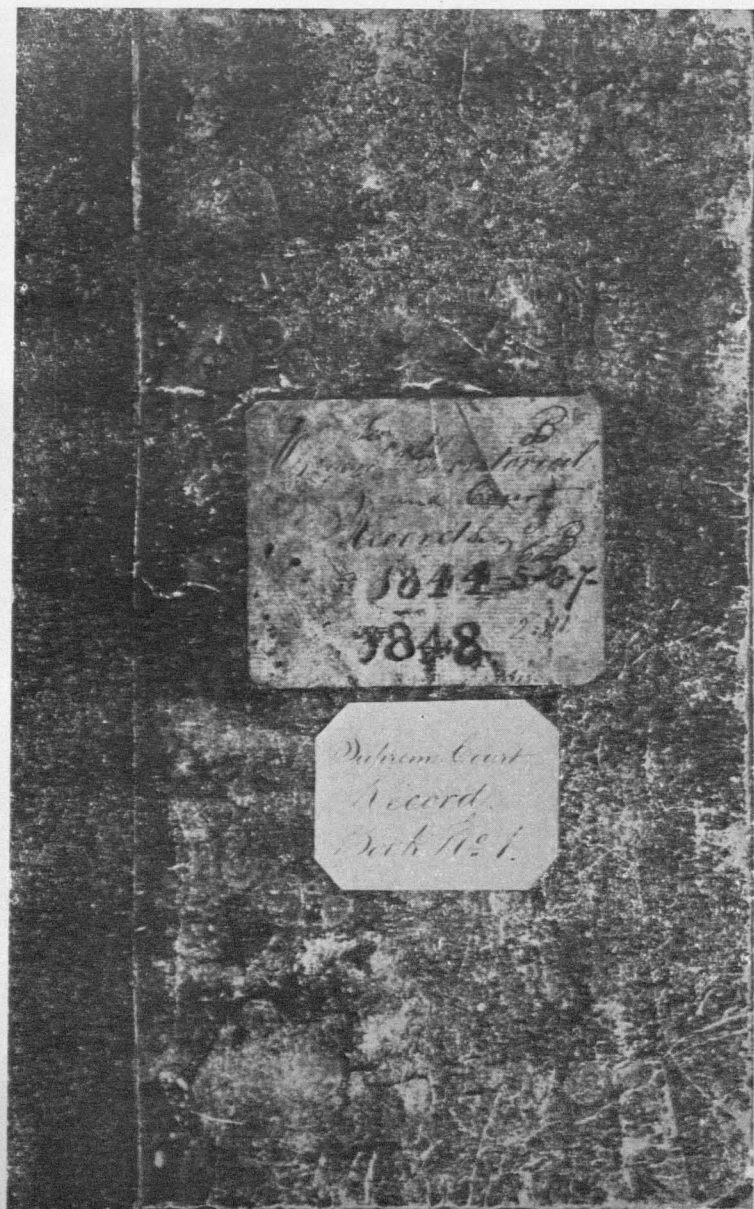


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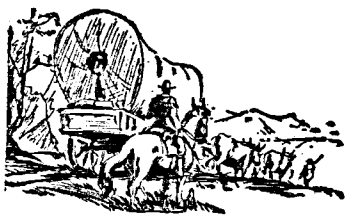
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THE COVER OF THE ORIGINAL RECORD

85

**OREGON  
SUPREME COURT  
RECORD**



# OREGON SUPREME COURT RECORD

*An original printing of cases and other  
matter contained in a manuscript  
labeled Book I, 1844-1848.*



*Together with  
a reprinting of an address entitled*

A HISTORY OF THE JUDICIARY OF OREGON

*By*  
HON. LAWRENCE T. HARRIS

PORTLAND, OREGON  
STEVENS-NESS LAW PUBLISHING CO.  
1938

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## ACKNOWLEDGMENT

Grateful acknowledgment is made to Honorable Lawrence T. Harris, former Justice of the Oregon Supreme Court, who kindly permitted us to reprint an address delivered by him before the Oregon Bar Association November 19, 1917. This notable address throws much light on the Oregon judiciary of pioneer days and we deem it of exceptional value when coupled with this printing of this venerable record.

To Mr. Arthur S. Benson, Clerk of the Supreme Court of Oregon, we wish to record our appreciation for his wholehearted cooperation and his making available the original manuscript for this printed reproduction.

STEVENS-NESS LAW PUBLISHING CO.

## FOREWORD

**T**HIS is the first printing from the original manuscript containing an authentic record of the first court proceedings in Oregon under the provisional government from 1844 to 1848, inclusive. This original volume is treasured among the records of the Oregon Supreme Court.

Other information of historical value relative to commissions issued by the Federal government, resignations, election of county officers, ferry licenses and schedule of fees, is also recorded. The use of Biblical and Grecian names among the pioneers such as Elijah, Abijah, Absalom, Jeremiah, Xavier and Theophilus, is frequently noted.

The original volume contains one hundred and eight pages in handwriting that is still well preserved. The scribes apparently used quill pens and homemade ink and many pages are models of excellent Spencerian script. Reproductions of the front cover of the book and two of its penned pages are included.

Opinions of the Supreme Court of the Oregon Territory are here published for the first time. Some of these were written and recorded nine years prior to the first of the early decisions incorporated in the Oregon Reports. Among those especially interesting is one holding unlawful the issuance of scrip as legal tender, while another decision declares that a litigant was entitled to a reasonable delay in order to secure depositions from Massachusetts and New York where the witnesses were "19,000 miles distant by boat and nearly 4,000 miles by land"—the court measuring the time at the rate of one day for each thirty miles.

Circuit Court proceedings are also recorded and are replete with interesting civil and criminal cases reflecting the demand of the times for law and order, particularly in prosecutions for sending challenges for duels.

Utmost care has been exercised to preserve accuracy, but the task has not been an easy one owing to some illegible writing and an occasional lapse in spelling, particularly of proper names and places.



Oregon  
Supreme Court  
Record

1844-1848

## COMMISSIONS ISSUED, 1846

*Be It Remembered* that the following Commissions were issued from the Secretary's office on the dates respectively mentioned, to-wit:

- To Frederic Prigg, on the 26th June, 1846, to be Secretary of the Territory and Recorder of Land Claims, Deeds, Bonds, Mortgages, etc.
- To Jeremiah Rowland, on 27th June, 1846, to be Presiding Judge of the County Court and Judge of Probate of Yamhill County.
- To William Holmes on the 27th June, 1846, to be Sheriff of Clackamas County.
- To S. S. White on the 27th June, 1846, to be Presiding Judge of the County Court and Judge of Probate of Clackamas County.
- To Fred K. Wagmire, on the 29th June, 1846, to be Sheriff of Polk County.
- To Thomas Owens, on the 29th June, 1845, to be Sheriff of Clatsop County.
- To Jas. Howard on the 29th June, 1846, to be Presiding Judge of the County Court and Judge of Probate of Polk County.
- To Isaac Staats on the 29th June, 1846, to be Judge of the County Court of Polk County for 2 years.
- To Hiram Taylor on the 29th June, 1846, to be Judge of the County Court of Polk County for 1 year.
- To Andrew Hoad on the 30th June, 1846, to be Judge of the County Court of Clackamas County, 2 years.
- To Wm. Allen on the ..... of July, 1846, to be Sheriff of Champois County.
- To R. Aitken on the ..... of July, 1846, to be Sheriff of Vancouver County.
- To Wm. Engle on the 3rd August, 1846, to be Judge of Clackamas County for 1 year.

## RESIGNATIONS—1846

Joel P. Walker has this day signified his intention of resigning the office of Judge of Yamhill County Court.

Aug. 25th, 1846.

Attest: FREDERIC PRIGG, Secy.

W. T. Perry resigned the office of Judge of Clatsop County Court the 26th June, 1846.

Attest: FREDERIC PRIGG, Secy.

William Burns resigned the office of Judge of Tualaty County Court the 10th day of August, 1846.

Attest: FREDERIC PRIGG, Secy.

R. Aitken resigned the office of Sheriff of Vancouver County on the ..... day of ....., 1846.

Wm. Golden resigned the office of Judge of Clatsop County on the ..... day of ....., 1846.

Attest: FREDERIC PRIGG, Secy.

Thos. Owens resigned the office of Sheriff of Clatsop County on the 20th day of Nov., 1846.

Attest: FREDERIC PRIGG, Secy.

*Be it known* that P. H. Burnett resigned the office of Supreme Judge of Oregon on the 29th day of December, 1846.

Attest: FREDERIC PRIGG, Secy.

#### COMMISSIONS ISSUED—1846

To Dugala McTavish on 26th August, 1846, to be Judge of Vancouver County for 2 years.

To Richard Covington on the 26th Aug., 1846, to be Judge of Vanucover County for 1 year.

To Wm. H. Gray on the 29th Aug., 1846, to be Presiding Judge of the County Court and Probate Judge of Clatsop County.

To David Ingalls on the 29th Aug., 1846, to be Judge of Clatsop County for 2 years.

To John Richardson on the 9th Sept., 1846, to be Judge of Yamhill County for 1 year.

To A. H. Prier on the seventh Oct., 1846, to be Justice of the Peace for the Eastern precinct of Tualaty County.

To Wm. Ryan on the ninth of Oct., 1846, to be Sheriff of Vancouver County.

To I. W. Nesmith on the seventh day of September, 1846, to be Captain of the first Company of Mounted Riflemen, called the Polk Guards.

To Hiram Taylor on the seventh day of Sept., A. D. 1846, to be First Lieutenant of the Polk Guards.

- To Joshua McDonald on the seventh day of Sept., A. D. 1846, to be Second Lieutenant of the Polk Guards.
- To Theophilus Magruder on the eighteenth day of December, 1846, to be Territorial Recorder of Oregon.
- To G. W. Bell, on the nineteenth day of December, 1846, to be Territorial Auditor of Oregon.
- To Alonzo A. Skinner, on the twenty-fourth day of December, 1846, to be Circuit Judge of Oregon.
- To Richard Lane, on the fifteenth of January, 1847, to be County Judge of Vancouver County until the general election.
- To Joseph Caples on twenty-first Dec., 1846, to be Sheriff of Clatsop until the general election.

## COURT RECORDS—OREGON TERRITORY

January 15th, A. D. 1844.

Ahi Smith obtained a writ of replevin for a yoke of oxen detained by Nineveh Ford.

Filed affidavit, and writ issued to the Sheriff, returnable at the next term of court.

G. W. LEBRETON, Clerk of Court.

## SECOND TERM OF SUPREME COURT OF OREGON TERRITORY

Held at Tualita Plaine—third Tuesday in  
April, A. D. 1844.

O. Russell presiding, assisted by R. More, Justice of the Peace.

Court opened at 10 o'clock A. M. First case called. Smith versus Ford.

Writ of replevin issued in behalf of Ahi Smith on the 15th of January, A. D. 1844, commanding the Sheriff to replevy one yoke of oxen unlawfully detained by Nineveh Ford, and summoning the said Ford to appear and abide the judgment of the Court.

The defendant plead for a non-suit on the informality of the bond given by the plaintiff. The Court having decided the bond to be legally constituted, the defendant then applied for a continuance of the cause, on account of absence of testimony. The oath being administered, the defendant stated the

facts he wished to prove by those witnesses. When the Court adjourned until two o'clock P. M.

2 o'Clock P. M.

Court opened pursuant to adjournment. The facts stated by the defendant being admitted by the plaintiff, the trial proceeded.

Twelve jurors being empaneled, were first sworn at the request of the defendant to answer such questions as might be asked them relating to their knowledge of the case. After answering the questions, the juror's oath was administered, and they took their seats. The witnesses were then sworn as follows:

*For the defendant—*

George W. Rice Mr. Ruby

*For the plaintiff—*

James Waters Calvin James Nathan Smith  
Anderson Smith.

After hearing the evidence the Court stated the law on the subject of replevin, and left the matter to be decided by the jury.

After retiring one hour the jury brought in their verdict as follows:

"We, the undersigned jurors in the case before us between Ahi Smith, plaintiff, and Nineveh Ford, defendant, do find judgment in favor of the plaintiff for the property and cost of suit.

(Signed) J. W. SMITH, Foreman."

(SEAL)

Witness our hands and seal.

O. RUSSELL, Presiding Judge.

R. MORE, Justice of the Peace.

O. JOHNSON, Clerk of the Court.

Court then adjourned to ten o'clock tomorrow.

17th. 10:00 o'Clock A.M.

Court opened, pursuant to adjournment and no business being brought before it, it was dismissed at 12 o'clock after the usual form.

### BE IT REMEMBERED

That at a General Election held in Oregon Territory on the first day of June, A. D. 1846, the following named persons

were severally elected by the qualified voters of said Territory, to fill the following described offices, to-wit:

For Colonel.....	Wm. Finley
For Lieut. Colonel.....	Saml. McSween
For Major.....	Chas. McKay

#### CLACKAMAS COUNTY

Hiram Straight.....	Representative
A. J. Lovejoy.....	Representative
W. G. Trault.....	Representative
Wm. Holmes.....	Sheriff
S. W. Mop.....	Assessor
I. H. Couch.....	Treasurer

#### TUALATY COUNTY

Joseph I. Meek.....	Representative
D. H. Lonsdale.....	Representative
Lawrence Hall.....	Representative
No return for Sheriff.	
No return for Assessor.	
No return for Treasurer.	

#### YAMHILL COUNTY

Thomas Jeffreys.....	Representative
Absalom J. Himbree.....	Representative
John Y. Baker.....	Sheriff
William Newly.....	Assessor
Abijah Hendricks.....	Treasurer

#### CLATSOP COUNTY

George Summers.....	Representative
Thomas Owens.....	Sheriff
Thomas Owens.....	Assessor
Robert W. Munson.....	Treasurer

#### VANCOUVER COUNTY

Henry N. Pew.....	Representative
George Aitken.....	Sheriff
George Aitken.....	Assessor
Thomas Lowe.....	Treasurer

#### LEWIS COUNTY

W. J. Holme.....	Representative
Saml. Gardner.....	Sheriff
George Brock.....	Assessor
S. Glomendon.....	Treasurer

## CHAMPOIG COUNTY

A. McDonald.....	Representative
A. Chamberlin .....	Representative
Jepee Looney.....	Representative
Robert Newel .....	Representative
William Martin .....	Sheriff
I. C. Truit.....	Assessor
W. P. Hughes.....	Treasurer

## POLK COUNTY (Held on 15th July, 1846)

I. E. Williams.....	Representative
I. D. Boone.....	Representative
Lewis Crawford .....	Sheriff
Luke Henshaw .....	Assessor

No returns for Treasurer.

For the County Judges to be elected by the people, the votes were 405 — and by the House, 27.

This is to certify that the above is a correct list of officers elected, according to the several returns now on file at the Secretary's office.

Attest: FREDERIC PRIGG, Secretary.

## OREGON RECORDS

*Be it remembered*, that at a Circuit Court began and held at Oregon City for Clackamas County, on the 1st day of October, A. D. 1844, were present the Honorable Ira L. Babcock, Judge; Joseph L. Meek, Sheriff, and John Edwin Long, Clerk, when the following proceedings were had:

The Sheriff, having returned into Court here the Writ of Venire Facias, executed according to law upon Francis Ermatinger, P. H. Hatch, L. W. Pettigrove, George Abernethy, Jno. McCadden, Hiram Straight, J. C. Couch, A. E. Wilson, J. L. Morrison, Richard Goodman, J. W. Nesmith and W. H. Gray to serve as Grand Jurors, and also the Writ of Venire Facias, executed according to law upon J. R. Robb, H. H. Hide, Absalom Frazier, M. R. Childers, P. M. Ware, Dwight Pomroy, Peter Brainard, Wm. McKay, L. M. Holderness, John Campbell, Wm. Rennick, J. Hanen, Saml. Vance, Frederick Prigg, Wm. L. Frazier, P. B. Brooks, James Hauck, Saml. Chase, Jas. Connor, Thos. Bronen to serve as petit jurors.

# Court Records, Oregon Territory

January 16<sup>th</sup> 1844. Mr. Smith obtained a writ of replevin for a yoke of oxen detained by Kenneth Ford

Filed affidavit and writ issued to the Sheriff returnable at the next term of court.

G. W. LeBarton, Clerk of Court.

## Second Term of Supreme Court of Oregon Territory. To be at Tualata, Oregon, third Tuesday in April 1844.

(D. Rippele presiding aided by A. McJannet of the Bar)

Court opened at 10 O'clock A.M.

First case called. Smith versus Ford

Writ of replevin issued in behalf of the Smith on the 16<sup>th</sup> of January 1844 commanding the Sheriff to return one yoke of oxen unlawfully detained by Kenneth Ford, and summoning the said Ford to appear and abide the judgment of the Court.

The respondent plead for a non-suit on the information of the bond given by the plaintiff. The Court having decided the bond to be legally constituted, the respondent then applying for a continuance of the case, on account of absence of attorney

Supreme Court Record.  
Bond by the Clerk of the said Circuit Court, paying down and impeding, it seems to the Court, that the said judgment was erroneous.

1<sup>st</sup>. Because the Court overruled the motion of the Appellant for a continuance, upon the grounds pointed out in the affidavit. It is true that the Appellant did not show that he had given notice to take deposition, but the law will not require a man to do either a useless or an impossible thing. It arises from the Appellant that he would be the deposition of witnesses residing 1900 miles from him by water, and then \$500 by land at any time between that of taking the appeal from the judgment of the S.P. and that at which this case came on to be heard in the Circuit Court, would have been useless, because of the absolute impossibility of taking the depositions within the specified time. And the law will not require the Appellant to say up more, dig down mountains, and annihilate spaces, because this is impossible, and yet the Appellant must be presumed to be able to do all this and more, if he is required to show in the Circuit Court of Blackman's County in Oregon when lay the deposition of a witness residing in Shoshone against Major Churchill, and of another residing in Plumas County in the State of New York, between the time of taking the appeal from the judgment of the S.P. and that of the trial of the cause in the Circuit Court. The Appellant was entitled to a continuance of the cause to a period of twenty months to admit of his giving the address of that ten days notice and one day additional (which he indicated) for every thing, made of distance



The grand jury having thereupon been duly empanelled, sworn and charged according to law, and George Abernethy appointed their foreman, retired to consider of their presentments.

There being no Circuit Attorney to prosecute for the Country, the Court thereupon appointed A. L. Lovejoy, Esq. to prosecute pro tem.

**NINEVEH FORD vs. ANDERSON SMITH.**

**ASSUMPSIT.**

Now at this day came the plaintiff by his attorneys, and says he will not further prosecute his said suit, but prays the Court to permit him to take a non-suit, which is accordingly done. It is therefore considered by the Court here, that the said defendant recover of the said plaintiff his costs by him about his said suit laid out and expended, and that he have execution therefor.

**HUGH BURNS vs. ROBT. MOORE.**

**PETITION.**

Now at this day came the said plaintiff, as well as the said defendant by their attorneys, and after argument had and the Court being fully advised of and concerning the matters and things in said petition alleged, the Court thereupon dismissed said petition at the cost of the said plaintiff. It is therefore considered by the Court here that the said defendant recover of the said plaintiff his costs by him in this behalf laid out and expended and that he have execution therefor.

The Grand Jury returned into court here an indictment against Alex. R. Stoughton for an assault upon the body of Nathan Eaton with intent to inflict a bodily injury endorsed "a True Bill" and retired further to consider of their presentments.

The Court thereupon adjourned to 9 o'clock tomorrow A. M.

