
Justice Stephen J. Field's PERSONAL REMINISCENCES, *Remembered*

BY JUSTICE JAMES MARCHIANO

Lying in a locked, rare book cabinet in East Sussex, England, Stephen J. Field's original, autographed *Personal Reminiscences of Early Days in California* waited for a purchaser. Six thousand miles away, but practically next door through the Internet, First District Court of Appeal clerk Ron Poellath was searching through several Google sites for a rare book by another title to add to his book collection, when he found the book by Justice Stephen Field offered for sale by antiquarian book dealer Ric Latham of Bow Windows Bookshop in Lewes, East Sussex.

The book revealed itself to be Justice Field's own written account of his early days in California as a lawyer, then as an *alcalde* in Marysville, as a legislator establishing the Civil and Criminal Codes, and later as a judge. Printed privately, with an 1893 copyright, the book's inside page bore Stephen J. Field's signature attesting to the book's monetary and historical value. (The book has been reprinted and is available in many academic and public libraries worldwide, including the Court's California Judicial Center Library in San Francisco.) Poellath, a collector of rare books, requested photographic portions of the book via e-mail so that he could be satisfied with its provenance. A price was reached and the book subsequently arrived in a Royal Mail bag to Ron's satisfaction. He shared his find with CSCHS board members Jake Dear, Fritz Ohlrich, and the author.

The book is a highly personal narrative dictated to a stenographer by Justice Stephen Field in 1877 while he was in San Francisco. Justice Field's friend and former court clerk George C. Gorham added a detailed account of the attempted assassination of Fields by former California Associate Justice David S. Terry in 1889. Terry was shot to death by Field's deputy marshal bodyguard as Terry tried to bludgeon Field at a dining station in Lathrop, California. Terry had served with Field on the California Supreme Court and later became a sworn enemy of his colleague.

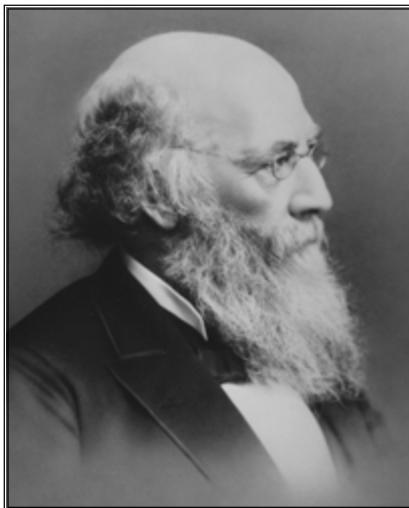
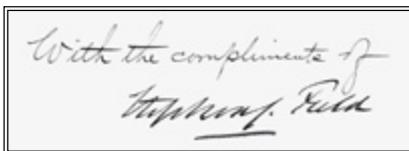


PHOTO COURTESY CALIFORNIA
JUDICIAL CENTER LIBRARY



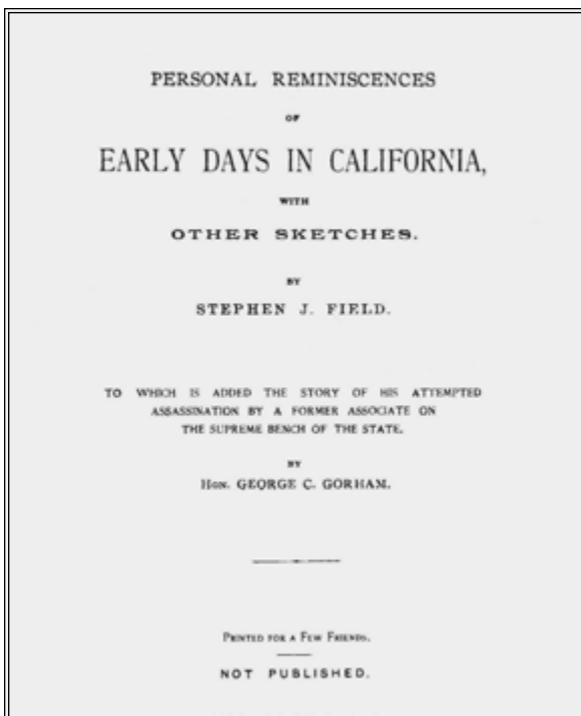
Justice Field, east-coast-educated and from a prominent family, was the fifth chief justice of California, serving from 1857 to 1863 and went on to serve on the Supreme Court of the United States from 1863 to 1897, surpassing Chief Justice John Marshall's record for longevity on the Court. His tenure on both courts was remarkable for his forceful and sometimes controversial opinions.

