

**University of Nevada, Reno**

**The Nevada Territorial Supreme Court:  
A Transitional Influence From Frontier  
Lawlessness to Statehood**

A dissertation submitted in partial fulfillment of the requirements for the  
degree of Doctor of Philosophy in Judicial Studies

By  
David A. Hardy

Dr. James T. Richardson  
Dissertation Advisor

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# University of Nevada, Reno

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prepared under our supervision by

**DAVID A. HARDY**

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**The Nevada Territorial Supreme Court:  
A Transitional Influence From Frontier Lawlessness to Statehood**

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**DOCTOR OF PHILOSOPHY**

Chairman James T. Richardson, Ph.D., J.D., Advisor

Honorable Richard H. Bryan, L.L.B., Committee Member

Professor Michael W. Bowers, Ph.D., Committee Member

Professor Robert P. Morin, Ph.D., J.D., Committee Member

Professor Robert E. Dickens, Ph.D., Graduate School Representative

David W. Zeh, Ph.D., Dean, Graduate School

May, 2015

## Abstract

Nevada statehood was a bi-lateral event that required approval from both the federal government and the territorial residents. It has been extensively studied from a federal perspective, but no scholar has fully considered how the territorial judiciary influenced the residents' approval of statehood. The judiciary's role is particularly relevant when explaining why territorial residents *rejected* statehood by a four-to-one margin only to *authorize* statehood a mere eight months later by an eight-to-one margin.

This paper will demonstrate the Nevada Territorial Supreme Court (NTSC) is an unrecognized but powerful influence in the statehood vote of September 1864. It begins with an examination of judicial systems in the Nevada area under the Utah Territory. It next examines the challenges of a remote, spiritual authority when profound mineral wealth was discovered during the spring of 1859, and suggests the absence of legal order and judicial normalcy compelled the creation of the Nevada Territory.

The NTSC exploded into existence in 1861 but then imploded under the weight of its own work during the summer of 1864. Great fortunes were in dispute and the three territorial judges were unable to manage the voluminous litigation. (In 1864, more than 400 lawsuits were on file in Storey County but only three were tried to a jury—and only one trial resulted in a jury verdict). Judicial processes became corrupted and productive mining and related capital infusions came to a halt. After a protracted battle between the newspapers, and a growing chorus of public discontent, the embattled judges resigned from office a mere 16 days before residents voted on statehood. Thus, voters knew the alternatives well: a rejection of statehood would maintain an impotent judiciary and perpetuate the mining recession, whereas the approval of statehood would result in popularly elected judges who were accountable to the citizens they served.

This paper examines the details of the first and second constitutional conventions through a judicial lens, the primitive judicial system in place during territorial years, and the role of the press in fomenting public discontent with the courts. This paper also examines the decisional work of the NTSC, which has never been published or otherwise folded into the historical record of Nevada. While some court records exist at the Nevada State Archives, the court's official opinions have been lost. Based upon extensive research into the newspapers of the time, this paper includes a significant portion of the NTSC's decisional history. Finally, this paper introduces the judicial personalities and suggests, contrary to other scholarship, that systemic corruption is more easily alleged than proven.

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## Chapter 1

### Introduction

**As in the lives of all great men and the histories of all great nations, there occur a multitude of events which are omitted by historians, yet are of vast importance as influencing, controlling, and accounting for the more startling and salient points in those histories and biographies: so there are in the history of the litigation of this Territory many facts which the future compilers of that history would fail to find upon the record. The private memoranda of the judges, the litigants, the attorneys, the court-brokers and other contemporaneous personages must be patiently and sagaciously examined, compared, and put in connected and readable shape before the world will be fully posted as to “Proceedings in Civil cases in the Courts of Justice in the Territory of Nevada,” as the same were conducted in the “dark ages” of Silverland.<sup>1</sup>**

The story of how early territorial courts influenced Nevada statehood has never been fully written. Nevada political scientist Michael Bowers observed: “I have seen firsthand the dearth of scholarly research and publication on [the topics of law and courts in Nevada], for example, there is no published history of the Nevada Supreme Court . . . .”<sup>2</sup> Professor Bowers further lamented that “scholarship in this area has long been woefully lacking is apparent to even the most casual observer.”<sup>3</sup>

The story is unique and interesting because of several events: 1) the influence of a remote and peculiar theocratic government 500 miles to the east, 2) the discovery of great mineral wealth in an area without government infrastructure, judicial normalcy, or settled law, 3) the electoral *rejection* and then *approval* of statehood within eight months in 1864, 4) the influence of sensational and inflammatory newspaper articles castigating judicial officers and court proceedings during the second constitutional convention and immediately before the statehood vote, 5) the impotence of law and resignation of all Nevada Territorial Supreme Court Justices immediately before the statehood vote, and 6) the loss of all original decisions issued by the Nevada Territorial Supreme Court during

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<sup>1</sup> Unpublished Chapters, *Gold Hill Evening News*, August 3, 1864.