Attest:

**I. E. LONG,**  
*Clerk of Court.*

**H. L. BABCOCK,**  
*Presiding Judge.*

*Wednesday, October 2nd, 1844*

The Court met pursuant to adjournment. The Grand Jury returned into court here an indictment against James

Connor for challenging Elijah White to fight a duel with deadly weapons, endorsed a "True Bill".

I. L. BABCOCK,  
*Judge of Probate.*

## OREGON vs. JAMES CONNOR.

### INDICTMENT FOR SENDING A CHALLENGE.

Now at this day came the said defendant, James Connor, into open court, and saith that he is guilty in manner and form as alleged in said indictment, and for his punishment puts himself upon the Court. It is therefore Considered by the Court here that the said defendant make his fine of five hundred dollars to Oregon, and that she recover of the said defendant her costs in this behalf laid out and expended, and that she have execution therefor.

The Grand Jury returned into Court here an indictment against Alex. R. Stoughton for an assault upon Nathan Eaton, with intent to commit great bodily harm, endorsed a "True Bill".

## OREGON vs. ALEX. R. STOUGHTON

### ASSAULT WITH INTENT TO INFLICT GREAT BODILY HARM.

Now at this day came the said defendant Alexander R. Stoughton by his attorney and saith that he is guilty in manner and form as alleged in said indictment, and for his punishment puts himself upon the Court. It is therefore considered by the Court here, that the said defendant, Alex. R. Stoughton, make his fine to Oregon, of the sum of twenty-five dollars, and that she recover of the said defendant her costs in this behalf laid out and expended; and that she have execution therefor.

All the business before the Court having been disposed of, the Court adjourned.

Attest:

I. E. LONG,  
*Clerk of Court.*

I. L. BABCOCK,  
*Judge of Probate.*

## OREGON RECORDS

Be it remembered that at a Circuit Court began and held at the Oregon Institute for Champoick County on the 8th day of October, A. D. 1844, were present the Honorable Ira L.

Babcock, Judge; Joseph I. Meek, Sheriff, and John E. Long, Clerk, when the following proceedings were had:

The Sheriff having returned into Court here the Writ of Venire Facias executed according to law upon Joseph Jarvis, Pierre Belecque, Robt. Newell, Akin Lucier, Francis Birnie, Nicholas Monture, Louis Pischette, Elijah White, Joseph Garrison, Daniel Waldo, Alanson Biers, Thos. D. Kiezer, as grand jurors, and also the Writ of Venire Facias, executed according to law upon Andrew Debon, David Weston, J. P. Black, Joseph Holman, Thos. H. Smith, Joseph Mat, Bennet O'Niel, Xavies Laderoot, Nimrod Ford, Jeremiah Horegon, Thos. McKay, Joseph Delord, as petit jurors,

The Grand Jury having thereupon been duly empannelled, sworn and charged according to law, and Joseph Garrison appointed their foreman, retired to consider of their presentments.

There being no Circuit Attorney to prosecute for the Country, the Court thereupon appointed A. L. Lovejoy, Esq., to prosecute pro tem.

The Grand Jury here returned into Court an indictment against John Edmunds endorsed "not a True Bill".

The Court adjourned to 9 o'clock tomorrow A. M.

The Court met pursuant to adjournment, there being no further business before the Court, the Court adjourned.

Attest:

I. E. LONG,  
*Clerk of Court.*

I. L. BABCOCK,  
*Judge of Probate.*

Thos. H. Smith, having taken the Oath as required by law, in open court in Champoick County, Oct. 9th, 1844, was appointed Deputy Sheriff for the County of Champoick by Ira L. Babcock, Judge.

Attest:

I. E. LONG,  
*Clerk of Court.*

I. L. BABCOCK,  
*Judge of Probate.*

## OREGON RECORDS

Be it remembered that at a Circuit Court began and held in Yamhill County on the 15th day of Oct., A. D. 1844,

Were present the Honorable Ira L. Babcock, Judge. John E. Long Clerk, and J. L. Meek, Sheriff, when the following proceedings were had.

The Sheriff having returned into Court here the Writ of Venire Facias, executed according to law upon John G. Campbell, Absalom Hembree, John Mannings, Jordan Hembree, T. J. Hubbard, Amos Cook, Medoran Crawford, Pleasant Armstrong, Francis Fletcher, John Larrison, Samuel Campbell, and Andrew Hembree as grand jurors.

The grand jury having thereupon been duly empannelled, sworn and charged according to law, and John G. Campbell appointed their foreman, retired to consider of their presentments.

There being no Circuit Attorney to prosecute for the Country, the Court thereupon appointed A. L. Lovejoy, Esq. to prosecute pro tem.

There being no business before the Court, the Court adjourned.

Attest:

I. E. LONG,  
*Clerk of Court.*

## OREGON RECORDS

Be it remembered that at a Circuit Court began and held in Tualaty County on the 22nd day of Oct., A. D. 1844,

Were present Ira L. Babcock, Judge; Joseph L. Meek, Sheriff, and John E. Long, Clerk, when the following proceedings were had:

The Sheriff having returned into Court here the Writ of Venire Facias executed according to law upon Henry Buxton, Robt. Powe, Alex. McKay, Archibald Spencer, David Hill, Walter Pomroy, Richard Ough, Charles McKay, John Flette, Lewis C. Cooper, Henry Black, Jacob Doran as Grand Jurors,

And also the Writ of Venire Facias executed according to law upon Wm. Baldra, Walter J. Matteney, David Flette, William Flette, Garrett McGary as Petit Jurors,

The Grand Jury having thereupon been duly empannelled, sworn and charged according to law, and David Hill appointed their foreman, retired to consider of their presentments.

There being no Circuit Attorney to prosecute for the Country, the Court thereupon appointed Peter H. Burnett, Esq. to prosecute pro tem.

The Court adjourned to 10 o'clock tomorrow.

The Court met pursuant to adjournment. The Grand Jury returned into Court here an indictment against V. W. Dawson for an assault with intent to commit murder, endorsed "A True Bill".

The Grand Jury returned into Court here an indictment against Anderson Smith for an assault with intent to inflict injury endorsed "A True Bill".

**ROBT. MOORE vs. RICHARD WILLIAMS.**

**REPLEVIN.**

Now, at this day, came said plaintiff by his attorney and prays the Court to grant him a continuance of his case, which is accordingly done. It is therefore considered by the Court here that the said defendant recover of the said plaintiff his costs by him about his said suit laid out and expended, and that he have execution therefor.

**NINEVEH FORD vs. ANDERSON SMITH.**

**ASSUMPSIT.**

Now at this day came the plaintiff by his attorney, and the Sheriff having returned into Court the previous summons not served, he, the said plaintiff, prays the Court to grant him an alias summons, which was granted accordingly.

It is therefore considered by the Court here that the said defendant recover of the said plaintiff his costs, by him about his said suit, laid out and expended, and that he have execution therefor.

**FELIX HATHAWAY vs. ELIJAH WHITE.**

**ASSUMPSIT.**

Now at this day came the plaintiff by his attorney, and prays the Court to grant a continuance of his case, which is accordingly done.

It is therefore considered by the Court here, that the said defendant recover of the said plaintiff his costs, by him about his said suit laid out and expended, and that he have execution therefor.

There being no further business before the Court, the Court adjourned.

Attest:

I. E. LONG,  
*Clerk of Court.*

I. L. BABCOCK,  
*Judge of Probate.*

### OREGON RECORDS

Be it remembered that at a Circuit Court began and held at Oregon City in the County of Klackamas on the first day of April in the year of our Lord 1845, were present the Honorable J. W. Nesmith, Judge; John E. Long, Clerk, and Joseph L. Meek, Sheriff, when the following proceedings were had:

The Sheriff having returned into the Court here the Venire Facias executed according to law upon Francis Ermatinger, J. R. Robb, Henry A. G. Lee, Thos. McGruder, Charles Bennett, C. B. Hawley, Nineveh Ford, John Force, William Remick, I. L. Morrisson, Frederick Prigg, and Hiram Straight as Grand Jurors.

The Grand Jury having therefore been duly empaneled, sworn and charged according to law, and Henry A. G. Lee appointed their foreman, retired to consider of their presentments.

**SAMUEL VANCE vs. WILLIAM HOLMES and  
JAMES HOUCK.**

#### COMPLAINT.

Now at this day came the said plaintiff by his attorney and saith that he will no further prosecute his said suit, but prays the Court to permit him to take a non-suit, which is done accordingly.

It is therefore considered by the Court here that the said defendant recover of the said plaintiff his costs by him about his said suit laid out and expended and that he have execution therefor.

**NATHAN EATON vs. ALEX. R. STOUGHTON.**

#### TRESPASS.

Now at this day came the said parties by their attorneys, and both parties being ready for trial, thereupon came a jury, to-wit:

Dwight Pomeroy, Nathan Muck, Richard Johnson, John L. Douglas, James Walsh, L. Everhart, John M. Shively, Heskia Smith, Richard McCarry, William H. Gray, Edward McGruder and James Clyman, good and lawful men of Oregon, who being duly sworn and empanelled, returned into Court here the following verdict, to-wit:

“We, the Jury, find the issue for the plaintiff, and assess his damages at One Hundred and Forty-six Dollars and Sixty Cents.”

It is therefore considered by the Court here that the said plaintiff recover of the said defendant the said sum of One Hundred and Forty-six Dollars and Sixty Cents, together with his costs and charges, by him in this behalf laid out and expended and that he have thereof execution.

Whereupon the Court adjourned to 9 o'clock tomorrow morning.

Attest:

I. E. LONG,  
*Clerk of Court.*

I. W. NESMITH,  
*Judge.*

April 2nd, 1844 (1845).

The Court met pursuant to adjournment. Now at this day came A. L. Lovejoy on behalf of John McLaughlin and Robt. Moore, and made application to the Court here for a license to keep a ferry across the Willamette River at the falls of the same; and after argument had, and the Court being fully advised of and concerning the matters and things in said application set forth, the Court thereupon refused to grant said license. It is therefore considered by the Court here, that said applicants pay the costs of Court in this behalf incurred, and that execution be issued therefor.

HUGH BURNS, *Petition.*

Now at this day came said Petitioner by his attorney into court here, and prays for a license to keep a ferry across the Willamette River at the falls thereof, and after argument had, and the Court being fully advised of and concerning the matters and things in said petition alledged, the Court thereupon refused to grant said license. It is therefore considered by the Court here, that said petitioner pay the costs of Court, in this behalf incurred, and that execution be issued therefor.

The Grand Jury came into Court here and reported, that during the sitting of the Court, they have had some important matters under consideration, but in consequence of the absence of a necessary witness they could not pursue their investigations further, and consequently had no Bill to present.

Whereupon the jury was dismissed by the Court.

**WILLIAM H. GRAY AND OTHERS.** *Petition.* Now at this day came said petitioners into court here, and prays the Court to cause a road to be located and established from Oregon City to Klackamas River; said petition being signed by 15 householders, residents of Klackamas County, and the Court being fully satisfied that due notice had been given according to law in such cases made and provided,

Thereupon the Court appointed James R. Robb, Chas. E. Picket and Nineveh Ford, to be made road viewers, to view and mark out a route for said road, and make a report of their doings at the next sitting of the Circuit Court in Klackamas County.

**MARTHA JANE RICE vs. STEVEN M. RICE.**

**PETITION—BILL FOR DIVORCE.**

Now at this day came the said complainant by her solicitors, and prays the Court here to dismiss her said Bill of Complaint without prejudice, which is done accordingly.

**JAMES R. ROBB vs. FENDAL C. CASON.**

**DEBT.**

Now at this day came the said plaintiff by his attorney and saith that he will no further prosecute his said suit, but prays the Court to permit him to take a non-suit, which is accordingly done. It is therefore considered by the Court here, that the said defendant recover of the said plaintiff his costs by him about his said suit laid out and expended, and that he have execution therefor.

**ABSALOM J. HEMBREE vs. HENRY H. HYDE.**

**ASSUMPSIT.**

Now at this day came said plaintiff and saith, that he will no further prosecute his said suit, and prays the court here to grant him a nonsuit, which is done accordingly. It is



therefore considered by the Court here, that by the consent of parties, the said defendant pay the said plaintiff his costs by him in this behalf laid out and expended, and that he have execution therefor.

Now at this day the following decree was made by the Court here, to-wit:

To William Holmes of Klackamas County, Oregon.

By the authority vested in me, you are hereby commanded to perform the duties of overseer of that portion of the public road in Klackamas County, to which you was appointed overseer by an act of the Legislature passed June, 1844. You will fill the above appointment for one year from the date of the expiration of your term of service as per Act above referred to.

Attest:

I. E. LONG.

(Signed) J. W. NESMITH, *Judge*.

There being no further business before the Court, the Court adjourned.

Attest:

I. E. LONG,  
*Clerk of Court.*

J. W. NESMITH,  
*Judge, Circuit Court.*

## OREGON RECORDS

Be it remembered that at a Circuit Court began and held at the house of Ekin Lucier, in Champoick County on the Eighth day of April, A. D. 1845, were present the Honorable J. W. Nesmith, Judge; John E. Long, Clerk and Joseph L. Meek, Sheriff, when the following proceedings were had:

The Sheriff having returned into Court here the Venire Facias, executed according to law upon Ekin Lucier, Joseph Yattan, Joseph Jarvis, Charles Rondon, Nicholas Mohtom, Joseph LaRocque, John Edmunds, John McCadden, John H. Passenger, Robert Newell, Francis Bernier, Joseph DeLor, and John McCudden was appointed their foreman.

The Grand Jury having been duly empannelled, sworn and charged according to law, retired to consider of their presentments. When the Court adjourned to 9 o'clock tomorrow.

The Court met pursuant to adjournment, whereupon the following appointments were made:

Robert Newell of Champoick, was appointed overseer of that portion of the road in Champoick County to which he was appointed by an Act of the Legislature passed in June, 1844. Said Robert Newell is commanded to fill said office of overseer, and discharge the duties of the same for the term of one year from the date of the expiration of his appointment by the Legislature as aforesaid.

Also Daniel Waldo was appointed to be overseer of that portion of the road in Champoick County, to which he was appointed by an Act of the Legislature passed in June, 1844. Said Daniel Waldo is commanded to fill said office of overseer, and discharge the duties of the same for the term of one year from the date of the expiration of his appointment by the Legislature aforesaid.

**THOMAS SMITH vs. WEBLEY HAUXHURT.**

**TRESPASS.**

Now at this day came the said plaintiff and saith that he will no further prosecute his said suit, and prays the Court here to grant him a non-suit, which is done accordingly.

It is therefore considered by the Court here, that the said plaintiff pay the said defendant his costs by him in this behalf laid out and expended, and that he have execution therefor.

**JOHN H. COUCH vs. WILLIAM J. BAILEY.**

**ASSUMPSIT.**

Now at this day came the said plaintiff, as well as the said defendant, by their attorneys, and the plaintiff prayed the Court to grant him a continuance of his case, which is done accordingly.

The Grand Jury returned into Court here, and said they had no business under consideration, whereupon they were dismissed by the Court—and the Court adjourned.

Attest:

I. E. LONG,  
*Clerk of Court.*

J. W. NESMITH,  
*Judge, Circuit Court.*

**OREGON RECORDS**

Be it remembered that at a Circuit Court began and held at the house of Clark and Campbell in the County of

Yamhill on the 15th day of April, A. D. 1845, were present the Honorable J. W. Nesmith, Judge; John E. Long, Clerk, and Thomas Smith, Sheriff, when the following proceedings were had:

The Sheriff having returned into Court here the Venire Facias executed according to law upon Henry Hewitt, Andrew Hembree, Joel J. Hembree, John Richardson, Pleasant Armstrong, Daniel Matheney, Elijah Millican, Madison Melone, Moses M. Harris, Ransom Clark, Walter Matney, and Thomas Owens.

The Grand Jury having been duly empannelled, sworn and charged, according to law, and Ransom Clark appointed their foreman, retired to consider of their presentments.

## H. TAYLOR AND OTHERS.

### PETITION FOR A ROAD.

A petition was presented to the Court here, praying the Court to authorize the establishment of a road from Smith's Landing on the Yamhill River, to the mouth of the Creole River, in Yamhill County. Whereupon John Richardson, Lancaster Plyman and John Manning were appointed to view out the route for said road, and report at the next Court in Yamhill County.

## DANIEL MATHENY.

### PETITION FOR A FERRY.

Application was made to the Court here for authority to establish and keep a ferry across the Willamette River at the farm now occupied by Daniel Matheny, to the opposite side of said river at the farm now occupied by David Carter.

Whereupon the Court granted a license to Daniel Matheny to establish and keep said ferry for (one)\* three years from the date of his license, subject to the laws that govern ferries in Oregon, for which said license, said Daniel Matheny shall pay the sum of Eight Dollars annually for the use of Oregon, and be authorized to receive the following rates for ferriage:

Viz: For a man and horse.....	\$ .37½
For every head of cattle and horses.....	.10
For every head of sheep and hogs.....	.05
For every 100 lbs. of goods and other freight.....	.05
For every wagon and team.....	2.00

For every cart and horse.....	1.00
For every pleasure carriage.....	1.00
For every single footman.....	.18¾

\* The above mistake and erasure was made by the Court before the record was signed by the Judge.

Attest:

I. E. LONG,  
*Clerk of Court.*

J. W. NESMITH,  
*Judge, Circuit Court.*

The above license was given to Daniel Matheny on the 2nd July, 1845, for which he paid Eight Dollars to the Treasury.

I. E. LONG, *Clerk.*

### OREGON RECORDS

*Be It Remembered* that at a Circuit Court began and held at the school house in Tualaty County on the 22nd day of April, A. D. 1845, were present J. W. Nesmith, Judge, Joseph L. Meek, Sheriff, and Sidney W. Moss, Deputy Clerk, the following proceedings were had:

The Sheriff having returned into Court here the Venire Facias executed according to law upon Morton M. McCarver, Samuel Snowden, Jacob Hoover, Robert Poe, Henry Buxton, A. L. Zachery, Alex. Blevins, Adam Hewitt, John Holman, William Baldra, William Higgins, and John Flett.

The Grand Jury having been duly empannelled, sworn and charged according to law, and M. M. McCarver appointed their foreman, retired to consider of their presentments.

Whereupon the Court adjourned to 9 o'clock tomorrow morning.

April 23rd, 1845.

The Court met pursuant to adjournment.

The Grand Jury returned into Court here an indictment against James White, endorsed "a True Bill".

NINEVEH FORD vs. ANDERSON SMITH.

ASSUMPSIT.

Now at this day came the said plaintiff and saith, that he will no further prosecute his said suit, and prays the Court to grant him a non-suit, which is done accordingly. It is therefore considered by the Court here, that by the con-

sent of parties, the said defendant pay the said plaintiff his costs by him in this behalf laid out and expended, and that he have execution therefor.

**ROBT. MOORE vs. RICHARD WILLIAMS.**

**REPLEVIN.**

Now at this day came the said parties by their attorneys and both parties being ready for trial, thereupon came a jury, to-wit: John Flett, Chas. McKay, Wesley Mulkey, George Lewis, Jacob Doran, Richard Ough, Owen M. Mills, David Flett, N. N. Osborn, Ransome Pomeroy, William Mozee, V. W. Dawson, good and lawfull men of Oregon, who being duly sworn and empannelled, returned into Court here the following verdict, to-wit:

“We, the Jury, find the issue for the plaintiff, and assess his damages at fifty cents.”

It is therefore considered by the Court here, that the plaintiff recover of the said defendant the said sum of fifty cents, together with his costs and charges by him in this behalf laid out and expended, and that he have execution therefor.

