

The Court's First Year: Colorful and Chaotic

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In February of 1850, a group of men attacked an Indian village in Napa Valley, shooting some of the residents, burning their homes, and destroying their food. When arrested and charged, they sought their release on a number of grounds, among others lack of jurisdiction in the committing magistrate and that the trial court to which they had been remanded did not exist.

A year earlier one Daniels had been found guilty of murder while California was under Mexican rule, but the government changed before sentence could properly be pronounced. He therefore sought his release.

The American schooner *Jupiter* visited the Marquesas Islands in the summer of 1850 and, while there, the captain and mate lured aboard five young women, daughters of native chiefs, one of whom was, at age 14, "Queen of the Bay." They promptly weighed anchor and set sail for San Francisco, "cruelly" abusing the women throughout the voyage. Once in San Francisco Bay, the women jumped overboard but were recaptured, and the mistreatment continued on a further trip up the San Joaquin River to Stockton. One of the crewmen then went to court to seek their freedom.

In June 1850, Stephen J. Field, later to become California Chief Justice and subsequently one of the longest-serving justices of the U.S. Supreme Court, was ordered disbarred, fined, and imprisoned by the Yuba district judge in Marysville. Field was again ordered expelled from the bar in October after the state Supreme Court had reversed the earlier order.

These stories do not come from disparate sources and require no extended research for their elucidation. They and more than a hundred other such glimpses of early California life and the court's involvement are to be found in any law office library, for they appear in Volume I of California Reports.¹ And there is much more. In the same volume is to be found, for example, the report of the state's first Senate Judiciary Committee, weighing the relative merits of the civil and the common-law judicial systems and coming down in favor of the latter in making its

recommendation to the legislature. There is also "The Alcalde System of California," a detailed account of the judicial system that was in place prior to statehood, as well as a description of "San Francisco and its Provisional Government."

The preface to that volume also explains why Associate Justice Nathaniel Bennett's name, rather than that of the Reporter of Decisions, appears on the book's spine. (The Reporter resigned in frustration after his notes were destroyed in one of San Francisco's many early fires.)

A cover-to-cover reading of Volume I will reward any California history buff as a collection of short stories. Together with Volume 2 and those that follow, it provides a fascinating view of the difficulties met by our state's Supreme Court in its efforts at equitable transition from the Mexican civil to the American common law. At the same time these volumes give us a not-altogether-haphazard picture of life in the California of the 1850s.

Those years were not an easy time for anyone, the judicial system included. Supreme Court opinions of the day not infrequently commence with some such rueful observation as that "Such is the unorganized condition of the county court in the county of San Francisco that the immediate action of this court is required . . .,"² or that "It will be unnecessary to enter into a detail of the proceedings in this case, from the fact that the laws of the country then in force were but imperfectly understood and error and irregularity are found in all of the proceedings of the courts, especially in criminal cases."³ Another opinion commences, "This case, from the moment of its inception to its appearance here, presents to view a curious anomaly."⁴ And still another begins, "It appears from the papers in this case that some kind of a proceeding . . . was instituted. . . . For what the action was brought nowhere appears, nor does it appear that there were any pleadings in the cause on either side."⁵

The court had to contend not only with law and men but with acts of God. Fires raged through San Francisco several times in its first years, and a decision of the Court in April 1851, commences, "The papers in this cause were destroyed by the late fire, and we must rely upon our recollection of the facts, as presented in the argument."⁶ In another decision later the same year, Chief Justice Hastings' entire opinion reads, "The record having been destroyed in the late fires, I have prepared no opinion of this case, and cannot now concur or dissent."⁷ And, as noted

above, a member of the court was compelled to step in when fire destroyed the Reporter of Decisions' notes.