<sup>2</sup> Michael W. Bowers, “Foreword,” *Nevada Historical Quarterly*, 43, no. 1 (2000): 3.

<sup>3</sup> *Ibid.*



its existence between 1861 and 1864. The territorial courts also influenced the content of the constitution, legislation, and judicial ethics jurisprudence in Nevada.

This work is inspired by the Nevada Supreme Court's reference in a 1992 judicial discipline decision that "Nevadans have historically manifested a pronounced sensitivity to potential abuses of judicial power."<sup>4</sup> The court then wrote:

Scholars of this state's constitutional process have suggested, for example, that this sensitivity—*originating from early public dissatisfaction and criticism of the Nevada Territorial bench*—explains the presence of no less than four separate provisions in our constitution allowing for the removal of state justices and judges during their terms of office.<sup>5</sup>

The public's dissatisfaction and criticisms of the Nevada territorial bench provide a unique context for examining statehood with a judicial perspective.

Nevada teaches its 4th grade students that Nevada became a state because President Abraham Lincoln needed help to ensure his 1864 re-election.<sup>6</sup> Nevada college students are taught there were four reasons the federal government wanted to admit Nevada as the 36th state: 1) to increase the number of votes in Congress to pass the Thirteenth Amendment, 2) to obtain three additional electoral votes supporting President Lincoln, 3) to strengthen the political power of legislative post-war reconstruction, and 4) to create a Republican advantage in the House of Representatives if third-party candidate John Fremont prevented the other two presidential candidates from receiving a majority of electoral votes.<sup>7</sup>

But statehood was a bi-lateral event. The federal government was required to consent to the additional state, but so also were the residents of the proposed state required to consent to statehood. Federal political explanations only account for one-half of the statehood decision. In October 1863, Nevada residents *authorized* a constitutional convention by a four-to-one margin, *rejected* statehood by a four-to-one margin in

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<sup>4</sup> Goldman v. Nevada Comm'n on Judicial Discipline, 108 Nev. 251, 256, 830 P.2d 107, 110 (1992).

<sup>5</sup> Ibid. (emphasis added).

<sup>6</sup> Gary BeDunnah, *Nevada: Our Home* (Salt Lake City, UT: Gibbs Smith 2006), 130.

<sup>7</sup> Michael W. Bowers, *The Sagebrush State*, 3rd ed. (Reno: University of Nevada Press, 2006).

January 1864, but then *approved* statehood by an eight-to-one margin just eight months later in September 1864. In Storey County, where the majority of mining interests were located and litigation occurred, and where the litigation-related mining recession was most deeply felt, the final vote was 5,548 for and a mere 142 against statehood. The cause of such a dramatic and quick change in popular opinion has been analyzed by other scholars but not fully presented within a legal and judicial context.<sup>8</sup>

Residents of the Nevada Territory embraced statehood, in large measure, to rid themselves of a judiciary they perceived as corrupt and unaccountable. Voters blamed endless litigation for the deep 1864 mining depression and saw judicial reform as the only possible cure. Litigation prevented capital infusions that were essential to mining productivity. Shortly after the constitutional convention in July 1864, and in the weeks preceding the popular vote on statehood, approximately 3,500 residents in Virginia City and Gold Hill signed a petition for the removal of the territorial judges. The judges did resign under deep suspicions of corruption just weeks before the statehood vote, leaving the entire area without a judicial system. In the final analysis, Nevada became a state because statehood provided the ordered law residents sought. If accurate, the story must be folded into the historical record of Nevada.

An examination of the territorial judiciary as a political influence must also include an analysis of its work. The inscription on the facade of the National Archives in Washington, D.C. reads: *What's Past is Prologue*. This phrase, taken from Shakespeare's *The Tempest*, describes what is known intuitively: past events influence and explain what is experienced today.<sup>9</sup> So too is the law governed by the past through the principles of precedent and *stare decisis*.<sup>10</sup> Thus, lawyers are trained to determine what *is* by reference to what *was*. These principles, together with the concepts of

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<sup>8</sup> For a detailed historical perspective see David Alan Johnson, *Founding the Far West: California, Oregon, and Nevada, 1840-1890* (Berkeley: University of California Press, 1992).