**OREGON vs. V. W. DAWSON.**

**INDICTMENT FOR ASSAULT.**

Now at this day came the said defendant and saith that he is “not guilty” as in manner and form alledged in said indictment, whereupon came a jury: to-wit: Henry Buxton, James Garrish, David Flett, William Baldra, William Higgins, Daniel Clark, A. L. Zachary, Jacob Doran, George Ebberts, Robt. Poe, John Flett, Caleb Wilkins, good and lawful men of Oregon, who being duly sworn and empannelled, returned into Court here the following verdict, to-wit: “We, the Jury, do find the defendant Not Guilty.” Whereupon the said defendant was fined, and paid fifteen dollars for contempt of court during the progress of his trial.

**OREGON vs. ANDERSON SMITH.**

**INDICTMENT FOR ASSAULT.**

Now at this day came the said defendant and saith that he is “not guilty” as in manner and form alledged in said indictment, whereupon came a jury, to-wit: Henry Buxton, James Garrish, David Flett, William Baldra, William Higgins,

Daniel Clark, A. L. Zachary, Jacob Doran, G. W. Ebberts, John Flett, Caleb Wilkins, I. W. Smith—good and lawful men of Oregon, who being duly sworn and empannelled, returned into Court here the following verdict, to-wit: "We, the Jury, do find the defendant Not Guilty."

#### HENRY H. HYDE vs. ALEX. R. STOUGHTON.

##### COMPLAINT.

Now at this day came the said plaintiff as well as the said defendant by their attorneys, and after argument had, and the court being fully advised concerning the matters and things alledged in said complaint, the Court thereupon dismissed the said complaint at the costs of the plaintiff. It is therefore considered by the Court here that the said defendant recover of the said plaintiff his costs in this behalf laid out and expended, and that he have execution therefor.

#### ISAAC W. SMITH vs. JOHN CUNNINGHAM.

##### APPEAL.

Now at this day came the said plaintiff, as well as the said defendant by his attorney, and both parties being ready for trial, thereupon came a jury as follows, to-wit: John Flett, Daniel Clark, James Gerrish, William Baldr, Jacob Doran, Richard Williams, Owen Mills, David Flett, N. Osborn, Robert Poe, John B. Jackson, and V. W. Dawson, good and lawful men of Oregon, who being duly sworn and empannelled, returned into Court here the following verdict, to-wit: "We, the Jury, find the Issue for the plaintiff and assess his damages at fifty cents." It is therefore considered by the Court here that the said plaintiff recover of the said defendant the said sum of fifty cents, together with his costs and charges by him in this behalf laid out and expended and that he have execution therefor.

It being the duty of the Court to appoint capable and discreet persons, possessing the qualifications of electors, to act as judges at the next general election in the different election precincts in Oregon.

The Court therefore appointed the following persons in the counties and precincts respectively, which said judges to perform the duties of their offices, until others are appointed to succeed them, to-wit:

WILLIAM HOLMES	}	At F. W. Pettigrove House Klackamas
J. L. MORRISON		
NINEVEH FORD		
JOSEPH YATTAN	}	At Alanson Beers' house Champoick
L. H. JUDSON		
THOS. D. KIEZER		
JOHN BAKER	}	At P. Armstrong's house Yamhill
DANIEL MATHENY		
PLEASANT ARMSTRONG		
WILLIAM HIGGINS	}	At Chas. McKay's house Twalaty Plains Western Precinct
CALEB WILKINS		
JOHN HOLMAN		
JAMES ATHEY	}	At Hugh Burns' house Twalaty County Eastern Precinct
HUGH BURNS		
ROBT. MOORE		
SAML. H. SMITH	}	Clatsop
CALVIN TIBBITS		
J. L. PARRISH		

The Court also appointed Benjamin Tucker to be overseer of that portion of the public road in Tualaty County leading from the point where the road from Linnton first strikes the Twalaty Plains up through Chahalem valley to the falls of the Yamhill River, and that David Lennox deliver to said Tucker the law on roads in his possession. The Court adjourned to tomorrow.

Attest:

I. E. LONG,  
*Clerk of Court.*

J. W. NESMITH,  
*Judge, Circuit Court.*

April 24th, 1845.

The Court met pursuant to adjournment. Application was made to the Court here by petition, signed by Robt. Moore and others, for an Election Precinct in Twalaty County, which was granted as follows, to-wit: Commencing at the southern limits of Twalaty County, on the Willamette river, thence down said river to the northern boundary of William Johnson's farm, thence west ten miles, thence to the southern boundary of Twalaty County, thence east along said boundary to the place of beginning; to be called the "Eastern Precinct of Twalaty County".

The Court appointed the following persons to be overseers of roads in Twalaty County, to-wit: William Beagle to be overseer of that portion of the road in Twalaty County leading from Linnton to where the road first strikes the Twalaty Plains; said William Beagle to fill the said office, and perform the duties of the same for the term of twelve months from the date of the expiration of his appointment by an Act of the Legislature passed in June, 1844.

Hugh Burns to be overseer of that portion of the road in Twalaty County leading from the Willamette Falls to the Butte, and that he perform the duties of said office for twelve months from the date of the expiration of his appointment by an act of the Legislature passed in June, 1844. George W. Ebberts to be overseer of the portion of the road leading from the Butte to Twalaty Plains, and that he perform the duties of said office for the term of twelve months from the 22nd June, 1845.

There being no further business before the Court, the Court adjourned.

Attest:

I. E. LONG,  
*Clerk of Court.*

J. L. NESMITH,  
*Judge, Circuit Court.*

### BE IT REMEMBERED

That at a General Election held in Oregon on the 3rd day of June, A. D. 1845, the following named persons were duly elected by the qualified voters to fill the following described offices:

For Executive.....	George Abernethy
For Judge.....	James W. Nesmith
For Circuit Attorney.....	Marcus Ford
For Treasurer.....	Fras. Ermatinger
For Clerk.....	John E. Long
For Assessor.....	Sidney W. Moss
For Sheriff.....	Joseph L. Meek
For Colonel .....	James Waters
For Lt.-Colonel.....	Charles Bennett
For Major.....	John Baker

### KLACKAMAS COUNTY OFFICERS

For Legislature.....	H. A. G. Lee
For Legislature.....	Wm. H. Gray



For Legislature.....Hiram Straight  
 For Justice of Peace.....Frederick Prigg  
 For Constable.....Henry H. Hyde

#### CHAMPOICK COUNTY OFFICERS

For Legislature.....J. M. Garrison  
 For Legislature.....M. G. Faisy  
 For Legislature.....Robert Newell  
 For Legislature.....Barton Lee  
 For Justice of Peace.....F. H. Mathew  
 For Constable.....F. Longevin  
 For Constable.....John W. Rowe

#### TWALATY COUNTY OFFICERS

For Legislature.....M. M. McCarvis  
 For Legislature.....Isaac W. Smith  
 For Legislature.....David Hill  
 For Justice of Peace.....Felix Hathaway  
 For Justice of Peace.....William Burriss  
 For Justice of Peace.....John Holman  
 For Constable.....George W. Ebberts  
 For Constable.....Robert Poe

#### YAMHILL COUNTY OFFICERS

For Legislature.....Jesse Applegate  
 For Legislature.....Abijah Hendricks  
 For Justice.....Joel P. Walker  
 For Justice.....I. I. Hembree  
 For Constable.....Samuel Campbell  
 For Constable.....Henry Hill

#### CLATSOP COUNTY OFFICERS

For Legislature.....John McClure  
 For Justice.....W. T. Perry

Allen Davy and H. King, having received an equal number of votes for the office of Justice of the Peace in Cham-poick County, and Thos. Owens and Calvin Tibbits having received an equal number of votes for the office of Constable in Clatsop County, consequently there was no election for said offices in said counties.

Attest:

I. E. LONG, *Clerk.*

J. W. NESMITH,

*Judge of Circuit Court.*

FRED C. PRIGG, *Justice.*

Dated at Oregon City this 10th day of June, 1845.

*Be It Remembered*, that S. W. Moss, David Hill, and James Athey were appointed road viewers to view out, and make any alterations they may deem necessary (as per Act) in the road leading from the Willamette Falls to Twalaty Plains and report the same to Hugh Burns and George W. Ebberts, overseers of said road.

Oregon City,  
7th July, 1845.

I. E. LONG,  
*Clerk of Court.*

*Be It Remembered* that Wm. Burriss, Justice of the Peace, is appointed to perform the duties of allotting Justice for Twalaty County.

Oregon City,  
7th July, 1845.

I. E. LONG,  
*Clerk of Court.*

### BE IT REMEMBERED

That on the 26th day of July, A. D. 1845, a General Election was held in Oregon as appointed by law for the purpose of taking the vote of the people on the adoption of the old or the amended organic laws, which vote was as follows, to-wit:

	<i>Old Organic Law</i>	<i>Amended Organic Law</i>
Twalaty County	34	42
Champoick County	5	121
Yamhill County	12	39
Klackamas County	1	37
Clatsop County	----	16
	<hr/> 52	<hr/> 255

Also an Election was held in Twalaty County on the aforesaid day to take the vote of the people in said County on the location of the County Seat of the same, which was as follows, to-wit:

For Columbia	40	2	42 votes
For Burnett's Plain	2	2	4 votes
For Chas. McKay's Plain	17	10	Multnomah votes
	<hr/> 59	<hr/> 14	

Attest:

I. E. LONG,  
*Clerk*

J. W. NESMITH,  
*Judge of Circuit Court.*  
FREDERIC PRIGG,  
*Justice of the Peace.*

**BE IT REMEMBERED**

That on this fifth day of August, A. D. 1845, upon the application of Robert Moore and John McLaughlin, a joint license was granted them by me, to keep a ferry across the Willamette River from Oregon City to the Robin's Nest, for the Term of Three Years from the first day of Sept. next, subject to the Laws regulating ferries; upon paying into the Treasury of Oregon the sum of Twenty-five dollars annually. And they are hereby authorized to charge the following rates for ferriage, to-wit:

For a single footman.....	\$ .12½
For a single person and horse.....	.25
For every wagon and team.....	1.50
For every head of cattle and horses.....	.06¼
For every cart and team.....	.75
For every head of sheep and hogs.....	.03
For every pleasure carriage.....	.75
For every 100 lbs. of goods and other freight....	.05

Attest:

I. E. LONG,  
Clerk.

J. W. NESMITH,  
Judge of Circuit Court.

**BE IT REMEMBERED**

That on this fifth day of August, A. D. 1845, upon the application of Hugh Burns, a License was granted him by me to keep a ferry across the Willamette River from Oregon City to Multnomah City, for the term of Three years from the date hereof, subject to the Laws regulating ferries; upon paying into the Treasury of Oregon the sum of Twenty-five dollars annually; and he is hereby authorized to charge the following rates for ferriage, to-wit:

For a single footman.....	\$ .12½
For a single person and horse.....	.25
For every wagon and team.....	1.50
For every head of cattle and horses.....	.06¼
For every cart and team.....	.75
For every head of sheep and hogs.....	.03
For every pleasure carriage.....	.75
For every 100 lbs. of goods and other freight....	.05

Attest:

I. E. LONG,  
Clerk.

J. W. NESMITH,  
Judge of Circuit Court.

## COMMISSIONS ISSUED

*Be It Remembered*, That on the 3rd day of Sept., 1845, the following named persons were duly commissioned by the Governor of Oregon Territory to fill the offices as follows, respectively, to-wit:

Francis Ermatinger to be Treasurer for Oregon.

Peter G. Stewart to be Judge of Klackamas District Court, and President of said Court for 3 years.

Frederic Prigg to be Judge of Klackamas District Court for two years.

Francis W. Pettigrove to be Judge of Klackamas District Court for one year.

William Holmes to be Sheriff of Klackamas District.

Jas. A. O'Niel to be Judge of Yamhill District Court for 3 years and President of said Court.

Joel J. Hembree to be Judge of Yamhill District Court for 2 years.

Joel P. Walker to be Judge of Yamhill District Court for one year.

Absalom J. Hembree to be Sheriff of Yamhill District.

William T. Perry to be Judge of Clatsop District Court for 3 years, and President of said Court.

Robert Shortess to be Judge of Clatsop District Court for two years.

Calvin Tibbits to be Judge of Clatsop District Court for one year.

Thos. Owens to be Sheriff of Clatsop District.

John E. Long to be Secretary of Oregon Territory.

James Douglas to be District Judge for Vancouver District for 3 years, and President of the said District Court.

Attest:

I. E. LONG,  
Secretary.

## COMMISSIONS ISSUED

*Be It Remembered*, That the following named persons were Commissioned according to law, by the Governor of Oregon Territory, as follows, to-wit:

John R. Jackson on the 4th day of Sept., 1845. To be Sheriff of Vancouver District until the annual election in 1846.

Peter H. Burnett, on the 6th Sept., 1845. To be Judge of the Supreme Court of Oregon Territory for the term of four years.

Harman Higgins on the 8th Sept., 1845. To be judge of the District Court of Twalaty District for two years.

Francis X. Mathew on the 8th Sept., 1845, to be Judge of the District Court of Champoick District for two years.

William Morrison on the 17th Sept., 1845. To be Sheriff of Champoick District.

William Burriss on the 26th Sept., 1845, to be Judge of Twalaty District Court for one year.

Daniel Waldo on the 17th Sept., 1845, to be Judge of Champoick District Court for one year.

Robert H. Poe on the 27th Sept., 1845, to be Sheriff of Twalaty District until next Annual Election.

B. I. Tucker on the 27th Sept., 1865, to be judge of Twalaty County Court for 3 years and president of said Court.

W. H. Willson on the 1st Oct., 1845, to be Judge of Champoick District Court for 3 years.

Marcus Ford on the 7th Oct., 1845, to be Prosecuting Attorney for Oregon Territory.

Robt. Moore on the 27th Oct., 1845, to be Judge of Twalaty District Court for 2 years (vice Wm. Higgins, resigned).

Joseph L. Meek on the 1st Nov., 1845, to be Marshall of Oregon Territory.

Attest:

I. E. LONG,  
*Secretary.*

In Vacation, September 6th, 1845.

*Be It Remembered*, That there being no Clerk of the Supreme Court of Oregon Territory, I, Peter H. Burnett, Judge of said Court, have appointed, and by these presents do appoint I. E. Long Clerk of said Court, who shall hold his office until the next meeting of the Legislature. Done in vacation the day and year aforesaid.

(Signed) PETER H. BURNETT,  
*Judge.*

It is ordered that the said I. E. Long enter into bond to the Territory of Oregon in the penalty of five hundred dollars with good and sufficient security, as the law directs.

(Signed) PETER H. BURNETT,  
*Judge.*

In Vacation, September 6th, 1845.

*Be It Remembered*, that I, Peter H. Burnett, Judge of Supreme Court of Oregon Territory, and ex-officio Judge of the Criminal Court of Oregon Territory, do by these presents appoint I. E. Long, Clerk of the said Criminal Court, who shall hold his office until the next meeting of the Legislature.

Done in vacation the day and year aforesaid.

It is ordered that the said Long enter into bond to the territory of Oregon in the penalty of Five Hundred Dollars, with good and sufficient security as the law directs.

(Signed) PETER H. BURNETT,  
*Judge.*

Attest:  
I. E. LONG,  
*Secretary.*

**BE IT REMEMBERED**

That the District Court of Clackamas District having notified me that they had, in vacation appointed Sidney W. Moss to be the Clerk of said Court until the next sitting of the House of Representatives: I have this day delivered to said Moss all the papers in my possession in relation to said Court and took his receipt therefor.  
9th Sept., 1845.

Attest:  
I. E. LONG,  
*Secretary.*

**BE IT REMEMBERED**

That Thos. H. Smith, having refused to accept the office of Sheriff for Tualaty District, to which he was elected by the House of Representatives. Thereupon the Governor appointed and commissioned Robt. H. Poe to said office, to hold the same until the next annual election.  
Dated Oregon City,  
16th Sept., 1845.

Attest:  
I. E. LONG,  
*Secretary.*

**BE IT REMEMBERED**

That a verdict to the amount of One Hundred and Forty-six Dollars and Sixty Cents having been rendered at the Cir-

cuit Court held in Klackamas County on the first day of April, 1845, against Alex. R. Stoughton in favour of Nathan Eaton—and a Writ of Execution having been issued by the Clerk of said Court to the Sheriff of Oregon against said Stoughton, whereupon the said Stoughton demanded a stay of execution, which stay was allowed until the first day of October, 1845, upon which day the said Stoughton, by his security, John Force, paid the full amount of the said verdict with interest thereon amounting in all to \$148.43, which amount was placed to the credit of the said N. Eaton the same day at the store of Geo. Abernethy, Oregon City.  
Dated Oregon City,  
1st Oct., 1845.

I. E. LONG,  
*Secretary.*

*Be It Remembered*, That E. E. Parrish having refused to accept the office of District Judge for Champoick District, to which he was elected by the House of Representatives. Thereupon the Governor appointed and commissioned W. H. Willson to fill said office, to hold the same for 3 years.  
Dated Oregon City,  
1st Oct., 1845.

Attest:  
I. E. LONG,  
*Secretary.*

*Be It Remembered*, That F. W. Pettigrove and Pete G. Stewart having resigned their offices as Judges of the County Court of Klackamas County, and the fact having been communicated to the House of Representatives, by the Gov., thereupon the House elected Chas. E. Picket for 2 years and Simpson White for one year to fill said vacancies.  
The House also elected Wm. Golden judge of Clatsop County Court for one year, instead of Robt. Shortess, resigned.

Attest: I. E. LONG,  
*Secretary.*

### COMMISSIONS ISSUED

*Be It Remembered*, That the following Commissions were issued from the Secretary's Office on the dates, respectively, to-wit:

To William Hughes, on the 20th Dec., 1845, to be Sheriff of Champoick District.

- To William Golden, Judge of Clatsop County Court, for one year. Issued on the 24th Dec., 1845.
- To Charles E. Picket, Judge of Klackamas County Court, for two years. Issued on the 26th Dec., 1845.
- To F. Prigg, Judge of Clackamas County Court, for three years, instead of his former election for two years. The last commission issued on the 30th Dec., 1845.
- To Michael T. Simmons, on the 24th January, 1846, to be Judge of Vancouver County Court for two years.
- To Henry M. Knighton, on the 6th Febr., 1846, to be Marshall of the Territory.
- To William G. T. Vault, on the 6th Febr., 1846, to be Prosecuting Attorney for Oregon.

Attest: I. E. LONG,  
*Secretary.*

- To John H. Couch, on the 4th March, 1846, to be Treasurer of Oregon Territory (vice F. Ermatinger).

Attest: I. E. LONG,  
*Secretary.*

- To A. L. Lovejoy, on the 10th March, to be Prosecuting Attorney for Oregon Territory (vice W. G. T. Vault, resigned).

Attest: I. E. LONG,  
*Secretary.*

- To I. M. Garrison, on the 6th April, to be Presiding Judge of Champoick County Court.

Attest: I. E. LONG,  
*Secretary.*

- To J. P. Martin, on the 14th April, 1846, to be Sheriff of Champoege County.

Attest: I. E. LONG,  
*Secretary.*

### RESIGNATIONS

*Be It Remembered,* That on the 26th day of January, 1846, Marcus Ford resigned the office of Prosecuting Attorney for Oregon Territory.

Attest: I. E. LONG,  
*Secretary.*



*Be It Remembered*, That on the 2nd day of February, 1846, J. L. Meek resigned the office of Marshall for Oregon Territory.

Attest: I. E. LONG,  
*Secretary.*

*Be It Remembered*, That on the 3rd March, 1846, Fras. Ermatinger resigned the office of Treasurer of Oregon Territory.

