned on Monday and, with the help of government interpreter Harry Hoyling, interviewed Minahan in the saloon of the *Wollowra*. Mercer also spoke to ‘a reputable Chinaman’, tobacco dealer Chan Num, who had known Minahan as a boy and had come to meet him at the wharf. Ching Kay of Sun Nam Hie in Little Bourke Street, another Shek Quey Lee native, also met the boat.

To execute his duties under the Immigration Restriction Act Mercer needed to establish whether the birth certificate Minahan presented was really his own. He later noted that there was no indication on the certificate that it belonged to someone who was ‘Chinese’. The certificate was in the name ‘James Francis Kitchen’, no father’s name was given and the mother was ‘Winifred Minahan’. Ever alert to the possibilities of fraud, Mercer suspected that the certificate did not belong to this man who was Chinese in appearance and manner, and who understood not a word of the English spoken to him. After interviewing Minahan, Mercer was not convinced of his identity and so applied the Dictation Test. Through interpreter Harry Hoyling, Mercer told Minahan that he was going to read a passage of not less than fifty words in English and that he was required to write them in English. He gave Minahan a pencil and paper and read a passage once slowly. It was the same passage Donohoe had read in Sydney. When asked, Minahan said that he could not write out the passage. Mercer informed him that he was a prohibited immigrant and that he could not land in Australia. Consequently, Minahan was to be transferred back to the *Taiyuan* in Sydney and then returned to Hong Kong. He was not at this point formally charged under the Immigration Restriction Act.

The next day, Tuesday, Minahan left Melbourne for Sydney on the *Wollowra*, and Melbourne Customs informed their Sydney colleagues of his rejection under the Immigration Restriction Act. When he arrived in Sydney two days later, Minahan was escorted by Inspector Donohoe back to the *Taiyuan*, which was due to sail for Hong Kong at the end of the following week. On Thursday, 6 February, however, two days before the scheduled departure, the *Taiyuan*’s master, Captain Lancelot Dawson, was asked to show cause why a writ of *habeas corpus* should not be issued against him for holding Minahan on board. *Habeas corpus* – asking a court to decide on the lawfulness of a person’s detention – was a tactic long used by Chinese Australians to secure the release of those held on board ship who were facing deportation as prohibited immigrants.[[3]](#footnote-4) Only seven month earlier, for example, it had been used successfully in the case of a youth named Willie Lee Hook, whose situation was very similar to that of James Minahan.[[4]](#footnote-5)

The case against Captain Dawson was heard by Justice Philip Street of the Supreme Court in chambers on Friday, 7 February. Barrister F.S. Boyce acted on Minahan’s behalf in the matter, under instruction from Deane and Deane Solicitors as agents for Croft and Rhoden Solicitors of Melbourne.[[5]](#footnote-6) Boyce argued that as a natural-born British subject Minahan was entitled to enter the Commonwealth, and he presented affidavits from Minahan and several Chinese residents of Victoria attesting to the facts of Minahan’s Victorian birth and subsequent travel to China with his father. Captain Dawson argued that he was acting on the orders of a Commonwealth Customs officer, who had declared at that James Minahan was a prohibited immigrant, noting that under section 9 of the Immigration Restriction Act the master of a vessel was liable for a penalty of £100 if a prohibited immigrant landed from his vessel. On hearing the evidence, Justice Street ruled in Minahan’s favour, concluding that neither Captain Dawson nor the Commonwealth had demonstrated that Minahan was a prohibited immigrant under the Act. Justice Street therefore ordered Minahan’s release.

Minahan left the *Taiyuan* at around one o’clock that afternoon, but he was not free for long. Acting on instructions from the Department of External Affairs, Inspector Donohoe had waited at Circular Quay and arrested Minahan as he left the wharf. Donohoe took him to the No. 4 Police Station at George Street North, where he was formally charged with being a ‘prohibited immigrant found within the Commonwealth in contravention of the Immigration Restriction Act, 1901–1905’.[[6]](#footnote-7) Minahan was brought before the Water Police Court at two o’clock on Friday, 7 February, and was remanded in custody until the following Friday. He was held in Darlinghurst Gaol.

On 6 February, when Captain Dawson had been summonsed to appear before Justice Street, the Collector of Customs in Sydney had sent an urgent telegram to the Department of External Affairs in Melbourne for advice on what action to take. The Secretary, Atlee Hunt, had responded, also by telegram:

Take no action in Kitchens case … so far as habeas proceedings are concerned presume he will be brought before Court and his discharge ordered … if that happens he should be arrested on leaving Court and charged with being prohibited immigrant & on appearance before police court remand should be applied for to allow Crown solicitor to be instructed.[[7]](#footnote-8)

Hunt also received a personal letter from Minahan’s Melbourne solicitor, E.A. Fortescue Croft, sent from Sydney the same day.