<sup>9</sup> William Shakespeare, *The Tempest*, ed. Neil Heims (New York: Bloom's Literary Criticism, 2007), 2.1.253-54. "Whereof what's past is prologue, what to come, in yours and my discharge."

<sup>10</sup> "The doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation." *Black's Law Dictionary*, 9th ed., s.v. "Stare Decisis"

transparency, predictability, and uniformity, compose the rule of law. Appellate decisions known as “decisional authorities” are published to create the record of law underlying the rule of law.

The need for a historical record of law is well known to Nevada. Immediately upon statehood, the first Nevada Legislature passed an act requiring the Nevada Supreme Court (NSC) to write, publish, and index its decisions.<sup>11</sup> As a result, dating back to its first decision in 1865, the NSC has published its decisional authorities in the Nevada Reports. Yet the Nevada Reports is incomplete because it begins with statehood in 1865 and excludes the decisions rendered by the NTSC.

There were 88 appeals initiated in the NTSC. Many appeals were dismissed without decision or held over for the NSC after statehood. The number of actual written opinions is unknown. Most decisions were reportedly kept by former NTSC Chief Justice George Turner (Judge Turner). On February 25, 1865, just four months after statehood, the *Humboldt Register* reported that of 69 decisions there were authentic copies of only 18 and “the other 51 being obtainable but probably of doubtful authenticity.” Accordingly, the *Register* continued, Governor Henry Blasdel properly vetoed a funding bill for their publication. After all, “[i]f the judges were so obnoxious as not to be tolerated, how much respect will their book of decisions command?” Judge Turner left Nevada and spent years in Europe and practicing law in California before killing himself in the bathroom of a San Francisco boarding house. The original opinions were never recovered and are presumed lost to history. (The Nevada State Archives maintains some of the underlying court records, which are digitized and can be found at its website. The seven decisions emanating from the Nevada area that are included within the Utah Reports should also be recognized in the historical record of Nevada courts.)

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<sup>11</sup> *Reports of cases determined in the Supreme Court of the State of Nevada*, (San Francisco: Sumner Whitney, 1866), 1:9. See also *The Journal of the Senate during the First Session of the Legislature of the State of Nevada* (Carson City: State Printer), 200; *Appendix to Journals of Senate of the First Session of the Legislature of the State of Nevada* (Carson City, John Church, 1865), 8a, 3-5.

An early decision from the NSC illustrates the incomplete historical record of Nevada law. A mining dispute was adjudicated by the NTSC in 1863. The court's decision was appealed to the United States Supreme Court and later reheard by the NSC after statehood. The NSC wrote in 1868:

The present judges of this court know nothing of the merits of this action, nor of the grounds upon which the territorial supreme court based its judgment. It would be unsatisfactory, to say the least, to grant a re-argument upon what might now be learned from the incomplete and imperfect records which were then kept of the proceedings of the court. It is possible, that some matter may have been presented to the consideration of that tribunal which the record here does not disclose, about which the present court knows nothing, and which may have been fully sufficient to warrant the decision.<sup>12</sup>

The chapters that follow will demonstrate the important influence of territorial courts to the statehood question, and will include many of the NTSC decisions so they may be added to the catalogue of laws relied upon by the contemporary legal community. With these materials, the story of Nevada statehood will be better understood as Nevada passes its sesquicentennial anniversary.

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<sup>12</sup> Trench v. Strong, 4 Nev. 87 (1868).

## Chapter 2

### Permanent Settlers Arrive In Nevada: 1851

**“It is always requisite to appoint offices whose duty it is to enforce law & maintain order.”<sup>13</sup>**

Many scholars have written about Nevada’s early native inhabitants, such as the Goshute, Mohave, Paiute, Shoshone, and Washoe Indians. Spain claimed ownership of Nevada lands and began exploring in the mid-18th century but relinquished its claims to Mexico after the 1821 War of Independence. Intermittent explorers and trappers traveled across Nevada during the next several decades and migratory incursions began after gold was discovered in California in 1848. Mexico ceded to the U.S. a large tract of land comprising modern-day California, Nevada, Utah, much of Arizona, and parts of New Mexico, Colorado, and Wyoming in the 1848 Treaty of Guadalupe Hidalgo.