Attest: I. E. LONG,  
*Secretary.*

*Be It Remembered*, That on the 5th March, 1846, W. G. T. Vault resigned the office of Prosecuting Attorney for Oregon Territory.

Attest: I. E. LONG,  
*Secretary.*

*Be It Remembered*, That on the 6th April, 1846, W. H. Wilson resigned the office of Judge of Champoick County Court.

Attest: I. E. LONG,  
*Secretary.*

*Be It Remembered*, That on the 4th day of April, 1846, James A. O'Neil resigned the office of Judge of Yamhill County Court.

Attest: FREDERIC PRIGG,  
*Secretary.*

*Be It Remembered*, That on the 26th day of June, 1846, Fred C. Prigg resigned the office of Presiding Judge of Clakamas County (Judge of Probate).

Attest: FREDERIC PRIGG,  
*Secretary.*

*Be It Remembered*, That at the June term of the Supreme Court of Oregon Territory, began and held at Oregon City on the 1st day of June, A. D. 1846, there were present the Honorable Peter H. Burnett, Supreme Judge; Henry M. Knighton, Marshal, and John E. Long, Clerk, when the following proceedings were had:

The Court being opened in due form by the Marshal, was by order of the Judge adjourned to 9 o'clock tomorrow morning.

PETER H. BURNETT,  
*Judge.*

Oregon City, June 2nd, 1846.

The Court met pursuant to adjournment. The Judge read the rules of the court in relation to practice in the Supreme Court: When W. G. T. Vault, A. L. Lovejoy, and Olney were severally sworn, "faithfully to demean themselves as Attorneys and Counsellors at law to the best of their ability" and authorized to practice law in the Supreme Court of Oregon Territory.

Now at this day came James B. Stevens, by his attorney A. L. Lovejoy in open court, and prayed the Court to grant him a license to keep a ferry across the Willamette River at Portland, upon which application the Court gave the following opinion, to-wit:

"This is an application for ferry license under an Act of the Oregon Legislature, conferring the power to grant such license upon the Supreme Court. The Organic Law provides that this court shall have appellate jurisdiction only, except in criminal cases. The Act of the Legislature therefore contravenes the Organic Law, and this Court therefore refuses the application."

The Court adjourned to one o'clock P. M.

At one o'clock P. M. the Court met.

J. H. COUCH, *Appellee*, vs. W. J. BAILEY, *Appellant*.

APPEAL FROM THE COUNTY COURT OF CHAMPOEG.

Upon a suggestion by the appellant's counsel, of a diminution of the record in this case, it is ordered that a Writ of Certiorari, returnable to the next term of this Court, issue to the Clerk of the Champoeg County Court, commanding him to send up a more full and perfect transcript of the record in this case; and this case is continued until the next term of this Court.

Ordered that the following be adopted as Rules of this Court, to-wit:

#### RULES OF THE SUPREME COURT OF OREGON

- 1st. The first business of the morning session will be the reading of the record.
- 2nd. Motions will be taken up and considered immediately after the reading of the record.
- 3rd. All motions must be in writing and filed one day at least before hearing.

- 4th. When a motion is founded upon matter of fact not admitted, and extraneous of the record, it must be supported by affidavit.
- 5th. Errors must be assigned in writing and filed on or before the first day of the term.
- 6th. The plaintiff's counsel will open the argument of the case: he will be replied to by defendant's counsel, who will be answered by plaintiff's counsel, when the arguments will be closed.
- 7th. When application is made for a *Certiorari* it must be accompanied by an affidavit stating the particular defect in the transcript.

The Court then adjourned to the Court in course.

Attest:

I. E. LONG,  
Clerk.

PETER H. BURNETT,  
Judge.

*Be It Remembered*, That at the June Term of the Criminal Court of Oregon Territory, began and held at Oregon City on the Eighth day of June, A. D. 1846. There were present the Honorable Peter H. Burnett, Judge; Henry M. Knighton, Marshal, and John E. Long, Clerk, when the following proceedings were had:

Alonzo A. Skinner, being duly sworn, was authorized to practice law in the Criminal Court of Oregon Territory.

#### OREGON TERRITORY vs. RANSOM CLARK.

##### INDICTMENT FOR HEARING ON CHALLENGE TO FIGHT A DUEL.

Now, at this day, came the said defendant by his attorney, W. G. T. Vault, and moved the Court here to quash said Indictment: which motion the court sustained, and the Indictment was quashed. It is therefore considered by the Court here that the said defendant recover of the County of Clackamas his costs in this behalf laid out and expended, and that the said defendant go hence without day.

#### OREGON TERRITORY vs. JOHN G. CAMPBELL.

##### INDICTMENT FOR CHALLENGING TO FIGHT A DUEL.

Now at this day came the said defendant by his attorney, W. G. T. Vault, and moved the Court here to quash said indictment: which motion the Court sustained, and the

Indictment was quashed. It is therefore considered by the Court here that the said defendant recover of the County of Clackamas his costs in this case laid out and expended: and that the said defendant go hence without day.

**OREGON TERRITORY vs. GEORGE GEER.**

**ADULTERY.**

Now at this day came the prosecuting attorney, who prosecutes on behalf of Oregon Territory, and by leave of the Court saith that he will no further prosecute the said Indictment. It is therefore considered by the Court that the said defendant recover of the County of Clackamas his costs in this case laid out and expended; and that the said defendant go hence without day.

**OREGON TERRITORY vs. HANSON BEERS.**

**INDICTMENT FOR DISTURBING A FAMILY  
BY NIGHT.**

Now, at this day came the said defendant, by his attorney W. G. T. Vault, and moved the Court here to quash said Indictment; which motion the Court sustained, and the Indictment was quashed. It is therefore considered by the Court, that the said defendant recover of the County of Champoick his costs in this case laid out and expended, and that the said defendant go hence without day.

The Court adjourned to two o'clock P. M.

At two o'clock P. M. the Court met.

**OREGON TERRITORY vs. JAMES WHITE.**

**INDICTMENT FOR TEARING PROMISSORY  
NOTE.**

Now at this day came the said defendant in his own proper person, as well as the prosecuting attorney, who prosecutes for and on behalf of Oregon Territory, and the said defendant saith he is not guilty in manner and form as alledged in said indictment against him, of which he puts himself upon the Country: and the said prosecuting attorney doth the like; whereupon came a jury, to-wit: William H. Rees, J. M. Miller, Preston Rice, G. A. Baker, William Finley, Philip Foster, Samuel Parker, Charles Lewis, L. A. Smith, George Rice, Hanson Hasted and Daniel Trinder, all good and lawful men, who being duly sworn, well and truly to

try the matters in issue between the said parties, retired to consider of their verdict: The jury then returned into Court here the following verdict, to-wit:

“We, the jury, find the defendant guilty in manner and form as charged in the within indictment, and assess his punishment at a fine of Five Dollars, and one year’s imprisonment.

SAML. PARKER, *Foreman.*”

The said jury also in open court recommended said defendant to the clemency of the Governor of Oregon. The defendant then filed his motion in arrest of judgment.

# OREGON TERRITORY vs. GEORGE MONTOUR.

## PERJURY.

Now at this day came the defendant in his own proper person, and moved the Court to quash said indictment. The Court sustained the motion, and the indictment was quashed. It is therefore considered by the Court that the said defendant recover of the County of Champoick his costs in this case laid out and expended, and that he go hence without day.

# OREGON TERRITORY vs. JOHN ROWLAND.

## LARCENY.

Now at this day came the said defendant in his own proper person, and moved the Court to quash the said indictment. The motion was sustained and the indictment quashed: It is therefore considered by the Court that the said defendant recover of the County of Champoege his costs in this case laid out and expended, and that said defendant go hence without day.

The Court adjourned to 9 o’clock tomorrow morning.

Attest:

I. E. LONG,  
*Clerk.*

PETER H. BURNETT,  
*Judge.*

Tuesday, June 9th, 1846.

The Court met at 9 o’clock this morning. Marcus Ford and J. W. Nesmith, being duly sworn, were authorized to practice law in the Criminal Court of Oregon Territory.

**OREGON TERRITORY vs. JAMES WHITE.****FOR TEARING PROMISSORY NOTE.**

Now at this day came the said defendant in his own proper person, and the Court being well advised of and concerning the matters and things contained in the said defendant's Motion in Arrest of Judgment, doth overrule the same. It is therefore considered by the Court here, that the said defendant make his fine of five dollars to the said Territory of Oregon; and that he be imprisoned for the term of one year in the jail at Oregon City, and that the said Territory recover of the said defendant her costs in this behalf laid out and expended, and that she have execution therefor, and the Court doth recommend the said defendant to the clemency of the Executive.

**OREGON TERRITORY vs. PETER RAYMOND.****ADULTERY.**

It is ordered by the Court that this case be stricken from the docket.

**OREGON TERRITORY vs. BEAN.****ADULTERY.**

It is ordered by the Court that this case be stricken from the docket.

**OREGON TERRITORY vs. LYMAN BYARD.****ADULTERY (*Indictment*).**

Now at this day came the said defendant by his Attorney J. W. Nesmith, and moved the Court to quash said Indictment: which motion the Court sustained, and the Indictment was quashed. It is therefore considered by the Court here, that the said defendant recover of the County of Champoege his costs in this behalf, laid out and expended: and that the said defendant go hence without day.

**OREGON TERRITORY vs. MARY OTEHIN.****LEWDNESS.**

Now at this day came the said defendant, in her own proper person, as well as the prosecuting attorney who prosecutes for and on behalf of said Territory, and the said defendant saith she is not guilty in the manner and form as

alleged against her in said indictment, and of this she puts herself upon the Country, and the said prosecuting attorney doth the like. Whereupon came a jury, to-wit: Washington Corbly, Lewis Stringer, John Minto, O. L. Thomas, Edward Magruder, William Glazer, William A. Culbertson, Philip Foster, Hiram Straight, Hugh Burns, Alason Husted, James McMillen, all good and lawful men of Oregon, who, being duly sworn, well and truly to try the matters in issue between the parties, retired to consider of their verdict. The jury then returned into Court here the following verdict, to-wit:

"We, the jury, find the defendant not guilty of the charges alleged in the within Indictment.

(Signed) HIRAM STRAIGHT, *Foreman*."

It is therefore considered by the Court, that the said defendant go hence without delay and that she recover of the County of Tualaty her costs in this behalf laid out and expended.

## OREGON TERRITORY vs. NOAH NEWMAN.

### INDICTMENT FOR DESTROYING HOUSE.

Now at this day came the said defendant in his own proper person, as well as the prosecuting attorney, who prosecutes for and on behalf of said Territory, and the said defendant saith he is not guilty in the manner and form as alleged in said indictment, and of this he puts himself upon the Country, and the said prosecuting attorney doth the like. Whereupon came a jury, to-wit: Samuel Parker, W. H. Rees, John Travers, Washington Cobly, Sirius Barns, Edward Magruder, William A. Culbertson, Lewis Springer, Hiram Straight, Joel Gillet, and Alanson Husted, all good and lawful men, who, being duly sworn well and truly to try the matters in issue between the parties, retired to consider of their verdict. The jury then returned into Court here the following verdict, to-wit:

"We, the jury, find the defendant Guilty of the charges set forth in the Indictment.

(Signed) THEOPHILUS MAGRUDER, *Foreman*."

The Court doth therefore assess the punishment of the said defendant at a fine of five dollars: It is therefore con-

sidered by the Court here that the said defendant make his fine to Oregon Territory of the sum of five dollars, and that the said Territory recover of the said defendant her costs in this behalf laid out and expended, and that she have execution therefor.

### OREGON TERRITORY vs. MOSES EADES.

#### ASSAULT WITH INTENT TO KILL.

Now at this day came the prosecuting attorney, who prosecutes for and on behalf of Oregon Territory, and by leave of the court saith, that he will no further prosecute the said Indictment. It is therefore considered by the Court, that the said defendant recover of the County of Champoege his costs in this case laid out and expended, and that the said defendant go hence without day.

### OREGON TERRITORY vs. ROBERT BLAIR.

#### LEWDNESS.

Now at this day came the prosecuting attorney who prosecutes for and on behalf of Oregon Territory, and by leave of the Court saith, that he will no further prosecute the said indictment. It is therefore considered by the Court that the said defendant recover of the County of Twalaty his costs in this case laid out and expended, and that he go hence without day.

Ordered by the Court that the following be adopted as rules of this Court:

- 1st. All motions shall be in writing, specifying the objectionable points, and filed at least one day before hearing.
- 2nd. The first business of the morning will be reading and amending the record.
- 3rd. Motions will be heard and determined after the record has been read and amended.

Ordered by the Court that the sum of fourteen dollars be paid H. M. Knighton for use of house.

The Court adjourned to the Court in course.

PETER H. BURNETT,  
*Judge.*



## SUPREME COURT RECORD

*Be It Remembered*, That at the September Term of the Supreme Court of Oregon Territory, began and held at Oregon City, on the 7th day of Sept., A. D. 1846, there were present the Honorable Peter H. Burnett, Supreme Judge; Henry M. Knighton, Marshal, and Frederic Prigg, Clerk, when the following proceedings were had:

The Court being opened in due form by the Marshal, the Judge ordered the attorneys authorized to practice to be called, and the Court adjourned to 1 o'clock P. M.

The Court met pursuant to adjournment.

RICHARD M. CARY, *Plaintiff in Error*,

vs.

OREGON TERRITORY.

Now at this day the plaintiff in error filed his Assignments of Errors.

W. I. BAILEY, *Appellant*,

vs.

INOTLE COUCH, *Appellee*.

Now at this day came the parties, when the appellant, by his attorney, asked leave till tomorrow morning to file his Assignment of Errors, which leave was granted.

ADMINISTRATOR OF THE ESTATE OF E. YOUNG, Deceased,  
*Plaintiff in Error*,

vs.

D. WALDO.

Now at this day came plaintiff in error and made application for a Writ of Error, which was granted, to be directed to the Clerk of Clackamas County.

CRISTOPHER STAMMERMAN, *Plaintiff in Error*,

vs.

ANDERSON COX.

Now at this day came plaintiff in error, and made application for a Writ of Error, which was granted, to be directed to the Clerk of Champoeg County.

The Court then adjourned to 9 o'clock tomorrow morning.

Attest:

FREDERIC PRIGG,  
*Clerk.*

PETER H. BURNETT,  
*Supreme Judge.*

Tuesday, Sept. 8th, 1846.

The Court met pursuant to adjournment, present, the same parties as yesterday. On motion being called for the attorney for appellant in the case of Bailey vs. Couch, presented an affidavit which was subscribed and sworn to in open court and placed on file.

WILLIAM I. BAILEY, *Appellant*,

vs.

JOHN M. COUCH, *Appellee*.

Now at this day came the parties by their attorneys, and the Court here delivered the following opinion, to-wit:

"This case was before this Court at its last session, and upon a suggestion of a diminution of the record, by the appellant's counsel, a writ of Certiorari was awarded to the Clerk of Champoege County Court, directing him to send up a more full and perfect transcript of the record in the case. In compliance with the writ of Certiorari, a new and amended transcript was sent up, and from this it appears that at the time the appeal was taken there had been no judgment rendered in the court below against the Appellant from which an appeal could be taken. It further appears that since the last session of this Court and at the August term, 1846, of the Champoege County Court, the Appellee, by his counsel, had procured that Court to amend the record, and to render judgment upon the verdict of the Jury in his favor and against the Appellant. It is plain that there being no judgment in the Court below, the appeal was not rightfully taken. The jury had rendered their verdict, but the Court had entered up no judgment, and there was nothing of which the appellant could complain. On the contrary, the appellee was the only party who had any right to complain, because the Court below had neglected to render judgment upon the verdict of the jury in his favor. It is also perfectly clear, that the Court below had no right to amend the record at the last August term, as the case had come to the Supreme Court, and was still pending: and the Court below had no control over it. This Court, therefore, dismisses the appeal at the costs of the Appellant.

The plaintiff in the Court below can proceed to have the record of that court amended, so as to render up judgment upon the verdict in his favor. It would also be well for the plaintiff in the Court below, to have the record so

amended, as to set aside the amendment made at the last August term of that Court: also to state upon the record, what disposition was made of the demurrer."

## RICHARD McCARY vs. OREGON TERRITORY.

### WRIT OF ERROR.

In this case the Court delivered the following opinion, to-wit:

"McCary was indicted, tried and convicted in the Clackamas County Court for selling and bartering Ardent Spirits. In the court below a motion was made in arrest of judgment, which motion was overruled by the Court: to which opinion of the Court the defendant below excepted, and brought up his case to this Court by writ of error. One of the causes assigned in the motion in arrest of judgment was, that there was no venue laid in the indictment. It is well settled law, that to any material charge in an indictment, there must be a venue *laid and proven*. It is a well settled principle also, that the prosecutor has no right to prove a material fact upon the trial, which is not alleged in the indictment: otherwise the prisoner would be taken by surprise. If it be material to prove the fact that the offense was committed in any particular county, then it is material to allege it. The indictment in this case is materially defective, in having no venue: and the Court below erred in overruling the motion in arrest of judgment. For this reason the decision of the Court below is reversed and the cause remanded for further proceedings. The Court below will arrest the judgment: and the prisoner will be liable to be indicted again upon the same charge."

There being no further business, the Court adjourned to the Term in Course.

Attest:

FREDERIC PRIGG,  
*Clerk.*

PETER H. BURNETT,  
*Supreme Judge.*

## CRIMINAL COURT RECORD

*Be It Remembered*, that at the September term of the Criminal Court of Oregon Territory, began and held at Oregon City on the fourteenth day of Sept., A. D. 1846. There were present, the Honorable Peter H. Burnett, Judge; Henry

M. Knighton, Marshal, and Frederic Prigg, Clerk, when the following proceedings were had:

The Court being opened in due form by the Marshal, the docket was read, and the parties named therein called, when the Court adjourned till 1 o'clock P. M.

The Court met pursuant to adjournment.

### OREGON TERRITORY vs. JOHN WATSON.

#### INDICTMENT FOR AN ASSAULT WITH INTENT TO COMMIT MURDER.

Now at this day comes as well the Circuit Attorney, who prosecutes for and in behalf of said Territory, as the said defendant in his own proper person, and it being demanded of him how he will acquit himself of said indictment, for answer thereunto the said defendant saith, that he is not guilty in manner and form as alleged against him in said indictment, and of this he puts himself upon the Country, and the said Circuit Attorney also doth the like. Thereupon came a Jury, to-wit: Elijah Bunton, R. H. Holder, Fleming Hill, W. Cunningham, A. Husted, Richard McCary, Joseph Parrot, James Parkinson, Thos. Glasgow, Jeffery Brown, Dwight Pomroy, Jas. Winston, twelve good and lawful men, who being duly sworn well and truly to try the matters and things in issue between the parties, retired to consider of their verdict. The said jury thereupon returned into Court here the following verdict, to-wit: "We, the Jury, find the defendant guilty in manner and form as charged in the within indictment, and assess his punishment at a fine of one hundred dollars, and two years' imprisonment. (Signed) E. BUNTON, *Foreman*."

It is therefore considered by the Court here that the said defendant make his said fine of one hundred dollars to the said Territory of Oregon, and that he undergo an imprisonment of two years in such prison as the County Court of Clackamas County may provide, and that the said Territory recover of the said defendant her costs in this behalf paid out and expended, and that she have thereof execution.

The Marshal presented a Bill of \$6.00 for use of room for Sept. term of Supreme and Criminal Courts, which was allowed.

There being no further business before the Court, ad-

journed to the term in Course.