The fires naturally led to litigation, as for example when, frustrated by the frequent and devastating fires, city authorities would blow up a line of buildings to serve as a fire break.⁸

Despite the many vicissitudes plaguing the courts, justice was usually swift, as one George Tanner quickly learned. On April 3, 1852, he stole from a merchant flour, potatoes, syrup, powder, and mackerel worth \$400. Within days, the grand jury indicted him for grand larceny. He was tried by jury on April 14, found guilty, and sentenced to be hung on May 28. The District Court affirmed the judgment on April 24, and the Supreme Court affirmed in the same month. On May 24 a petition for rehearing was filed and a stay of execution granted to July 23. On July 16 the Supreme Court ordered execution to proceed, and Tanner was in fact hanged on July 23, less than four months elapsing from crime to punishment.⁹

The court was more benevolent in its treatment of a Stockton judge who was convicted by jury of refusing to discharge a certain prisoner on bail until an additional \$100 was paid to him personally and of bargaining for and receiving still another \$100 for later dismissing the charges and exonerating bail without investigation or trial. The court, with one dissent, reversed the convictions on the ground that it wasn't clear that the first \$100 was intended as a fee or that the judge took it "wilfully and corruptly," and that the second count didn't allege that the judge took the money for acting "more favorable to one side than the other."¹⁰

The early court was compelled to confront the question of slavery and, in a lengthy decision, held that the owner of three slaves who he had brought to California before statehood was entitled to the aid of the state to return them to Mississippi by force, despite the fact that both Mexico and California outlawed slavery, on the authority of an 1852 California statute that provided that a slave who had been voluntarily brought to California before statehood should be deemed to be a fugitive if he refused to return to the slave state of origin, giving the owner a right of "reclamation." The reasoning of the two justices who rendered opinions provides an interesting picture of the temper of the times.¹¹

Today's airline travelers may be more content with their lot upon reading of the indignities suffered by one Carrington, who presented himself at Pacific Mail's New Orleans office on December 15, 1849,

believing himself to have a "through ticket" to California on a ship leaving that day. Being told that was not the case, he paid for a through ticket for January 15, plus a penalty for not using his earlier ticket. Instructed to return for his ticket when it had been printed, he did so from day to day, each time being put off, only to be finally told on January 9 that the tickets had arrived but had all been given out and there was no longer space on the ship he had bargained for. On the agent's assurance, he took another ship to Panama with the promise that the connection from there to California would be as planned. He was held up in Panama for six weeks, however, waiting for the ship to California, and while there became ill and remained so until he arrived in San Francisco. On suit for damages, a jury awarded him \$1,000, which the court affirmed on appeal with the comment, "I think the verdict is small enough. . . ." ¹²

Many of the cases concern merchandise damaged, lost, or stolen on the perilous route from the East Coast, thus providing a source of the nature and prices of typical commodities of the period—and presenting the courts with the legal question of whether damages should be measured by eastern or western prices, which varied substantially. Many others deal with disputed mining claims and practices and with titles to real property, particularly in San Francisco and along its waterfront which, with self-help, owners and squatters altered almost daily.

One closes these volumes marvelling that so much order was so speedily carved out of a wilderness. And current members of the profession may be excused a prideful gratification that along with the gold-seekers, the merchants, and the seamen, California from its very beginning lured members of the legal profession who were equal to the demands of that chaotic era.

NOTES

¹*Ex parte The Queen of the Bay*, 157; *People v. Smith*, 9; *People v. Daniels*, 106; *Ex parte Turner*, 143, 152, 188, 190; and *Ex parte Field*, 187.

²*People v. Clark*, 1 Cal. 406.

³*People v. Daniels*, 1 Cal. 406.

⁴*Horrell v. Gray*, 1 Cal. 133.

⁵*Mena v. LeRoy*, 1 Cal. 216.

⁶*Elliot v. Osborne*, 1 Cal. 396.

⁷*Weber v. City of San Francisco*, 1 Cal. 455, 458.

⁸*Dunbar v. The Alcalde*, 1 Cal. 355; *Correas v. City of San Francisco*, 1 Cal. 452.

⁹*People v. Tanner*, Cal. 257.

¹⁰*People, Ex Rel. Purley*, 2 Cal. 564.

¹¹*In re Perkins*, 2 Cal. 424.

¹²*Carrington v. The Pacific Mail*, 1 Cal. 475.