The Utah Territory was created in September 1850, with its western boundary set at the eastern slope of the Sierra Nevada Mountains. The area now composing modern day Nevada fell within the Utah Territorial boundaries. That same year a small group of Mormons established a temporary trading post in Carson Valley, but left before the winter season arrived. In June of 1851, a group of 16 settlers from Salt Lake City arrived in the Carson Valley. They erected a stockade for shelter and protection, planted crops, and built a trading post to serve migratory travelers. They stayed through the winter after establishing a mail service and acquiring 80 mules and other supplies from California. They settled in the area then known as “Mormon Station” and now known as Genoa.

These first settlers, comprised of Mormons from the Utah Territory, miners, and California expatriates, met in November 1851, and several times thereafter to establish a provisional government. Recognizing the singular importance of law to the safety and order of their community, the preamble of their charter reads:

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<sup>13</sup> Andy Welliver, ed., “First Records of Carson Valley; Utah Ter. 1851,” *Nevada Historical Society Quarterly*, 9, nos. 2-3, (1966): 8-1, <http://nsla.nevadaculture.org/statepubs/epubs/210777-1966-2-3Summer-Fall.pdf>. The quotations from this source represent the original document as it appears.

Whereas it has been deemed necessary to the welfare and advancement of our community that there should be some fixed rules of right agreed upon & established for its government & the protection of citizens in ~~the~~ all their privileges . . . and whereas it is always requisite to appoint offices whose duty it is to enforce law & maintain order It is agreed that there be certain officers Elected from among our community, to wit a Justice of the peace, a clerk of the court, & a Sheriff, and these functionaries shall be required to Exercise & Enforce law according to the acknowledged rules of equity which govern all civilized communities. There shall be four Individuals associated with the Justice himself making the fifth in forming a court, and he shall be empowered to summon any four whenever occasion may require it, to take cognizance & adjudicate summarily in all cases of controversy debts or offenses against the publick [sic] weal, and to enforce fines or other sufficient penalties upon offenders to issue warrants & authorize arrests, But to provide against the abuse of these powers, citizens & others Shall have the right of appeal to a court of twelve citizens, summoned promiscuously [sic], who shall constitute a court of enquiry from whose decisions there shall be no appeal . . . and who shall have power to remove the magistrate or impose upon him any other just penalty in the event of the abuse exercise of his authority.<sup>14</sup>

The original records of this “squatter” community, which are stored in the Nevada State Archives and titled *First Records of Carson Valley; Utah Ter. 1851*, reveal several civic actions such as licensing a bridge, authorizing road repairs, and collecting tolls. A few examples reveal the legal issues and challenges of settling the area.

On March 14, 1853, John Reese filed a petition asking the justice of the peace to attach property belonging to G. Chorpenning as surviving partner of Woodward & Co. Reese alleged a \$675 debt and expressed concern that Chorpenning would leave the area with an intent to defraud his creditors. Reese posted a bond and the justice of peace was commanded “to attach so much of the good and chattels of ~~the said~~ Lands and Houses of the said [defendant] to satisfy any Judgment that may be received on this attachment.” The constable successfully “attached four mules, one anvil, two fire tongs, one broken

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<sup>14</sup> Ibid.

vice, two hammers, one cold chisel, one bellow, one sledge, one compass [sic], chain and surveying instruments, and one revolver.”<sup>15</sup>

Two months later, in May of 1853, Reese again sought judicial help by filing a complaint that “Mrs. Terry has taken a certain Brown Mare from his Premises, Said Mare being Left with him by J.P. Barnard to herd until called for by him.”<sup>16</sup> The constable was directed “to Bring said Mare Back and keep her in your possession until such time as the Claimants of said mare can be brought together for the purpose of deciding the rights of property.”<sup>17</sup> The mare was never found.

Other similar actions are recorded in the *First Records*. As the population increased, business interests developed, and religious divisions grew deeper, the primitive legal system proved unworkable. The remote area was geographically too distant from the territorial seat of authority in Salt Lake City, and the theocratic nature of territorial leadership led to legal chaos. The principles of a neutral magistrate and a citizen jury were established but not permanently embedded in the area. The Utah territorial officials did not seek to establish governmental control during this time and residents of the area soon sought the creation of their own territory to facilitate orderly and peaceful living in a previously lawless area of our country.

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<sup>15</sup> Ibid., 35.

<sup>16</sup> Ibid., 38.