Attest:

FREDERIC PRIGG,  
*Clerk.*

PETER H. BURNETT,  
*Judge.*

## SUPREME COURT RECORD

*Be It Remembered*, That at the June term of the Supreme Court of Oregon Territory, begun and held at Oregon City, on the 7th day of June, A. D. 1847, there were present the Honorable J. Quinn Thornton, Supreme Judge; H. M. Knighton, Marshal, and Frederic Prigg, Clerk, when the following proceedings were had:

The Court being opened in due form by the Marshal, the Record of the last session of the Court was read.

On motion the Roll of Attorneys authorized to practice in the Supreme Court was read, when P. H. Burnett signed his name to the same. Motions were then called for.

H. HILL vs. WM. HIGGINS.

A. A. Skinner was allowed till tomorrow morning to file his motion.

P. H. Burnett and T. G. Vault filed his assignment of errors.

STIMMERMAN vs. COX.

On motion of W. G. T. Vault, this case was dismissed and stricken from the docket at the cost of plaintiff in error.

H. M. KNIGHTON vs. H. BURNS.

W. G. T. Vault for plaintiff in error filed his assignment of errors.

*Administrator of the Estate of*  
EWING YOUNG, Deceased, vs. D. WALDO.

P. H. Burnett and A. L. Lovejoy for plaintiff in error filed his assignment of errors.

G. MUNDEN vs. J. McGUINNESS.

P. H. Burnett and A. L. Lovejoy for plaintiff in error, filed his assignment of errors.

**S. K. BARLOW vs. ALEXANDER.**

On motion this case was dismissed and stricken from the docket at the cost of the plaintiff in error.

**H. B. BREWER vs. I. HUTCHINS.**

P. H. Burnett for plaintiff in error filed his assignment of errors.

**S. H. I. MEEK vs. R. D. TORNEY.**

P. H. Burnett and A. L. Lovejoy, for defendant, filed a motion to dismiss.

The Court then adjourned till tomorrow morning at 8 o'clock.

J. QUINN THORNTON,  
*Judge of the Supreme Court.*

FREDERIC PRIGG,  
*Clerk.*

Tuesday, June 8th, 1847.

Court met pursuant to adjournment, the minutes of yesterday were read. I. A. Rice added his name to the roll. Motions were then called for.

**H. HILL vs. W. HIGGINS.**

A. Skinner for defendant in error filed his joinder in error.

**H. M. KNIGHTON vs. HUGH BURNS.**

P. H. Burnett and A. L. Lovejoy for defendant in error, filed his joinder in error.

**H. B. BREWER vs. ISAAC HUTCHINS.**

W. G. T. Vault and A. L. Lovejoy for defendant in error, filed his joinder in error.

**G. MUNDEN vs. I. McGUINESS.**

W. G. T. Vault for defendant in error filed his joinder in error.

## S. H. I. MEEK vs. R. D. TORNEY.

The motion of P. H. Burnett and A. L. Lovejoy for defendant in error, to dismiss was taken up, and after argument of counsel was overruled by the Court.

*Administrator of the Estate of*

EWING YOUNG, Deceased, vs. D. WALDO.

W. G. T. Vault for defendant in error, filed his joinder in error.

## H. HILL vs. W. HIGGINS.

*(Error to the Yamhill County Court.)*

Now at this time comes the plaintiff in error by his attorney, as well as the defendant in error by his attorney, and the case being fully argued, the Court here delivered the following opinion, to-wit: Per curiam:

"This was an action for forcible entry and detainer, under the Iowa statute, which is made the law of Oregon Territory, brought by Wm. Higgins against H. G. Hill, before Jeremiah Rowland, a J. P. of Yamhill County. Judgment was given against Hill before the J. P. from which he appealed to the Yamhill County Court, which at that time possessed the civil jurisdiction now exercised by the Circuit Court. The trial in the County Court was before a jury and a verdict and judgment was had against Hill, who brings the case into the Supreme Court by writ of error.

"The counsel for the plaintiff in error assigned several errors; the Court notice the following:

"1st. That the plaintiff below did not alledge in his complaint that he possessed the premises described, or that the defendant below divested him of their possession.

"2nd. That the verdict of the Jury was not subscribed by them.

"Upon the first error it may be remarked that in every complete title to land there are three things necessary: the possession, the right of possession, and the right or property therein. A may have the possession; B the right of possession; and C the right of property; the union of these in the same person constitutes a perfect and complete title. If one turns or keeps another out of possession forcibly, this is an injury of both a civil and criminal nature; the civil

injury is remedied by immediate restitution, which puts the ancient possessor in statu quo: the injury partaking of the nature of a criminal or public wrong, is punishable by fine. For by the Iowa 'Act to prevent forcible entry and detainer', approved Jan. 25th, 1839 (Laws of Iowa, p. 217), which is made the law of Oregon, and which seems for the most part to be a re-enactment of the statute 8 Hen. Vic. 9 it is provided that upon a complaint made to any J. P. of a forcible entry and detainer, he shall try the truth of the complaint by jury, and upon force found, shall restore the possession to the party so put out and impose a fine not exceeding fifty dollars; and in such case the complainant shall also be entitled to recover treble damages with costs of suit by action of trespass. The wrong for which these provisions were designed to furnish a remedy is that of forcibly turning out of the possession of lands, one who has a right of possession, and of detaining that possession from him. The action which it authorizes does not propose to try the right of property, but only that of possession; and in order that the remedy may be made available, the complainant must alledge that he possessed the premises, or at least that he was divested of their possession. The defendant in error in this case, has not alledged either. This it was absolutely necessary to do, for the reason that this action does not try title, but only *a right of possession*. It is sustained in those cases only when the plaintiff had actual possession and the defendant forcibly entered and expelled him. If the title to real estate could be tried in this form of action, then we would be under the painful necessity of witnessing a most strange and anomalous judicial proceeding—that of litigating a title to real estate before a J. P., which is contrary to both law and common sense.

"The action is merely possessory; serving only to regain that possession whereof the complainant has been deprived; it decides nothing with respect to the right of property; only restoring he who sues to that state or situation in which he was (or by law ought to have been) before the dispossession committed. But this without any prejudice to the right of ownership, for if the dispossessor has any legal claim, he may afterwards exert it, notwithstanding a recovery against him in this possessory action. As to how far the error committed by the plaintiff below, in not alledging in his complaint that he possessed the premises or that the defendant below divested him of their possession, is affected by the



Statute of Amendments and Jeofaile, the Court is of opinion that it is not cured by that statute.

"This case is to be carefully distinguished from that of *Test v. Devers* (2 Blackford's Rep. 80). In that the complaint in an action of forcible entry and detainer stated that the defendant, with force and arms, unlawfully and forcibly entered upon the plaintiff's land (particularly described) and him, the plaintiff, with force and arms *did expel and unlawfully put out of possession*; Held that this complaint could not be objected to after verdict, for not showing more particularly that the plaintiff had peaceable possession of the premises before the injury complained of. But in the case now before the Court, the complaint not only omits to show that the defendant in error had peaceable possession of the premises before the injury complained of, but it does not so much as show that he was with force and arms expelled and unlawfully put out of possession; instead of which it is affirmed that the premises were unlawfully and forcibly and with strong hand *detained* from the possession of the defendant in error. A may have the right of possession, without having ever had the possession, this having been *detained* from him by B.

"The 11th section of the law regulating forcible entry and detainer (Laws of Iowa, p. 218) provides that if the Jury, after a full hearing, find the persons against whom the complaint is made, guilty, they shall sign their verdict, and deliver the same to the justice, who shall thereupon enter judgment for the complainant to have restitution of the premises, and shall impose such fine not exceeding fifty dollars, considering all the circumstances, as he may deem just. The verdict of the jury in the County Court is insufficient and void, and therefore no verdict, or at the least, not such a one as could authorize that court to render a judgment against the defendant below. The statute requires the verdict in this form of action to be signed by all the jury, whereas in this case it is not signed by any of them. There being no verdict or at least no sufficient verdict, the Court below could not render a judgment.

"And this is in perfect accordance with principle and with the decisions of the Supreme Court of Indiana, first in the case of *Test v. Devers*, Nov. Term, 1827, under the Statute of 1824, 2 Blackford's Rep. 80; and second, in *Word v. Crane*, 3 Blackford's Rep. 393, under the statute of 1831, which is the same with that of 1824, both of which are similar to the

Act of Iowa, January 25, 1839, Laws of Iowa, p. 217: all three of these Acts being substantially a reenactment of the provisions of the statute of 8 Den. VI. c. 9. In both of these cases the error assigned was that the verdict had not been signed by all the jurors, and the Court held that the objection was fatal.

"The judgment, therefore, is reversed, and the verdict set aside, with costs. Cause remanded, etc."

P. H. BURNETT,  
W. G. T. VAULT, *for plaintiff in error.*  
A. A. SKINNER, *for defendant in error.*

GILBERT MUNDEN vs. JAMES MCGUINNESS.

ERROR TO THE YAMHILL COUNTY COURT.

Now at this time comes the plaintiff in error by his attorney, as well as the defendant in error by his attorney, and the case being fully argued, the Court delivered the following opinion, to-wit, per curiam:

"This was an action brought by James McGinnis, the plaintiff below, against Gilbert Munden, the defendant below, upon a promissory note, before a Justice of the Peace in Yamhill County. A judgment was rendered against the plaintiff in error, from which he appealed to the Yamhill County Court. The transcript of the record shows that at a regular term of that Court commencing on the 3rd August, 1846, said cause was continued until the next term of said Court upon the motion of the counsel for the plaintiff in error, supported by the necessary affidavit. The concluding entries of the record show that it was ordered that the Court 'be held at the falls of Yamhill River at the house of Joel Perkins, May Term, 1847.' It was then ordered 'by the Court, that court adjourn without day.'

"At a special term of the Court 'began and held at the dwelling house of A. J. Hembree, on the 10th day of Dec., 1846.' A judgment by 'default' was obtained by the defendant in error against the plaintiff in error for \$51.70, after the plaintiff in error had sought to have the cause continued to the regular term. From this judgment the defendant below comes into this Court upon a writ of error.

"The plaintiff's counsel assigned for error:

"1st. That the Court below erred in refusing the application of the plaintiff for a continuance.

"2nd. That the Court below erred in proceeding to try this cause at the special term.

"These errors rest upon the same principle; and the determination of either determines the whole case so far as concerns the jurisdiction of this Court.

"The application for a continuance was wholly unnecessary, since the cause stood continued until the regular term of the Court; and the effort to hurry the defendant below into a trial in anticipation of the time of the regular term to which the cause stood adjourned, was in violation of well known and long established principles. To require him thus to go to trial, was to take him by surprise and consequently without a preparation for making his defense. Nor is the case at all effected by the section of the act (Spec. Vol. 1, No. 7, p. 1, sec. 2) providing for a special term. This Act seems to contemplate county business in contradistinction to civil suits between party and party; and whatever may be the proper construction of this section, it is at least certain that no provision having been made at the regular term for a special term, the cause stood continued until the next succeeding regular term.

"Judgment reversed, and cause remanded for a new trial."

P. H. BURNETT,

A. L. LOVEJOY,

A. A. SKINNER, *Attorneys for plaintiff in error.*

W. G. T. VAULT, *Attorney for defendant in error.*

Court adjourned till 2 o'clock P. M.

Court met pursuant to adjournment.

#### H. B. BREWER vs. ISAAC HUTCHINS.

Now at this time comes the plaintiff in error by his attorney, as well as the defendant in error by his attorney, and the cause being fully argued, the Court postponed opinion for advisement until tomorrow.

#### H. M. KNIGHTON vs. HUGH BURNS.

Now at this time comes the plaintiff in error by his attorney as well as the defendant in error by his attorney, and the cause being argued, the Court postponed opinion for advisement till tomorrow.

Court adjourned till tomorrow morning at 10 o'clock.

FRED C. PRIGG, *Clerk.*  
J. QUINN THORNTON,  
*Judge of the Supreme Court.*

WEDNESDAY, JUNE 9TH, 1847

The Court met pursuant to adjournment. Sheriff Wm. Holmes having been appointed Deputy Marshal by H. M. Knighton, was duly qualified by taking and subscribing to the necessary oath, the other parties the same as yesterday. The Record of yesterday was read, and motions called for.

*Administrator of the Estate of*  
EWING YOUNG, Deceased, vs. D. WALDO.

W. G T. Vault for defendant in error, asked leave to withdraw his joinder in error, which was refused by the Court.

H. B. BREWER, *Appellant,*  
vs.  
ISAAC HUTCHINS, *Appellee.*

(From Clackamas County Court)

Now at this time the Court delivered the following opinion, to-wit: Per Curiam:

"This was an action brought by the appellee vs. the appellant before a Justice of the Peace upon an account in the following words and figures, to-wit:

"Henry B. Brewer, Dr.  
to Isaac Hutchins  
1845. To one yoke of oxen.....\$150.00

"A verdict and judgment was had before the Justice of the Peace vs. the appellant for \$150 and costs, payable in currency. The appellant appealed to the Circuit Court of Clackamas County, where the appellant filed a motion for a continuance based upon an affidavit setting forth the absence of material witnesses resident in the United States, the one in Massachusetts, and the other in New York. The affidavit sets forth that appellant expects to prove by said witnesses that affiant took good care of the oxen mentioned in plaintiff's account, that affiant never purchased said oxen of

plaintiff and that affiant used all due diligence and proper care to keep said oxen safely for plaintiff, but that said oxen either strayed off or were stolen, without any carelessness on the part of the affiant'. The affidavit was in other respects such as is required by the statute, upon a motion for continuance. The motion was overruled, and a verdict and judgment was rendered against the appellant for \$120 and costs, payable in currency excepting scrip. From this judgment the appellant appeals to this Court.

"An examination of the transcript of the record of the judgment in this cause, as well as of the minutes of the proceedings of the said Circuit Court, and the original papers filed, now produced to the Supreme Court, by the Clerk of the said Circuit Court, being seen and inspected, it seems to the Court here, that the said judgment was erroneous.

"1st. Because the Court overruled the motion of the appellant for a continuance upon the grounds pointed out in the affidavit. It is true that the appellant did not show that he had given notice to take depositions, but the law will not require a man to do either a useless or an impossible thing.

"A notice from the appellant that he would take the deposition of witnesses residing 19,000 miles distant by water, and near 4,000 by land at any time between that of taking the appeal from the judgment of the Justice of the Peace and that at which this cause came on to be heard in the Circuit Court, would have been useless, because of the absolute impracticability of taking the depositions within the specified time. And the law will not require the appellant to dry up rivers, dig down mountains, and annihilate space because this is impossible; and yet the appellant must be presumed to be able to do all this and even more if he is required to have in the Circuit Court of Clackamas County in Oregon Territory, the deposition of a witness residing in Cambridgeport, Massachusetts, and of another residing in Chenango County in the state of New York, between the time of taking the appeal from the judgment of the Justice of the Peace and that of the trial of the cause in the Circuit Court. The appellant was entitled to a continuance of the cause to a period sufficiently remote to admit of his giving his adversary at least ten days' notice and one day additional (Sabbath included) for every thirty miles of distance to the place, and a reasonable time in addition, and having in view the tardiness of communication with the United States for sending the *dedimus protestatio-*

*tem* and for the return of the depositions, allowing for the latter at the least one day for every thirty miles of distance. (1 Blackford's Rep. 50.)

"2nd. The judgment was erroneous because the appellant having reduced in the Circuit Court, the verdict of the Jury before the Justice of the Peace from \$150 to \$120, showed conclusively that he had just cause to appeal, and therefore the Circuit Court, if it had been authorized to render a judgment against the appellant at all, should have rendered two judgments—one against the appellant for the amount of the verdict, \$120, and the costs which had accrued before the Justice of the Peace up to the time of taking the appeal; and one against the appellee for the costs which accrued between the time of taking the appeal and the rendition of the judgment in the Circuit Court. The Ohio Supreme Court has decided that if a plaintiff appeal and do not recover a greater sum in the Supreme Court than in the Court of Common Pleas, exclusive of costs and interest which have accrued after rendition of the judgment in the Court of Common Pleas, the Supreme Court will render a judgment against him for the costs accruing in the Supreme Court, and if the defendant appeal in any personal action and the plaintiff recovers the same, or a larger sum than was recovered in the Court of Common Pleas, exclusive of costs, the Supreme Court will render a judgment for the sum so recovered with costs. (Ohio Practice, 367.) Upon the same principle this Court holds that if the defendant appeals and the judgment below is diminished, the costs of the appeal should fall upon the plaintiff below.

"3rd. The judgment was erroneous, because there is no statement on the part of the appellee of the nature of the demand, and there is nothing among the minutes of the proceedings of the Circuit Court or among the original papers in the cause except the affidavit of the appellant that would afford the slightest information as to whether the plaintiff is sued for a malicious trespass, in an action of assumpsit for oxen sold and delivered, or as a bailee. Nor is there any date except that of the year at which the appellant's liability commenced. This becomes important in view of the Act regulating the currency, entitled 'An Act relative to the currency and subjecting property to execution,' passed in Dec., 1845.

"The principles involved in the case of *H. M. Knighton vs. H. Burns* upon the subject of the inviolability of contracts, and of the currency, apply with equal force here. The account which constitutes the basis of an action before a Justice of

the Peace stands in the place of a declaration in the Circuit Court. The law is so solicitous that the defendant shall be fully informed as to the nature of the demand, that even in the Circuit Court and where the declaration is general, a bill of particulars may be demanded (1 Blackford's Rep., 181).

"4th. The judgment is erroneous in this, that the verdict is defective because of specialty in excluding scrip, whereas the finding should have been as general as the account, so as not to lead to a variance between the judgment and the account which stands in the place of a declaration.

"It is, therefore, for these reasons, considered that the said judgment be reversed and annulled, and that the appellant recover against the appellee his costs, etc., and it is ordered that the said verdict be set aside and that the cause be sent back to the said Circuit Court for a new trial to be had therein.

P. H. BURNETT, *Attorney for Appellant.*

W. G. T. VAULT and A. L. LOVEJOY *for Appellee.*

## H. M. KNIGHTON vs. HUGH BURNS.

### ERROR TO THE CLACKAMAS CIRCUIT COURT.

Now at this time the Court here delivered the following opinion, *Per curiam*:

"This cause came up from the Circuit Court upon a statement of facts presented in a bill of exceptions. On the 4th Nov., 1845. The defendant executed to the plaintiff a note for \$150, payable Nov. 1st, A. D. 1846. Suit was brought upon this note before a Justice of the Peace, where judgment was rendered against the maker, from which an appeal was taken to the Clackamas Circuit Court. This Court rendered a judgment against defendant for \$146.23, payable in currency, scrip excepted, together with costs. On the trial of the cause at the April term, 1847, the defendant to maintain the issue on his part proved that he had tendered to the Justice of the Peace, before whom the trial was originally had, the full amount of the debt, interest and costs up to the filing of the plea of tender, in Oregon scrip, to the amount specified in the plea of tender. The defendant also tendered in the Circuit Court the full amount in Oregon scrip. The plaintiff objected to receiving the scrip in payment of the debt, interest and costs, which objection was sustained by the Court.