When Minahan was rejected at Melbourne and returned to Sydney, Croft had rushed north to start legal proceedings on his behalf. Although there is no certain evidence in the archives, it is likely that it was Minahan’s uncles in Melbourne, Ah Doe and Ah Yuey, who organised and paid for this legal representation. Another possibility is that it was done through the auspices of the Kong Chew Society (岡州會館) or the See Yup Society (四邑會館), welfare and mutual aid societies established in Melbourne in the 1850s for people from Sunwui county and the See Yup or Four Counties district, of which Sunwui was a part.[[8]](#footnote-9) Croft was a sensible choice of solicitor, as he already had experience in representing Chinese Australians in their legal struggles against the Commonwealth and continued to do so in following years.[[9]](#footnote-10)

In his private letter to Hunt, Croft wrote that he had ‘not managed the High Court Habeas after all’ and so had ‘taken your middle course here by issuing an order nisi calling on the captain to shew cause why a writ of habeas corpus should not issue’. Croft had been advised by the Commonwealth’s counsel that this was ‘the Sydney practice’. He updated Hunt on the progress of the case and urged him to ‘take this private letter in the spirit it is sent’, noting ‘you see I always try to fight straight.’[[10]](#footnote-11)

These private discussions between Minahan’s solicitor and those representing the Commonwealth were the beginning of a course of action, engineered behind the scenes, that eventually saw the case transferred from Sydney to Melbourne. The Department of External Affairs first passed the matter to the Crown Solicitor and, on request, Inspector Donohoe sent his file to the Crown Solicitor’s Sydney office. Then moves were taken for Melbourne Customs Officer Hugh Mercer and Chinese interpreter Harry Hoyling to journey to Sydney for the hearing against James Minahan on Friday, 14 February. However, realising the difficulty and expense of defending his client in Sydney, where he had no friends or contacts, Croft wrote to Atlee Hunt suggesting that the case be transferred to Melbourne. Hunt advised the Crown Solicitor on 11 February that ‘the Department has no particular wish to act either for or against Mr Croft’s desires and will accept your decision which will doubtless be in accord with the general balance of convenience’.[[11]](#footnote-12) Croft and the Crown Solicitor soon came to an agreement which suited all parties.

1. Report of Passengers for the *Taiyuan* from Hong Kong, Sydney, 23 January 1908, NAA: A1, 1908/12936; Passenger List for the *Taiyuan*, Sydney, 23 January 1908, *New South Wales, Australia, Unassisted Immigrant Passenger Lists, 1826–1922* [online database], Ancestry.com (Provo, UT: Ancestry.com Operations, Inc., 2007). [↑](#footnote-ref-2)
2. Copy of Dictation Test from 16 to 31 January 1908, NAA: A1, 1908/12936. [↑](#footnote-ref-3)
3. On the history of Chinese legal challenges to racial exclusion in Australia see: Mark Finnane, ‘“Habeas Corpus Mongols” – Chinese Litigants and the Politics of Immigration in 1888’, *Australian Historical Studies* 45, no. 2 (2014), 165–83. [↑](#footnote-ref-4)
4. ‘Prohibited Immigrant’, *Argus*,12 July 1907, 4, http://nla.gov.au/nla.news-article10142694; ‘One Month's Grace’, *Argus*, 13 July 1907, 19, http://nla.gov.au/nla.news-article10155422; ‘Habeas Proceedings re WILLIE LEE HOOK’, NAA: A5522, M47. [↑](#footnote-ref-5)
5. ‘Is He an Australian?’, *Evening News* (Sydney), 7 February 1908, 6 and 7, http://nla.gov.au/nla.news-article114098110. [↑](#footnote-ref-6)
6. Statement by J.T.T. Donohoe, 10 February 1908, NAA: A1, 1908/12936. [↑](#footnote-ref-7)
7. Telegram from Atlee Hunt, Secretary, Department of External Affairs to the Collector of Customs, Sydney, 6 February 1908, NAA: A1, 1908/12936. [↑](#footnote-ref-8)
8. On the Kong Chew Society and See Yup Society see: C.F. Yong, *The New Gold Mountain: The Chinese in Australia 1901–1921* (Richmond, SA: Raphael Arts, 1977), 189–93. [↑](#footnote-ref-9)
9. Croft and Rhoden had represented Willie Lee Hook in a similar case in 1907: ‘Prohibited Immigrant’, *Argus*,12 July 1907, 4, http://nla.gov.au/nla.news-article10142694. See also, for example: ‘The Chinese Exclusion Law’, *Age* (Melbourne), 29 September 1911, 9, http://nla.gov.au/nla.news-article196210126 (case of Lim Wee); ‘Chinese or Australian?’, *Weekly Times* (Melbourne), 25 October 1913, 33, http://nla.gov.au/nla.news-article222611116 (case of Suey Land). [↑](#footnote-ref-10)
10. Handwritten Letter from E.A. Fortescue Croft, Solicitor, to Atlee Hunt, Secretary, Department of External Affairs, 6 February 1908, NAA: A1, 1908/12936. [↑](#footnote-ref-11)
11. Memorandum from Atlee Hunt, Secretary, Department of External Affairs, to Crown Solicitor, 11 February 1908, NAA: A1, 1908/12936. [↑](#footnote-ref-12)