



A tile mural in the Custom House Plaza in Monterey depicts events in the city's early history.
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The First Jury Trial in California

IN 1846 IN MONTEREY, A VERY PUBLIC DISPLAY OF AMERICAN JUSTICE

BY JUDGE BARRY GOODE*

SOMETIMES SEEMINGLY BANAL events can give rise to cases of historic importance. So it was with the first jury trial in California.**

It was a simple case of conversion. The plaintiff, Isaac Graham, claimed that the defendant, Charles Roussillon, sold some of Graham's lumber and pocketed the cash. But there was nothing simple about the heated, historic context in which the case was heard on September 4, 1846.

On July 7, 1846, U.S. Navy troops landed in Monterey and seized the town, commencing the Mexican War in Alta California. Expatriate English, American, Scot,

and French — as well as the Mexicans and Californios in the Monterey Bay area — were not entirely surprised. They had been discussing for some time which of the naval powers would take Alta California from the weak and divided government in Mexico City. Many looked forward to a new regime that would bring greater security to commerce and a proper legal system for dealing with commercial disputes.

Commodore John Drake Sloat originally asked the two Mexican alcaldes of Monterey to remain in their positions, but they declined. So he appointed two navy officers — a surgeon and a purser — to the posts. About a week later, Commodore Robert F. Stockton arrived on the *Congress*. Because Sloat was ready to retire, Stockton assumed command. He proclaimed martial law.

Stockton was preparing to sail south to chase the Mexican army. He needed the surgeon, and possibly the purser, so he looked around and decided that his chaplain was suitable for the post of alcalde. He put the minister, Walter Colton, ashore with instructions to run the town.

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** Historians cite this as the first jury trial, but the full story is more complex — and more interesting. See “The American Conquest of Alta California and the Instinct for Justice: The ‘First’ Jury Trial in California” in the 2013 issue of *California History*. (http://www.californiahistoricalsociety.org/publications/pdf/California_History_vol90_no2.pdf).

Colton was at a serious disadvantage. He was a Congregationalist cleric in a profoundly Catholic community. He spoke no Spanish and knew nothing of the local customs. Yet he became the face of the new government the elite of Monterey had been awaiting.

Immediately he was confronted with two tests. The first was the case brought by Isaac Graham, one of the nastiest men in Alta California. Graham was a fur trapper and hunter who deserted his family in Tennessee and came to California in the mid-1830s. He settled in a small community north of what is now Salinas and opened a distillery, which soon became a gathering spot for deserters and rough-hewn men living hand to mouth. He meddled in Mexican politics, and in 1840 was arrested and sent to Mexico City. Acquitted of the charges by a central government unfriendly to the local Alta California authorities who arrested Graham, he returned and settled in the Santa Cruz Mountains, where he established the first water-powered sawmill. He produced boards and shingles he carted down to the beach for sale to passing ships.

His neighbor was Carlos Roussillon, a Frenchman, who was also his competitor in the lumber trade. Both men laid their inventory on the Santa Cruz beach about 20 yards apart. Roussillon twice sold Graham's lumber, Graham charged — once in 1845 and again in 1846 — and kept the proceeds. As Colton explained their dispute: "The case was one involving property on the one side, and integrity of character on the other. Its merits had been pretty widely discussed, and had called forth unusual interest." Graham was concerned with his alleged property, Roussillon felt his good name had been besmirched, and everyone in the community was aware of the case. It was a hot potato.

Now that the Americans had taken Monterey, Graham was determined to put the new authorities to the test: Had the navy really brought American justice with it?

Colton's other problem was of Stockton's making. After Colton had been alcalde for about three weeks, Stockton thought he had subdued the Mexican army in Southern California and, in a burst of democratic spirit, ordered that elections be held in Monterey for the position of alcalde. It seems likely that he had previously told Colton that he would do that at some point, and that Colton should do what he could to win the election.

Here then was Colton, a stranger in a new town, trying to figure out how to maintain order, facing a controversial case and an election in which he was to

seek office. In addition, the elite of the community were watching closely to see just what American justice was all about. Would it really be different from the system of mediation and conciliation that had characterized Mexican dispute resolution?

Colton was up to both tests. He set the case for trial and decided to empanel a jury, making jurors of most of the men who were running against him for the position of alcalde. With that masterstroke, he would not have to render a decision by himself, nor would he be the only candidate to suffer the political consequences of the outcome of the case.

The trial took the better part of the day. When it was over, the jury rendered a verdict that tracked Roussillon's position exactly. Although Graham recovered a small verdict, it was in the amount that Roussillon had already agreed was owed due to offsetting mistakes made by both sides in the handling of the lumber. Graham was assessed costs; as a result, he was a net loser. Roussillon's reputation was vindicated.

Colton summarized the proceedings: "The inhabitants who witnessed the trial said it was what they liked — that there could be no bribery in it — that the opinion of 12 honest men should set the case forever at rest. . . . If there is anything on earth beside religion for which I would die, it is the right of trial by jury."

The election was held three days later. Although Colton received only 68 votes out of 368 cast, he won by three votes, narrowly edging out the only candidate who was not on the jury. The candidates who served on the jury split a total of 165 votes.

Colton went on to serve as alcalde, with considerable distinction, for three years. However, his statement declaring his devotion to trial by jury equal to his religious commitment was a bit of an exaggeration. For the next 16 months, he seems not to have convened another jury even as he tried many alleged horse thieves, cattle rustlers, drunks, and other miscreants.

Still, *Graham v. Roussillon* was an early, very public display of American justice. Although no one was sure what law governed in the newly conquered territory, *Graham* pointed the way to the future. It gave the residents of Alta California hope that liberty — as Americans saw it — would become the organizing principle of their community. Real change was coming, even though statehood and a constitutional right to a jury were still four years in the future. ★



**"I EMPANELLED TODAY
THE FIRST JURY
EVER SUMMONED IN
CALIFORNIA."**

— WALTER COLTON
SEPTEMBER 4, 1846