"The Organic Law, Art. 1, Sec. 2, declares 'that no law

ought to be made, or have force in said Territory, that shall in any manner whatever interfere with or affect private contracts or engagement, *bona fide* and without fraud previously formed.' This is a prohibition of great moment, affecting extensively the authority of the legislative branch of the established government. It is taken in the substance of its provision, from the Constitution of the U. S. in which there is no prohibitory clause, which has given rise to more various and able discussion, or more protracted litigation. The first important case arising under the clause as found in that Constitution, was the case of *Fletcher vs. Peck* (6 Cranch. 87). In that case it was decided that when a law was in its nature a contract, and absolute rights had vested under that contract, a repeal of that law could not divest those rights. The Supreme Court went again and more largely into the consideration of this delicate and interesting fundamental doctrine in the case of *Ferret vs. Taylor*, (9 Cranch, 43). It was there held that a legislative grant, competently made, vested an indefeasible and irrevocable title. But it was in the great case of *Darhmouth College vs. Woodward* (4 Wheaton 518), that the inhibition to impair by law the obligation of contracts, received the most elaborate discussion. In that case the principles previously recognized, were not only greatly elaborated but efficiently and instructively applied to new cases.

"The late venerable and learned Judge Story, added many new and interesting views of the nature of contracts, which the constitution intended to protect. The argument of the Court in this celebrated case; the full and elaborate exposition of the constitutional sanctity of contracts, to be met with in any of the reports, and the decision made in it, did much to throw an impassable barrier around all rights and franchises, and to give solidity to the literary, religious, and commercial institutions of the country. 1 Kent 418.

"The same constitutional prohibition came again under discussion in the case of *Green vs. Biddle* (8 Wheaton 1), in which it was decided that *any* deviation from the terms of a contract impaired it, and that the objection to a law on the ground of its impairing the obligation of contracts, could never depend upon the *extent* of the change which the law effects in it.

"In the case of *Sturges vs. Crowninshield* (4 Wheaton 122), the operation and effect of this constitutional prohibition was again extensively enquired into. That was a case



which arose out of the retrospective operation of an Act of the Legislature of New York, passed in April, 1811, by which the defendant had been discharged as an insolvent debtor upon his single petition, from the obligation to pay two promissory notes executed by him in March of the same year, and upon his surrendering his property, without the concurrence of any creditor.

"In the opinion delivered by the late Chief Justice Marshall a broad and well defined distinction was made between the contract and the remedy for the enforcement of that contract; and the court held that while the remedy to enforce the obligation of a contract might be modified as the wisdom of the Legislature should direct, yet that the constitution intended to restore and preserve public confidence completely by establishing the great principle that the obligation of contracts should be inviolable. And all experience, even if this had been necessary to a correct understanding of the subject, hath shown that the framers of the Constitution acted wisely in incorporating this prohibitory clause in that sacred instrument, and that its expounders merit the gratitude of the nation for having had the firmness to give to it such a construction as affords an ample remedy for the consequences which must otherwise result from the temporary expedients of legislators. The Supreme Court admitted in this case, that the states might, by law, discharge debtors from imprisonment, and that they might pass statutes of limitation, because these relate only to the remedy affecting only the means of coercion, while the obligation of the contract is left where the parties chose to place it. But a law which discharged the debtor from his contract to pay by a given time, without performance, and released him without payment, entirely from any future obligation to pay, impaired because it entirely discharged the obligation of the contract.

"Any construction therefore of the Act of the Legislature of Oregon Territory, Dec. 12th, 1845, which would admit of Scrip constituting the basis of illegal tender on the part of the defendant, would contravene the Organic Law, Art. 1, Sec. 2, because, although it would not entirely discharge the defendant from the payment of the note, yet it would impair the obligation of the contract embraced in that note, by making that a lawful tender which was not contemplated by the parties at the time of its date, to-wit, Nov. 4th, 1845. The Supreme Court of New York in *Mather vs. Bush*, 16 Johnson's Rep. 233; the Chief Justice of Massachusetts in

Blanchard vs. Russell, 13 Mass. Rep. 1; the Court of Chancery in New York in *Hicks vs. Hotchkiss*, 7 Johnson's Ch. Rep. 297, took a distinction between the case of a contract made before and one made after the passage of the Act; and they held that an insolvent Act in force when the contract was made, did not in the sense of the Constitution of the United States impair the obligation of that contract, *because the parties are presumed to contract with regard to existing laws*. Were this rule applied to the case now before the Court, it would of itself determine the question presented.

"The laws existing at the time the contract was made for the payment of the money, did not recognize Scrip as constituting any part of the legal currency of the country, nor did it do so until more than one month after the date of the execution of the note. But the Supreme Court of the United States in *McMillan vs. McNeill*, 4 Wheaton 209, carried this doctrine much farther, and held that a discharge under a state insolvent law *existing when the debt was contracted*, impaired the obligation of a contract. As the decisions now stand, the debt in order that a discharge may extinguish the remedy against the future property of the debtor must be contracted *after* the passage of the Act, *within* the state and *between* citizens of the state. The principles thus settled are the law of the present case, in which the contract was made *before* the passage of the law. The Supreme Court of Indiana in *Lewis vs. Breckenridge*, 1 Blackford's Rep. 220, following the current of decisions, decided that this constitutional provision must be considered as rendering void any statute which is retrospective, and which destroys a vested right of action which arises *ex contractu*; but that the legislative power of limiting the time and regulating the manner in which rights shall be legally demanded, does not interfere with the rights themselves. It was also held, independently of the Constitution, to be a general rule, subject, however, to exceptions, that statutes shall have a prospective operation only. The Constitutional provision, therefore, that no law impairing the obligation of contracts shall ever be made extends to all rights accruing under all contracts, whether written or parole, whether expressed or implied, whether arising from the stipulation of the parties or accruing by operation of law.

"Persons, therefore, who contract to pay a given sum in cash, will be required to make payment in cash; and persons who contract to pay in a named sort of funds or property,

will be held to the fulfilment of their engagements, or be required to pay in coin an amount equal in value to the fund or property contracted to be paid. 1 Kent 412, 421.

"It is, therefore, clear that the plea of tender was bad, and that payment can be made only in that which might have been legally tendered in payment of debts, Nov. 4, 1845. Judgment of Court below affirmed with costs."

P. H. BURNETT and

A. L. LOVEJOY, *Attorneys for the plaintiff.*

W. G. T. VAULT, *Attorney for the defendant.*

*Administrator of the Estate of*

EWING YOUNG, Deceased, vs. D. WALDO.

Now at this time comes the plaintiff in error, and here set forth his arguments, when the Court postponed opinion till the afternoon.

S. H. I. MEEK vs. R. D. TORNEY.

P. H. Burnett and A. L. Lovejoy, for defendant in error, filed his joinder in error.

Court adjourned to 2 o'clock P. M.

Court met pursuant to adjournment.

A. L. LOVEJOY, *Administrator of the Estate of*

EWING YOUNG, Deceased, vs. DAVID WALDO,

*surviving partner of the late firm of Jackson & Waldo.*

ERROR TO THE CLACKAMAS COUNTY COURT.

Now at this time the Court here delivered the following opinion, *Per curriam*:

"This cause comes up to this Court upon a writ of error sued out for the purpose of reversing a judgment given by the Clackamas County Court at the August Term, 1846, in favor of the defendant in error, who was the plaintiff below, and against 'The Administrator of the Estate of Ewing Young' for the sum of \$4380.58 debt, together with the costs of the plaintiff below by him laid out and expended.

"The cause of action was cash advanced, laid out and expended, and goods and sundries furnished to the said Young and for his use and benefit by David E. Jackson and David Waldo, formerly trading and doing business under the name

and style of Jackson and Waldo, in the Republic of Mexico in the years 1831, 1832, and 1833.

“The account was made out in the name of David Waldo, surviving partner of the late firm of Jackson & Waldo, as the creditors of Ewing Young. It claimed \$3023.29 as principal and \$2599.92 as interest, making a sum total of \$5623.21. The account was filed in the office of the Clerk of the County Court and the copy of the record states that notice was given to ‘*the said administrator*’, who ‘*the said administrator*’ was, however, remains yet to be known, so far as concerns any information furnished by the copy of the record. Upon the hearing of the testimony and the examination of the account the County Court, at its August term, 1846, rendered judgment for \$4380.50 debt, together with the costs of the plaintiff below, against ‘*the Administrator of the Estate of Ewing Young*’. It does not appear that anybody appeared in the Court below to defend as administrator, nor does it appear that any one by name had any notice of any proceeding against said estate. Whatever other errors there may be, it is clear that there is not a sufficient certainty in the proceedings below, as to who was the defendant. An omission through either inadvertence or the want of skill to make a just application of those rules of civil jurisprudence, which relate to the *persons* who are to be the *parties to the action*, are in general so fatal to the further prosecution of suit, that the plaintiff is usually compelled to abandon his suit and to proceed *de novo*. The action should be brought in the name of the party whose legal right has been affected, and against the party who committed the injury (1 M. & S., 722; 1 Marsh. 260; 8 T. R. 332; 1 East 499; 1 Chit. Pl. 1) or by or against his *personal* representatives. The account in this case stands in the place of a declaration in an action of assumpsit, in which certainty to a certain extent in general is necessary in setting forth the parties, time, place, and other circumstances necessary to maintain it. The parties to the suit must be specifically mentioned (Com. Dig. Pleader, C. 18), and actions to be properly brought must be commenced and prosecuted in the proper *Christian* and *surnames* of the parties. *Seely vs. Schenck* and *Denise, Crandall vs. Fr. Denny & Co.*, 1 Penn. Rep. 75.137. *Tomlinson vs. Burke et al* (5 Halst. Rep. 295). In declarations upon contracts, whether express or implied, it should be expressly stated by and with whom the contract was made; (Id. Roym. 899 Com. Dig., Action on the case for Assumpsit, H. 3, Pleader, C. 18, 1 Chit. Pl.

286) and when there are two or more persons of the same name, they should be distinguished from each other by the insertion of some appropriate allegation, as 'the now plaintiff' or 'the now defendant' or 'the said E. Y., deceased', etc. (2 Wils. 386—Cro. Eliz. 267, Com. Dig. Pleader, C. 18.) And although the subject thus to distinguish the parties will in general, be aided by intendment, particularly upon a general demurrer or after verdict (1 Chit. Pl. 285, 1 N. R. 172), yet the books furnish no example that now occurs to the Court of a total omission of both the Christian name and surname of one of the parties being cured by pleading over, intendment after verdict, or by the statute of Jeofaile, which has sometimes been called an omnipotent act (1 Kent 100), by which all trifling exceptions are so thoroughly guarded against, that writs of error cannot now be maintained but for some material mistake.

"Judgment reversed and cause remanded, etc."

P. H. BURNETT and A. L. LOVEJOY, *for plaintiff in error.*  
W. G. T. VAULT, *for defendant in error.*

S. H. I. MEEK vs. R. D. TORNEY.

WRIT OF CERTIORARI.

Now at this time comes the plaintiff by his attorney, but the defendant, tho' called three times, comes not, whereupon the Court here delivered the following opinion, *Per Curiam*:

"This cause came up to this Court upon a writ of *Certiorari* sued out of this Court by Stephen H. I. Meek, who was the defendant below, commanding Ralph Wilcox, Justice of the Peace within and for the County of Tuality, to send up to this Court a transcript of the docket and proceedings had in the case of Richard D. Torney, plaintiff, vs. Stephen H. I. Meek, defendants, with all things touching the same as fully as they existed at the time of issuing said writ.

"The transcript sent up shows that an attachment was sued out by the plaintiff below, before A. H. Triar, Justice of the Peace within and for the said County of Tuality, vs. the defendant below. During the progress of the cause a motion was made, grounded upon an affidavit by the plaintiff below for a removal of the cause before another Justice of the Peace. The motion was sustained, and the papers were sent to Ralph Wilcox, Justice of the Peace. Here the plaintiff abandoned his proceeding by attachment and commenced

*de novo* by a summons upon an account for \$28. The defendant below appeared and filed an offset for \$10 cash. After a hearing of the evidence, the Justice of the Peace rendered judgment for the amount sued for, and for \$6.13 costs. In this Court a motion was made by P. H. Burnett and A. L. Lovejoy, attorneys for the defendant here, to quash the writ of *certiorari* and to dismiss this cause from the docket upon the ground that a *certiorari* does not lie from the Supreme Court to a Justice of the Peace. This motion was overruled, and this Court is of opinion that it alone possesses the power to issue this writ: this power is nowhere conferred upon the Circuit Court by either the Organic Law or by any statute under it. The Supreme Court possesses a general superintending control over all inferior courts of law. It has power to issue writs of Habeas Corpus, Mandamus, Quo Warranto, Certiorari, and other original remedial writs, and to hear and determine the same. *Organic Law*, Art. 11, Sec. 8.

"W. G. T. Vault, attorney for the plaintiff in this Court, assigns four causes of error, but the consideration of these and of the law applicable to them is rendered wholly unnecessary by the fact that they all relate to the proceeding by Attachment, and have no connection whatever with the proceeding *de novo* under the summons which issued upon the abandonment of the suit by Attachment.

"The judgment of the Justice of the Peace is therefore affirmed, with costs. Cause remanded, etc."

P. H. BURNETT & A. L. LOVEJOY, *attorneys for the defendant.*  
W. G. T. VAULT, *Attorney for the plaintiff.*

Court adjourned till 6 o'clock P. M.

Court met pursuant to adjournment and adjourned till tomorrow at 2 o'clock P. M.

FREDERIC PRIGG,  
*Clerk.*

J. QUINN THORNTON,  
*Judge of the Supreme Court.*

THURSDAY, JUNE 10TH, 1847

Court met pursuant to adjournment, when the Record was read and the Court adjourned to the Court in course.

FREDERIC PRIGG,  
*Clerk.*

J. QUINN THORNTON,  
*Judge of the Supreme Court.*

*Be It Remembered*, that at the September term of the Supreme Court of Oregon Territory, began and held at Oregon City on the 6th day of September, A. D. 1847, there were present, the Honorable J. Quinn Thornton, Supreme Judge; Wm. Holmes, Deputy Marshall, and Fred C. Prigg, Clerk, when the following proceedings were had. The Court was opened in due form by the Deputy Marshall.

HENRY M. KNIGHTON vs. HUGH BURNS.

IN ERROR.

Now at this time the defendant in error comes by his attorneys, Burnett and Lovejoy, and motions that the said cause be remanded to the Circuit Court of Clackamas County, commanding said Court below to issue execution in said cause.

The Court then adjourned till tomorrow at 5 o'clock P. M.

Attest:

FREDERIC PRIGG,  
Clerk.

J. QUINN THORNTON,  
*Judge of the Supreme Court.*

Court met pursuant to adjournment, Sept. 7th, 1847.

HENRY M. KNIGHTON vs. HUGH BURNS.

IN ERROR.

Now at this time the Court here ordered that the said cause be remanded to the Circuit Court of Clackamas County, and that said Court issue execution thereon.

The Court then adjourned to the Court in course.

Attest:

FREDERIC PRIGG,  
Clerk.

J. QUINN THORNTON,  
*Judge of the Supreme Court.*

*Be It Remembered* that at the June term of the Supreme Court of Oregon Territory, begun and held at Oregon City, on the fifth day of June, A. D. 1848, there were present the Honorable Columbia Lancaster, Supreme Judge; H. M. Knighton, Marshall, and Frederic Prigg, Clerk, when the following proceedings were had:

The Court being opened in due form by the Marshal; on motion of P. H. Burnett, the names of W. G. T. Vault, Saml.

R. Thurston, Aaron E. Wait and Milton Elliott were enrolled, as attorneys authorized to practice in the Supreme Court.

Motions were then called for.

A. ZACHARY vs. JAMES WATERS.

Now at this time the plaintiff in error, by his attorney, filed his assignment of errors.

A. J. MASTERS vs. AMARIAH WILSON.

Now at this time the plaintiff in error filed his assignment of errors.

FELIX HATHAWAY vs. C. M. WALKER.

Now at this time the plaintiff in error, filed his assignment of errors.

JAMES RICE vs. WILLIAM M. CARD.

Now at this time the plaintiff in error filed his assignment of errors.

HARRY MARLIN vs. LEWIS H. JUDSON.

Now at this time the plaintiff in error filed his assignment of errors.

COLEMAN BURNETT vs. OREGON TERRITORY (No. 1).

Now at this time the defendant, by attorney, filed his motion to dismiss.

COLEMAN BURNETT vs. OREGON TERRITORY (No. 2).

Now at this time the defendant, by attorney, filed his motion to dismiss.

Court then adjourned till tomorrow morning at ten o'clock.

COLUMBIA LANCASTER,  
*Supreme Judge.*

TUESDAY, JUNE 6TH, 1848

Court opened pursuant to adjournment. The record of preceding day was read, and motions were called for.



A. ZACHARY vs. I. WATERS.

Defendant in error here filed his joinder in error.

A. I. MASTERS vs. A. WILSON.

Defendant in error here filed his joinder in error.

JAMES RICE vs. W. M. CARD.

Defendant in error here filed his joinder in error.

F. HATHAWAY vs. C. M. WALKER.

Defendant in error here filed his joinder in error.

JAS. RICE vs. WM. M. CARD.

Now at this time the plaintiff and defendant in error, by their attorneys, here agree that the defects of transcript and certificate are waived as per agreement filed. The case was argued and submitted and Court held the same under advisement.

HENRY MARLIN vs. L. H. JUDSON.

The defendant in error here filed his joinders in error.  
Court then adjourned till 9 o'clock tomorrow.

COLUMBIA LANCASTER,  
*Supreme Judge.*

WEDNESDAY, JUNE 7TH, 1848

Court met and opened pursuant to adjournment. The record of preceding day was read and signed. Motions were called for.

COLEMAN BURNETT vs. OREGON TERRITORY (No. 1).

The motion to dismiss was here taken up, argued and submitted to the Court, who held the same under advisement.

The plaintiff in error here filed his assignment of errors.

COLEMAN BURNETT vs. OREGON TERRITORY (No. 2).

The plaintiff in error here filed his assignment of errors.

**A. I. MASTERS vs. AMARIAH WILSON.**

Now at this time comes the plaintiff in error by his attorney as well as the defendant in error by his attorney. The cause being argued, was here submitted to the Court, who held the same under advisement.

**COLEMAN BURNETT vs. OREGON TERRITORY (No. 1).**

The defendant in error here filed his joinder in error.

**COLEMAN BURNETT vs. OREGON TERRITORY (No. 2).**

The defendant in error here filed his joinder in error.

**FELIX HATHAWAY vs. COURTNEY M. WALKER.**

Now at this time comes the plaintiff in error by his attorney, as well as the defendant in error by his attorney, and by consent of parties the argument and decision is deferred to the next session of this Court, and that in case the attorneys of either side shall deem it inconvenient to attend personally at the next term of this Court, they, or either of them, may file with the Clerk of this Court a written argument in the cause with legal references, etc., which will be regarded by the Court the same as a personal argument, and the Clerk of Yamhill Circuit Court is hereby ordered and directed to forward to this Court the original account on file in his office, which was entered by Hathaway vs. Walker.

Court adjourned to tomorrow morning, one-half past 9:00 o'clock.

COLUMBIA LANCASTER,  
*Supreme Judge.*

THURSDAY, JUNE 8TH, 1848

Court met and opened pursuant to adjournment. The record of preceding day was read and signed, and motions called for.

**COLEMAN BURNETT vs. OREGON TERRITORY (No. 1).**

Now at this time comes the plaintiff in error by his attorney, as well as the defendant in error by his attorney, and the cause being argued and submitted, the Court held the same under advisement.

COLEMAN BURNETT vs. OREGON TERRITORY (No. 2).

The argument and authorities cited in the preceding case applying equally to this, it is therefore considered argued, submitted, and held under advisement with Case No. 1.

HENRY MARLIN vs. L. H. JUDSON.