In sixteen sections, the book recounts in Field's own words his struggles, adventures, and accomplishments from 1848 to around 1868, including descriptions of early San Francisco, his relationship with Captain John Sutter for whom he drafted the deed to Sutter's land holdings, his work as an *alcalde*/local judge, life in the Legislature, and life on the Court, which he entitled in part, "The Annoyances of My Judicial Career and Rosy Views of Judicial Life Gradually Vanishing." California's mid-nineteenth-century legal and political life with its unique personalities are brought to life in Field's words. Justice Field shaped the development of state constitutional law, seminal land law, mining rights, and civil rights, particularly involving Chinese immigrants. (Justice Field's early support of Chinese rights was later replaced by anti-Chinese sentiment as a U.S. Supreme Court justice when he supported the Chinese Exclusion Act.)

Justice Field describes his early days in an engaging nineteenth-century style with a perspective that is naturally favorable to the author. The following passage about his time in Marysville dispensing raw justice when the penal code was in its infancy will give you the flavor of his narrative style.

One morning, about five o'clock, a man tapped at my window, and cried, "Alcalde, Alcalde, there has been a robbery, and you are wanted." I got up at once, and while I was dressing he told his story. Nearly every one in those days lived in a tent and had his gold dust with him. The man, who proved to be Gildersleeve, the famous runner, upon going

to bed the previous evening had placed several pounds of gold dust in his trunk, which was not locked. In the night some one had cut through his tent and taken the gold dust. I asked him if he suspected anybody; and he named two men, and gave such reasons for his suspicion that I immediately dictated a warrant for their arrest; and in a short time the two men were arrested and brought before me. The gold dust was found on one of them. I immediately called a grand jury, by whom he was indicted. I then called a petit jury, and assigned counsel for the prisoner. He was immediately placed upon his trial, and was convicted. The whole proceeding occupied only a part of the day. There was a great crowd and much excitement, and some talk of lynching. Curiously enough, my real trouble did not commence until after the conviction. What was to be done with the prisoner? How was he to be punished? Imposing a fine would not answer; and, if he had been discharged, the crowd would have immediately hung him. When at San Francisco, Mayor Geary, of that place, told me if I would send my convicts to him, with money enough to pay for a ball and chain for each one, he would put them in the chain gang. But at that time the price of passage by steamer from Marysville to San Francisco was fifty dollars, which, with the expense of an officer to accompany the prisoner, and the price of a ball and chain, would have amounted to a much larger sum than the prosecution could afford; so it was clearly impracticable to think of sending him to San Francisco. Nor is it at all likely that the people would have consented to his removal. Under these circumstances there was but one course to pursue, and, however repugnant it was to my feelings to adopt it, I believe it was the only thing that saved the man's life. I ordered him to be publicly whipped with fifty lashes, and added that if he were found, within the next two years, in the vicinity of Marysville, he should be again whipped. I, however, privately ordered a physician to be present so as to see no unnecessary severity was practiced. In accordance with this sentence, the fellow was immediately taken out and flogged; and that was the last seen of him in that region. He went off and never came back. The latter part of the sentence, however, was supererogatory; for there was something so degrading in a public whipping, that I have never known a man thus whipped who would stay longer than he could help, or ever desire to return. However this may have been, the sense of justice of the community was satisfied. No blood had been shed; there had been no hanging; yet a severe public example had been given (pp. 25-26).



Justice was swift, certain and indelible in 1850 Marysville. Field proudly observed that as a result of his administration of justice in Marysville with “many desperate persons, gamblers, blacklegs, thieves, and cut-throats; yet the place was as orderly as a New England village. There were no disturbances at night, no riots, and no lynching. It was the model town of the whole country for peacefulness and respect for law (p. 37).”

Professor Paul Kens has written the definitive Justice Field biography, *Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age* (University of Kansas Press, 1997). Justice Field's *Personal Reminiscences* was also the subject of an article by Professor Kens in his scholarly “Introduction” about Justice Field's life and jurisprudence in the *Journal of Supreme Court History* (29:1, March 2004; 30:2, July 2005). Field's *Reminiscences* provided source material for lawyer Milton S. Gould's entertaining book, *A Cast of Hawks* (Copley Books, 1985) recounting colorful lawyers, judges, and characters in nineteenth-century San Francisco.

Ron Poellath has digitized his copy of Justice Field's book in easily readable print so that anyone may have access to it and added an index of persons, place names, and nineteenth-century words. He has donated a CD of his digitized version to the California Judicial Center Library. The text of Justice Field's *Personal Reminiscences* with Professor Kens's enlightening annotations can also be found as part of Professor Kens's article mentioned above. Reprinted versions of Field's book are also available through a variety of bookstores and online booksellers. ★