Now at this time comes the plaintiff in error by his attorney, as well as the defendant in error by his attorney, and the argument being opened, the Court adjourned till tomorrow morning, 9 o'clock.

COLUMBIA LANCASTER,  
*Supreme Judge.*

FRIDAY, JUNE 9TH, 1848

Court met and opened pursuant to adjournment. The record of preceding day was read and signed, and motions called for.

HENRY MARLIN vs. L. H. JUDSON.

Argument was resumed, and on conclusion the cause was submitted to the Court, who held the same under advisement.

ALEXANDER ZACHARY vs. JAMES WATERS.

Now at this time comes the plaintiff in error by his attorney, as well as the defendant in error by his attorney, and asked leave to submit their arguments and briefs in writing, which leave was granted by the Court, the written arguments and briefs to be filed with the Clerk on or before Thursday, the 15th instance, at 1 o'clock P. M.

Court then adjourned till Thursday, the 15th inst., at 1 o'clock P. M.

COLUMBIA LANCASTER,  
*Supreme Judge.*

THURSDAY, JUNE 15TH, 1848

Court met and opened pursuant to adjournment. The record of the 9th inst. was here read and signed, and motions called.

**ALEXANDER ZACHARY vs. JAMES WATERS.**

Now on this day comes the plaintiff in error and moves the Court for leave to withdraw this suit agreeable to the stipulations of agreement between the parties on file in this Court, which leave was granted.

Court then adjourned until Monday, the 7th day of August, 1 o'clock P. M.

COLUMBIA LANCASTER,  
*Supreme Judge.*

MONDAY, AUGUST 7th, 1848.

Court opened pursuant to adjournment, and adjourned till tomorrow at 1 o'clock P. M.

COLUMBIA LANCASTER,  
*Supreme Judge.*

MONDAY, SEPT. 4TH, 1848

*Be It Remembered* that at the September term of the Supreme Court of Oregon Territory, begun and held at Oregon City on the fourth day of September, A. D. 1848, there were present the Honorable Columbia Lancaster, Supreme Judge, and Frederic Prigg, Clerk.

Court opened by the Clerk.

On motion being asked for:

**FELIX HATHAWAY vs. C. M. WALKER.**

On motion of attorney for plaintiff, this case was continued to the next term of this Court.

There being no further business before the Court, the Court adjourned to the term in course.

COLUMBIA LANCASTER,  
*Supreme Judge.*

**TERRITORY OF OREGON—ss.**

*Be It Remembered* that at a term of the Supreme Court of the United States in and for the Territory of Oregon, authorized by an Act of Congress passed August 14th, A. D. 1848, entitled "An Act to Establish the Territorial Government of Oregon", held in pursuance of an Act of the Legislative Assembly of said Territory, passed August 28th, 1849,

entitled "An Act to Provide for a Special Term of the Supreme Court", at Oregon City this 30th day of August, A. D. 1849; present, the Honorable Wm. P. Bryant, Chief Justice, and the Honorable O. C. Pratt, Associate Justice of said Court, the proceedings following were had, that is to say: Court called to order and public proclamation thereof made by Joseph L. Meek, Esq., Marshal of the United States for said Territory. The Court thereupon directed an entry in the record of the following orders, to-wit:

Ordered, that Frederic Prigg, Esq. be and he hereby is appointed Clerk *pro tempore* of the Supreme Court in and for the Territory of Oregon, and as such is directed to perform all the duties and receive all the fees and emoluments legally appertaining to said office.

Ordered, that the Marshal cause to be furnished to the said Clerk, to be kept and used by him in his official capacity, an engraved seal with the following device, to-wit:

And a press for said seal; also proper books in which to keep the record of this Court; also an appropriate room at the Capitol of the Territory, wheresoever the same may be, in which to keep his books, papers, and records of office, together with such reasonable amount of stationery as may be wanted for the present term of the Court, and to be used during the vacation until the next term thereof.

Ordered, that any and all causes pending and undetermined in the Supreme Court of Oregon, as organized under the late Provisional Government, be and the same are hereby directed to be transferred from the old docket of said Court to the docket of this Court; that such proceedings may be had therein as to this Court may seem meet in the premises.

Ordered, that the docket of this Court now be called.

#### FELIX HATHAWAY vs. COURTNEY M. WALKER.

Cause called. Court then adjourned to two o'clock.

Court met pursuant to adjournment.

#### FELIX HATHAWAY vs. COURTNEY M. WALKER.

Now at this time appeared the plaintiff in error by council and the defendant in error in person, when the cause was submitted and held under advisement on the papers of said cause.

Court adjourned to tomorrow morning at 9 o'clock.

**FRIDAY, AUGUST 31st, 1849**

Court met pursuant to adjournment.

**FELIX HATHAWAY vs. COURTNEY M. WALKER.**

Now at this time the Court delivered its opinion in this cause.

There being no further business, the Court adjourned by proclamation.

**A HISTORY**  
**OF THE**  
**JUDICIARY OF OREGON**

# A HISTORY OF THE JUDICIARY OF OREGON

*By*  
LAWRENCE T. HARRIS

A PAPER READ BEFORE THE OREGON BAR  
ASSOCIATION ON NOVEMBER 19, 1917

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## FOUR PERIODS

The history of the judiciary of Oregon may appropriately be divided into four periods:

1. Anterior to the provisional government.
2. The provisional government.
3. The territorial government.
4. Statehood.

It may be of some interest to call attention at the outset to some of the large events that must be kept in mind when considering any department of the government of this commonwealth. That vast stretch of country known as the Oregon Territory was for years the subject of controversy between Great Britain and the United States; but for the purpose of preventing disputes and differences between themselves the two sovereignties, by the treaty of October 20, 1818, agreed that the disputed territory should be left free and open for ten years to the subjects and citizens of the two powers. This agreement was continued by the convention of August 6, 1827, so that citizens of the United States and subjects of Great Britain held joint possession of that section west of the Rocky Mountains embracing Oregon and Washington, and more too, until June 15, 1846, when the line dividing our possessions and those of Great Britain was established so that all of what is now the State of Oregon was at that time definitely brought under the laws and sovereignty of the United States.

The provisional government had its origin in a meeting held on February 16, 1841; the act of congress providing for the territorial



government was approved on August 14, 1848; and our state constitution was formed by a convention of sixty delegates at Salem on September 18, 1857, was adopted by the people on November 9, 1857, and approved by congress on February 14, 1859. The four periods into which for convenience the history of the judiciary has been divided cover the years: (1) From the earliest known history of the country to 1841, when the provisional government was in embryo; (2) from the beginning of the provisional government until the inauguration of the territorial government in 1848; (3) from the establishment of the territorial government to the approval of the state constitution in 1859; and (4) finally statehood.

Ordinarily the provisional government is spoken of as dating either from 1843 or 1845. For the sake of convenience, and also in the interest of accuracy, I prefer to speak of the provisional government as commencing in February, 1841. There are, however, several events which stand out in large outlines in the history of the provisional government: (1) The meetings held in February, 1841; (2) the meeting of May 2, 1843, and the election held at Champooick on July 5, 1843, when certain rules and regulations were adopted; (3) the legislative act of June 27, 1844, when the legislative committee transferred the executive power from a committee of three to a single person styled the Executive of Oregon and changed the title of the supreme judge to that of circuit judge; (4) the adoption of the so-called organic act at the election held on July 26, 1845; and (5) the legislation of August, 1845.

While some of the information we now have of the earlier courts of Oregon comes from contemporaneous documents, still much of our knowledge is derived not from the journals of those courts nor even from records made at the time, but from papers, letters, and documents written afterward; and yet we have a fairly authentic history of the judiciary dating as far back as 1841, when the country was jointly occupied by citizens of the United States and subjects of Great Britain.

#### PERIOD ANTEDATING THE PROVISIONAL GOVERNMENT

Little need or can be said of the period which antedates 1841. The subjects of Great Britain attempted to extend certain forms of their judicial system to the Oregon country at a very early period, and three of the employees of the Hudson Bay Company were commissioned as justices of the peace. The American settlers, however, refused to recognize these officers, held their processes in contempt, and concluded to establish courts of their own; and so the Methodist missionaries appointed a justice of the peace.

#### THE PROVISIONAL GOVERNMENT

Attention has been directed to meetings held in February, 1841.

It is interesting to note the cause of those meetings. Ewing Young, recognized as the wealthiest American citizen in this section, died on February 15, 1841. His funeral was largely attended. So far as then known, he left no will or heirs. There was no officer to probate any will, even had one been left. Naturally the question arose: What should be done with his estate? Immediately after the funeral a meeting was held and organized by electing Reverend Jason Lee as chairman. While there is no record of the meeting of the 16th, it seems to be a fairly well established fact that a committee was appointed to take into consideration the feasibility of organizing a provisional government, and then the meeting adjourned to meet the next day, February 17, at the Methodist Mission. According to a record made at the time, "some of the inhabitants of the Willamette Valley" met pursuant to adjournment on February 17, 1841, "for consultation concerning the steps necessary to be taken for the formation of laws, and the election of officers to execute the same, for the better preservation of peace and good order," and it was resolved that a committee of seven be elected for the purpose of drafting a constitution and code of laws for the government of the settlements south of the Columbia River.

The meeting proceeded to advise the committee to propose the creation of certain offices, including a Governor, a supreme judge with probate powers, three justices of the peace, three constables, and an attorney general. After nominating persons to fill the various offices, the meeting adjourned to convene on the next day. Pursuant to adjournment a full meeting of the inhabitants of the Willamette Valley was held at the American Mission House, and after choosing a committee of nine consisting of Reverend F. U. Blanchet, Reverend Jason Lee, David Dompierre, Gustavus Hines, Mr. Charleron, Robert Moore, J. L. Parrish, Etamie Lucie, and William Johnson, those present at the meeting proceeded to appoint I. L. Babcock supreme judge with probate powers. The first supreme judge for Oregon was not a lawyer but he was a physician, and when the meeting instructed him to act according to the laws of the State of New York until a code of laws be adopted by "this community" he was addressed not as Judge Babcock but as Doctor Babcock. The first official paper ever issued by the Provisional Government reads thus: "Probate Court, I. L. Babcock, Judge of Probate, hath appointed David Leslie administrator of the affairs of the late Ewing Young, Yeoman, deceased, Willamette Settlement, April 15, 1841, George W. Le Breton, Clerk." It will be recalled that Ewing Young died intestate and without known heirs, and for that reason it may be of interest to note in passing that his estate was appropriated for the building of a jail at Oregon City. Afterward, however, the State of Oregon refunded the value of the property taken to a son, Joaquin Young, of New Mexico.

There was a public meeting at Champooick on May 2, 1843, of "the inhabitants of the Willamette settlements, held in accordance with the call of the committee, chosen at a former meeting, for the purpose of taking steps to organize themselves into a civil community, and provide themselves with the protection secured by the enforcement of law and order." The same Doctor I. L. Babcock who had been chosen supreme judge with probate powers on February 18, 1841, acted as chairman of the meeting held on May 2, 1843. That the meeting was not altogether harmonious may be inferred from the fact that a motion to accept the report of the committee which had been chosen at a former meeting was lost and in the language of the record, "considerable confusion existing in consequence," a motion was made that "the meeting divide preparatory to being counted, those in favor of the objects of the meeting taking the right, and those of a contrary mind taking the left, which being carried by acclamation, and a great majority being found in favor of organization, the greater part of the dissenters withdrew," and thereafter the report of the committee was taken up and disposed of, article by article.

A motion having been made and carried that a supreme judge, with probate powers, be chosen to officiate in this community, W. E. Wilson, a native of Massachusetts, who had just come to the colony with a stock of goods, and who was not a lawyer by profession, was chosen to act as supreme judge, with probate powers. In addition to the appointment of a supreme judge the meeting elected Messrs. Burns, Judson, and A. T. Smith to act as magistrates, and then Mr. Campo was chosen as an additional magistrate. The meeting is historic in more ways than one, because at that time nine persons were chosen to act as a legislative committee and it was moved and carried that the legislative committee make their report on July 5 following, at Champooick. The legislative committee held sessions on May 16, 17, 18, and 19, on June 27, and their work was finally completed on June 28, when they adjourned after adopting a motion that the chairman of the legislative committee present the report of the committee to the chairman of the public meeting on July 5 following.

The inhabitants of Oregon Territory met at Champooick on July 5, 1843, and after hearing the report of the legislative committee adopted it with but few amendments. This report when adopted constituted the first body of rules or regulations which made any approach to laws. Oregon Territory was by this meeting divided into four districts. As the record expresses it: "The legislative committee recommended that the territory be divided into four districts, as follows:

"First district to be called the Twality District, comprising all the country south of the northern boundary line of the United States, west

of the Willamette, or Multnomah, River, north of the Yamhill River, and east of the Pacific Ocean.

"Second district to be called the Yamhill District, embracing all the country west of the Willamette, or Multnomah, River and a supposed line running north and south from said river, south of the Yamhill River to the parallel of 42 degrees north latitude, or the boundary line of the United States and California, and west to the Pacific Ocean.

"Third district to be called the Clackamas District, comprehending all the territory not included in the other three districts.

"Fourth district to be called the Champooick District, and bounded on the north by a supposed line drawn from the mouth of the Anchiyoke River (Pudding River), running due east to the Rocky Mountains, west by the Willamette, or Multnomah River, and a supposed line running due south from said river to the parallel of 42 degrees north latitude, south by the boundary line of the United States and California, and east by the summit of the Rocky Mountains.

"The legislative committee also recommended that the above districts be designated as Oregon Territory. Approved by the people, July 5, 1843."

Article I continued the officers who had been selected on May 2 until the second Tuesday in May, 1844, when the next election was to be held, thereby continuing W. E. Wilson's term until May, 1844. The executive power was vested in a committee of three, the legislative authority in a committee of nine, and the judicial power "in a supreme court consisting of a supreme judge and two justices of the peace, a probate court, and in justices of the peace." The jurisdiction of the supreme court was made both appellate and original; that of the probate court and justices of the peace, as limited by law, with the proviso that individual justices of the peace should not have jurisdiction of any matter of controversy, when the title or boundary of land was in dispute, or where the sum claimed exceeded \$50.

Article XII declared that "the law of Iowa Territory shall be the law of this territory in civil, military, and criminal cases, where not otherwise provided for, and where no statute of Iowa applies, the principles of common law and equity shall govern." The laws of Iowa Territory respecting wills and the administration of estates and certain statutes enacted by the Territory of Iowa at the first session of the legislative assembly held in 1838-9 were adopted as the laws of the provisional government.

Article XVI fixes the terms and defines the jurisdiction of the supreme court: "The supreme court shall hold two sessions annually, upon the third Tuesdays in April and September; the first session to be held at Champooick on the third Tuesday of September, 1843, and

the second session at Tuality Plaines on the third Tuesday of April, 1844. At the sessions of the supreme court the supreme judge will preside, assisted by two justices; provided, that no justice shall assist in trying any case that has been brought before the court on appeal from his judgment. The supreme court shall have original jurisdiction in all cases of treason, felony, or breaches of the peace, and in civil cases where the sum claimed exceeds \$50." At this meeting of July 5, 1843, Mr. Burns, who had been selected as justice of the peace on May 2, 1843, resigned and Robert Moore was chosen to fill the vacancy.

The name of W. E. Wilson, who had been selected as supreme judge on May 2, 1843, and whose term was continued until the second Tuesday in May, 1844, by virtue of Article I of the rules and regulations adopted July 5, 1843, does not appear on any legal document or in any journal coming under my notice, and it is to be inferred that he either resigned or declined to serve, because among the records now on file with the secretary of state is a citation signed by O. Russell as probate judge under date of November, 1843; and, furthermore, an old record labeled Book Number 1, Supreme Court Records, in the office of the clerk of the supreme court, recites the doings of what was evidently the first formal term of court which was held on January 15, 1844, and nowhere is the name of W. E. Wilson found as a judge. The first entry is under date of January 15, 1844, and recites that "Ahi Smith obtained a writ of replevin for a yoke of oxen detained by Ninveh Ford. Filed affidavit, and writ issued to the sheriff returnable at the next term of court," and is signed by "G. W. Le Breton, Clerk of the Court."

The next entry tells us that the second term of the supreme court of Oregon Territory was held at Tualata Plaine on the third Tuesday in April, A. D. 1844. O. Russell presiding, assisted by R. Moore, Justice of the Peace. Court opened at 10 a. m. and the first case called was Smith v. Ford. The writ of replevin which he had issued at the first meeting held on January 15, 1844, was returned and is mentioned in the record of the second term of court held on the third Tuesday in April, 1844. The defendant, Ninveh Ford, according to the record, pleaded for a nonsuit on the informality of the bond, but the court decided against him, and then the defendant applied for a continuance of the cause on account of the absence of testimony. An oath was administered to the defendant, who stated the facts which he wished to prove by the absence of witnesses, and thereupon the plaintiff admitted that the witnesses if present would so testify, and the trial proceeded. Twelve jurors were empaneled, and according to the record: "After hearing the evidence the court stated the law on the subject of replevin, and left the matter to be decided by the jury." The verdict of the jury resulted in favor of the plaintiff.

Pursuant to the rules and regulations which had been adopted on July 5, 1843, officers of the provisional government were elected on May 14, 1844. Osborn Russell, who probably held the first term of the supreme court, and who certainly presided at the second term, was elected as a member of the executive committee, while Doctor I. L. Babcock was for the second time selected as supreme judge.

On June 27, 1844, the legislature, apparently in disregard of the will of all the people, expressed July 5, 1843, passed an act regulating the executive power, the judiciary, and for other purposes. The executive power was vested in a single person and styled the "Executive of Oregon." The judicial power was vested in the circuit courts and as many justices of the peace as "shall from time to time be appointed or elected according to law." Section 2 of the act prescribes that there shall be one judge elected by the qualified voters at the annual election, who shall hold his office for one year, and until his successor be duly elected and qualified, "and who shall hold two terms of the circuit court in each county, at such times and places as by law shall be directed, and shall receive the sum of \$500 annually for his salary; he shall also be allowed such fees for probate services as are by law allowed." The circuit courts were granted original jurisdiction in all criminal cases, and in all cases in law and equity, when the amount sued for was not under \$150, and also in all probate and county business, and appellate jurisdiction from justices of the peace. Justices of the peace had jurisdiction in all civil cases in all sums not exceeding \$150. The same act changed the date of the election to the first Tuesday in June in each year, at such places as might be designated by the judge of the circuit court.

The next term of court was held in Oregon City for Clackamas County on October 1, 1844, and is called in the record "a circuit court," in obedience to the legislative act of June 27, 1844, with I. L. Babcock presiding judge. The first indictment returned by a grand jury was returned at this term against Alex R. Stoughten, charging him with an assault upon the body of Nathan Eaton with intent to inflict a bodily injury. And it may be added that Stoughten pleaded guilty and was fined \$25 and costs.

The last term of court held by Babcock was on October 22, 1844, and then J. W. Nesmith held his first term on April 1, 1845, at Oregon City for Clackamas County. Nesmith must have been appointed, because the term of I. L. Babcock would not have been ended until the first Tuesday in June, 1845, according to the provisions of the legislative act of June 27, 1844. James W. Nesmith was elected, however, at the election held on June 3, 1845.

On July 2, 1845, the legislative committee framed a so-called organic act which was submitted to the people, and at an election on July 26,

1845, the voters of Tualaty, Champooick, Yamhill, Clackamas and Clatsop counties adopted the new organic law by a vote of 255 as against 52 for the "old organic law."

This organic act, which was adopted July 26, 1844, is introduced by the following preamble: "We, the people of Oregon Territory, for the purpose of mutual protection, and to secure peace and prosperity among ourselves, agree to adopt the following laws and regulations, until such time as the United States of America extend their jurisdiction over us." The legislative power was vested in a house of representatives and it was given power to create inferior tribunals and inferior officers when necessary. The executive power was vested in one person, to be elected by the qualified voters at the annual election.

By Section 8 the judicial power was vested in a supreme court, and such inferior courts of law, equity, and arbitration as might from time to time be established. The supreme court consisted of one judge, who was to be elected by the house of representatives, and was to hold his office for four years. The supreme court, except in cases otherwise directed by the compact, was to exercise appellate jurisdiction only. It was decided that two sessions should be held annually, one in June and one in September, and at such places as were by law directed. The supreme court was granted general superintending control over all inferior courts of law. It had power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and other original remedial writs, and to hear and determine the same. It is also interesting to note that whenever called upon by the house of representatives the supreme court was obliged to give its opinion touching the validity of any pending measure. The compact provided also that the house of representatives might provide by law for the supreme court having original jurisdiction in criminal cases.

This same organic act by Section 9 prescribed an oath to be taken by all officers as follows: "All officers under this compact shall take an oath as follows, to-wit: I do solemnly swear that I will support the organic laws of the provisional government of Oregon, so far as said organic laws are consistent with my duties as a citizen of the United States, or a subject of Great Britain, and faithfully demean myself in office, so help me God." The first Monday in June of each year was chosen as the day for the election of the civil officers provided for by the compact.

A session of the legislature consisting of the house of representatives was held during the month of August, 1845, and at that session a number of bills were passed. Justice, probate, and district courts, and a supreme court, were established and their duties prescribed. On August 15 an act was passed providing that the official acts of the courts

of Oregon, so far as they were in accordance with either the original or amended organic laws of Oregon, should be valid and legal; and the same act made it the duty of the officers of those courts to deliver to the secretary of the territory the docket and all other papers or records belonging to such courts, and in turn it became the duty of the secretary to forward to the proper district and probate courts, as soon as they might be organized, a transcript of the docket, together with the papers belonging to the same, and all unfinished business on such docket of the court, so that pending cases might be proceeded with to completion.

On August 12, 1845, a bill was passed providing that the statute laws of the Territory of Iowa, enacted at the first session of the legislative assembly of that territory, be adopted as the laws of Oregon so far as applicable to the conditions in this state, where not otherwise provided for by legislation; and it was further provided that the common law of England should govern in all cases where no statute law had been made or adopted. The acts passed by the legislative committee of 1844 not incompatible with the original or organic laws and not repealed by the house of representatives of 1845 were adopted as the laws of Oregon by a bill enacted August 23, 1845. On August 19, 1845, a bill was passed to establish courts and prescribe their powers and duties. The judicial power was vested in the supreme court, criminal courts, district courts, probate courts, and justice courts. The supreme, criminal, district, and probate courts were made courts of record. The bill provided that all judicial officers should be elected by the house of representatives and commissioned by the Governor.

The judge of the supreme court was required at the close of each session of the house of representatives to examine the laws passed and was empowered to annul by the publication of his decision all such laws as violated the articles of compact. The sessions of the supreme court were directed to be held at Oregon City until otherwise prescribed by law, and the salary of the judge was fixed at \$200 per year. The act defining the duties and powers of the supreme court provided that in addition to the powers defined by the articles of compact, the supreme court should have power to direct the form of writs and process and to supervise inferior courts in all things relative to their duty.

A criminal court was established and was styled "The Criminal Court." Its functions were to try cases arising out of indictments found in the district courts for crimes and misdemeanors which were to be punished corporally or by fine exceeding \$100. The criminal court was directed to be held at Oregon City on the second Monday in June and the second Monday in September of each year. The judge of the supreme court was made ex officio judge of the criminal court until otherwise directed by law, with a salary of \$200 per year for services as



judge of the criminal court. A district court composed of three judges in each district was provided for, so that each of the districts had a district court. The three judges for each district first elected by the house of representatives held their offices for three, two, and one years, respectively, and their successors held for a term of three years. Two sessions each year of the district courts were required to be held at the seat of justice in each district "so soon as suitable buildings are provided." The district courts were given jurisdiction over all criminal cases, except the trial of indictment for crimes and misdemeanors, the punishment of which was corporal or by fine exceeding \$100. Original jurisdiction was granted in all civil cases not triable by the justices of the peace.

A probate court was established for each organized district in the territory, to be held monthly in the several districts "at the seat of justice of each district so soon as suitable buildings are prepared." The president of the district court was made ex officio probate judge for the district. Justices of the peace were provided for, the judges of the district courts being made ex officio justices of the peace, and it was directed that they "shall hold the courts monthly in their several offices or residences for the trial of all cases within their jurisdiction." These courts were granted jurisdiction in all civil cases where a sum not exceeding \$150 was involved. The record shows that the house at the same session, held in August, 1845, elected district judges for the several districts. Pursuant to the authority conferred by the compact of July 26, 1845, the house of representatives on August 9 elected Nathaniel Ford of Yamhill County as supreme judge; but on August 18 following, Governor Abernathy sent a message to the house of representatives with the information that Nathaniel Ford declined to serve, and thereupon the house elected Peter H. Burnett as supreme judge to serve for four years. Peter H. Burnett was an uncle of George H. Burnett of the supreme court of Oregon.

On September 3, 1845, commissions were issued by the Governor to judges of the district courts, three district judges being commissioned for each county; and on September 6, 1845, Peter H. Burnett was duly commissioned to be judge of the supreme court of the Oregon Territory. Judge Peter H. Burnett held his first term of the supreme court of the Oregon Territory at Oregon City on June 1, 1846. Quite a number of criminal cases were handled at that term. Judge Peter H. Burnett has the distinction of being the first judge to prescribe rules of court, as it appears from the record that on June 2, 1846, he announced seven rules for the guidance of the supreme court (see pages 32-33):

"1st. The first business of the morning session will be the reading of the record.

"2nd. Motions will be taken up and considered immediately after the reading of the record.

"3rd. All motions must be in writing, and filed one day at least before hearing.

"4th. When a motion is found upon matter of fact not admitted, and extraneous of the record, it must be supported by affidavit.

"5th. Errors must be assigned in writing and filed on or before the first day of the term.

"6th. The plaintiff's counsel will open the argument of the case; he will be replied to by defendant's counsel, who will be answered by plaintiff's counsel, when the arguments will be closed.

"7th. When the application is made for a certiorari it must be accompanied by an affidavit, stating the particular defect in the transcript."

The first recorded opinion was delivered by Judge Peter H. Burnett on June 2, 1846, in the matter of the application of James B. Stevens for a ferry license. The record reads thus: "Now at this day came James B. Stevens, by his attorney, A. L. Lovejoy, in open court, and prayed the court to grant him a license to keep a ferry across the Willamette River at Portland, upon which application the court gave the following opinion, to-wit: 'This is an application for ferry license, under an act of the Oregon legislature, conferring the power to grant such license upon the supreme court. The organic law provides that this court shall have appellate jurisdiction only, except in criminal cases. The act of the legislature therefore contravenes the organic law, and this court therefore refuses the application.'" Peter H. Burnett resigned as supreme judge and was succeeded by J. Quinn Thornton, who took the oath of office on February 11, 1847, and held his first term of court at Oregon City on June 7, 1847.

J. Quinn Thornton was in turn followed by Columbia Lancaster, who took the oath of office on November 13, 1847, but it was not until June 5, 1848, that he held his first term of court. His first term of court was held at Oregon City and his next term was held at the same place on September 4, 1848, after the territorial act of August 14, 1848, had gone into effect. It is not to be wondered at, however, that the provisional government operated as late as September, 1848, when it is remembered that it was a matter of six months' time to obtain communication from Washington, D. C. The great distance from Washington to this country and the time required to traverse it find illustration in the fact that in the journal of the 1849 session of the legislature, under date of February 13, appears a record of the election of A. L. Lovejoy as supreme judge. This brings us to the territorial period.

## THE TERRITORIAL GOVERNMENT

The territorial act provided that from and after the passage of this act all that part of the United States which lies west of the summit of the Rocky Mountains, north of the forty-second degree of north latitude, known as the Territory of Oregon, shall be organized into and constitute a temporary government by the name of the Territory of Oregon.

Section 6 of the act provided that the legislative power of the territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States; but no law shall be passed interfering with the primary disposal of the soil; and all laws passed by the legislative assembly shall be submitted to the Congress of the United States, and if disapproved, shall be null and of no effect.

Section 7 states that all township, district, and county officers, not otherwise provided for in the act, shall be appointed or elected in such manner as shall be provided by the legislative assembly of the Territory of Oregon.

Section 9 of the territorial act vests the judicial power in the supreme court, district courts, probate courts, and in justices of the peace.

The supreme court consisted of a chief justice and two associate justices, any two of whom constituted a quorum, and they were required to hold a term at the seat of government of the territory each year, the term of the officers being four years. The act declared that the territory be divided into three judicial districts and that a district court be held by one of the justices of the supreme court at such times and places as might be prescribed by law. The judges were obliged each to reside in one of the three districts. The jurisdiction of the several courts was such as might be limited by law, but it was provided that justices of the peace should not have jurisdiction where the title to land came in question or where the debt or damages shall exceed \$100, and the supreme and district courts were granted chancery as well as common law jurisdiction. Writs of error, bills of exception, and appeals were allowed in all cases from the final decisions of the district courts to the supreme court, under such regulations as might be prescribed by law.

Section 14 recognized the acts of the provisional government by declaring that: "The existing laws in force in the Territory of Oregon, under the authority of the provisional government established by the people thereof, shall continue to be valid and operative therein, so far as the same be not incompatible with the constitution of the United States and the principles and provisions of this act," with the limitation, however, that all laws previously passed in the territory making

grants of land or otherwise affecting the title to lands were declared to be null and void. The first term of the territorial supreme court was held at Oregon City on August 30, 1849, with William P. Bryant as chief justice and O. C. Pratt, associate justice. Very little was done at that term of court except to appoint a clerk pro tem, and to direct the marshal to furnish the clerk with an engraved seal, proper books in which to keep the record of the court, and "also an appropriate room at the capitol of the territory, wheresoever the same may be, in which to keep his books, papers, and records of office."

It was also ordered that "all causes pending and undetermined in the supreme court of Oregon and organized under the late provisional government be and the same are hereby directed to be transferred from the old docket of said court to the docket of this court."

The journal entry directing the marshal to furnish "an appropriate room at the capitol of the territory, wherever the same may be," necessarily implies that the location of the capitol was at that time involved in doubt. The language of the journal entry also suggests the story of a controversy that was waged between members of the territorial supreme court about the location of the capitol of the territory.

The provisional government had declared that "all the statute laws of Iowa Territory, passed at the first session of the legislative assembly of said territory, and not of a local character, and not incompatible with the conditions and circumstances of this country, shall be the law of this government, unless otherwise modified." The act of congress of August 14, 1848, organizing the Territory of Oregon, continued and preserved the laws of the provisional government until altered or repealed by the territory.

At the first session held at Oregon City the legislative assembly passed two acts which furnished the subject matter for the controversy referred to. One of the acts was passed on February 1, 1851, and is entitled: "An act to provide for the selection of places for location and erection of the public buildings of the Territory of Oregon." The other act relates to the statutes of Iowa Territory. The territorial legislative assembly of Oregon by a single act adopted certain acts of the revised statutes of Iowa Territory published in 1843, but the Oregon act designated the Iowa acts by their several titles and the dates of their passage. This act of the legislative assembly became known as the "Chapman Code," for the reason that W. W. Chapman introduced the bill and secured its passage. Soon after the passage of the acts relating to the Iowa statutes and to the location of the public buildings of the territory it was contended by many that both measures were invalid because they violated Section 6 of the organic act of August 14, 1848, which provides that "to avoid improper influences which may result

from intermixing in one act such things as have no proper relation to each other, every act shall embrace but one object, and that shall be expressed in the title." Persons interested in retaining the capitol at Oregon City brought a suit for the purpose of testing the validity of the act under which it was claimed that the capitol had been removed from Oregon City to Salem. This suit came on for hearing before the supreme court at Oregon City in December, 1851. Thomas Nelson, Chief Justice; O. C. Pratt, and William Strong constituted the membership of the supreme court. Judge Pratt believed the territorial act removing the capitol to Salem was valid, and he therefore went to Salem. Judges Nelson and Strong refused to go to Salem and convened court at Oregon City. The quorum of the court was at Oregon City and a single member was at Salem. Judges Nelson and Strong, who constituted the quorum, decided that the act providing for the selection of places for public buildings was void because it violated the act of August 14, 1848. Judge Pratt refused to yield and insisted that the decision of Judges Nelson and Strong was a nullity because it had not been made at the seat of government. The legislative assembly was at that very time in session at Salem and Judge Pratt's opinion was concurred in by the legislature. This bitter controversy was calmed, however, by a joint resolution of congress, adopted May 4, 1852, legalizing the act of the territorial legislature which provided for the location of the public buildings and declaring that the last session of the territorial legislative assembly held at Salem complied with all the requirements of the law.

But the settlement of the dispute about the removal of the seat of government did not determine the controversy concerning the territorial legislative act relative to the Iowa Territory statutes. Judges Nelson and Strong held that this act was void because it consisted of a single act which included several distinct statutes of Iowa and hence embraced more than one object. Judge Pratt contended that the act embraced but one object, namely, the adoption of a code of laws for the territory. In other words, Judges Nelson and Strong ruled that by virtue of the act of the provisional government, as continued by the act of congress of August 14, 1848, organizing the Territory of Oregon, the statutes of Iowa Territory, passed at the legislative session of 1838-9, were held to be in force, while Judge Pratt ruled that by virtue of the act of 1851, passed by the territorial legislature of Oregon, certain acts of the revised statutes of Iowa Territory, published in 1843, constituted the law of the land. The volume containing the Iowa statutes of 1838-9 was known as the "Little Blue Book," while the Iowa Code of 1843 was called the "Big Blue Book." In an address delivered to the Oregon Pioneer Association at a meeting held in 1876, Judge R. P. Boise said that use was made of a manuscript which contained a mere reference

to various laws of Iowa of 1843 and was called the Steamboat Code. Judge Nelson's judicial district embraced Clackamas, Marion, and Linn Counties; Judge Strong's district was composed of Clatsop County and the counties north of the Columbia River; Judge Pratt's district embraced all the territory west of the Willamette River and included the counties of Washington, Yamhill, Polk and Benton. Lawyers appearing before Judge Nelson or in Judge Strong's district would rely upon the "Little Blue Book," while in Judge Pratt's district they would adapt themselves to the surroundings by quoting from the "Big Blue Book."

It will be recalled that the legislative assembly concurred with Judge Pratt in his opinion that the seat of government was legally located at Salem, and it is of more than passing interest to note that the legislature passed an act detaching Marion and Linn counties from Judge Nelson's district, attaching them to Judge Pratt's district, and leaving only Clackamas County for Judge Nelson. The act attaching Marion and Linn counties to Judge Pratt's district provided for terms of court one week earlier than under the old law. Judge Pratt held court in Marion and Linn counties under the new law and when Judge Nelson came a week later to hold court under the old law he found Judge Pratt had disposed of all the business and adjourned court. This heated and unfortunate controversy concerning the Iowa statutes was terminated by an act passed by the legislature in January, 1853, providing for the selection of three commissioners to prepare a code of laws to be submitted to the succeeding legislature. James K. Kelly, Reuben P. Boise, and Daniel R. Biglow were elected commissioners. They prepared a code which was adopted by the next legislative assembly and became effective on May 1, 1854.

Having concluded the episode concerning the controversy between the members of the territorial supreme court, attention is again directed to the main subject of this discussion. The first opinion delivered by the territorial supreme court was rendered orally in the case of *Felix Hathaway v. Courtney M. Walker* on August 31, 1849. President Polk had appointed William P. Bryant chief justice and Peter H. Burnett and James Turney associate justices. Judge Burnett went to California in 1848 and, after his arrival there, was met with a commission in the spring of 1849, but he declined to accept and remained in California, where he was elected Governor and afterward judge or minister of the Superior Tribunal. Orville C. Pratt was appointed in the place of Turney.

In 1850 William Strong was appointed to the position made vacant by Burnett's refusal to serve, and William P. Bryant, the chief justice, having resigned, Thomas Nelson was appointed in his stead, so that from 1850 to 1853 the court consisted of Thomas Nelson, chief justice,

and Orville C. Pratt and William Strong, associates. When the administration at Washington changed, new judges were appointed. Pratt was made chief justice, with Cyrus Olney and Matthew P. Deady as associates. After holding one term of court, Deady's commission was revoked because of an informality and Obadiah B. McFadden was appointed in his place; but when the Territory of Washington was created he was assigned to the same position in Washington Territory and Deady was reinstated in the Territory of Oregon. When Pratt's first term expired, in the fall of 1852, the President appointed C. F. Train as his successor, but Train never came to Oregon, and before Pratt's nomination as chief justice could be confirmed by the Senate, the President withdrew his name and substituted the name of George H. Williams. On June 20, 1853, Olney and Deady opened a term of the supreme court. Williams arrived shortly after, and Williams, Olney and Deady constituted the supreme court until 1859. Olney and Williams resigned in 1858. During 1858 and 1859, after the resignation of Olney and Williams, Judge Deady was the sole judge until Reuben P. Boise was appointed to Olney's place. Deady and Boise constituted the court until Oregon was admitted to the Union as a state.

#### STATEHOOD

The state constitution provided for an election of four supreme judges. The state was divided into four judicial districts by the constitution. Each district elected one judge and the four justices constituted the supreme court. The first four elected allotted the terms among themselves so that the term of one would expire in two years, one in four years, and two in six years, and their successors were to hold for a term of six years; the judge having the shortest term to serve, or the oldest of several having the shortest term, and not serving by appointment, acted as chief justice. Each was obliged to perform circuit duty in each of the counties of their several districts. Matthew P. Deady, R. E. Stratton, R. P. Boise, and A. E. Waite were elected to their offices at the first election in 1858, but before the term commenced in the following year Judge Deady had been appointed to the federal bench and did not qualify for the state office. P. P. Prim was appointed in place of Deady and was afterward elected by the people at the regular election held in 1860. Boise and Stratton drew the six-year term and the four-year term fell to Waite, who by virtue of the constitution became chief justice.

The state constitution authorized the supreme court to revise the final decisions of the circuit courts. When the white population should amount to 200,000 the legislative assembly was empowered to provide for the election of supreme and circuit judges in distinct classes, one of

which should consist of three justices of the supreme court, who should not perform circuit duty, and the other class should consist of the necessary number of circuit judges. A new district was created in 1862 and a fifth judge, in the person of Joseph G. Wilson, was added to the four judges first selected when Oregon was granted statehood. In addition to the names already given, those who served as judges during the period ending in 1878, when the supreme court was organized as a separate tribunal, were: W. W. Page, E. D. Shattuck, Alonzo A. Skinner, W. W. Upton, John Kelsey, A. J. Thayer, B. Whitten, L. L. McArthur, B. F. Bonham, L. F. Mosher, John Burnett, J. F. Watson.

In 1878, when the supreme court was made a distinct organization, the Governor appointed James K. Kelly, P. P. Prim, and R. P. Boise as justices. In 1907 Will R. King and W. T. Slater were appointed commissioners, and in 1909, when the legislature increased the membership of the court to five justices, King and Slater were appointed to fill the newly created positions. In 1913 the membership of the court was again enlarged by the addition of two justices, and William M. Ramsey and Charles L. McNary were appointed by the Governor.



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