<sup>17</sup> Ibid.

## Chapter 3

### The Peculiar Institution of Mormonism

**“The laws of Utah then, so long as they remain ineffectual, are equivalent to no law at all.”**

There is no record of why the 1851 provisional government ceased to exist. One subtle reference within the *First Records* foreshadowed the unsuitability of a theocratic government over a partially secular, remote people. At the first meeting on November 12, 1851, the settlers discussed petitioning Congress for territorial status “distinct” from the Utah Territorial government.<sup>18</sup> Whether caused by geographical distance or spiritual estrangement, the seeds of territorial independence were sown from the very beginning of the Nevada experience.<sup>19</sup>

Any attempt to unravel Nevada’s history must acknowledge the controversies created by the presence of Mormons and their distrust for traditional judicial systems.<sup>20</sup> Mormons distrusted judicial systems because they had been denied the protection of laws in Ohio, Missouri, and Illinois before migrating into the unsettled Salt Lake Valley in 1847. The Mormon leader Brigham Young expressly renounced the common law as a judicial imperative in the Utah Territory for fear it would be used against Mormon self-government.<sup>21</sup> Though Mormons pledged fidelity to secular political institutions through an Article of Faith to “honor and sustain the law,” Young believed secular legal systems were corruptible and could be instruments of persecution.<sup>22</sup>

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<sup>18</sup> *Ibid.*, 1.

<sup>19</sup> See generally Nevada Territory, *Territorial Enterprise*, January 24, 1860.

<sup>20</sup> The noun “Mormon” refers to adherents of the Church of Jesus Christ of Latter-day Saints. For an explanation of Mormonism and territorial courts, see Hal Rothman, *The Making of Modern Nevada*, Chapter 5 (entitled Utah: The Territorial and District Courts).

<sup>21</sup> See generally Michael W. Homer, “The Judiciary and Common Law in Utah Territory, 1850–61,” *Dialogue: A Journal of Mormon Thought* 21, no.1. (Spring 1988).

<sup>22</sup> The Mormon Church’s 12th Article of Faith provides: “We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law.” *The Pearl of Great Price*, (Salt Lake City: Church of Jesus Christ of Latter-day Saints 2013).



There is historical support for this distrust. The peculiar nature of Mormonism aroused antipathy and outright hostility. Mormons were a clannish people who controlled election results wherever they settled. On October 27, 1838, Missouri Governor Lilburn W. Boggs signed an “extermination order” providing “the Mormons must be treated as enemies and must be exterminated or driven from the state if necessary for the public peace.”<sup>23</sup> During a raid at Haun’s Mill, Missouri, seventeen Mormons (including aged men, women, and children) were killed as they attempted to flee the mob. The first leader of the Mormon Church, Joseph Smith, Jr., was murdered by an Illinois mob while in custody awaiting trial on charges of treason.<sup>24</sup> Mormons understood mobocracy and justifiably considered themselves vulnerable to anti-Mormon sentiment.

Mormons believed in a living, present God who communicated through their prophet. They sought hegemonic communities in which they could worship and live as they pleased. Mormon leaders also practiced polygamy, which was as repugnant then as it is now. Brigham Young was the governor of the Utah Territory, and the integration of church and state in the Nevada area reflects his desire to control the judiciary and protect Mormon sovereignty.

Mormon allegiance to a spiritual rather than secular form of authority created problems in the Nevada area because of geographical remoteness and the presence of non-believing “gentiles.” Peripatetic miners ventured into the hills of Nevada to search for gold, which had been found in trace amounts in 1850. Other migratory travelers stopped permanently, and Californians crossed the Sierras to plant crops, provide services, and sell products. The area was thus caught between reverence for the spiritual,

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<sup>23</sup> Lilburn W. Boggs, Letter to General John B. Clark, Executive Order Number 44, 27 October 1838, Missouri Secretary of State, Missouri State Archives, [http://www.sos.mo.gov/archives/resources/findingaids/miscMormRecs/eo/18381027\\_ExtermOrder.pdf](http://www.sos.mo.gov/archives/resources/findingaids/miscMormRecs/eo/18381027_ExtermOrder.pdf). Executive Order Number 44 was officially rescinded by Governor Christopher S. Bond on June 25, 1976. See Christopher S. Bond, Rescission Order, Missouri Secretary of State, Missouri State Archives, [http://www.sos.mo.gov/archives/resources/findingaids/miscMormRecs/eo/19760625\\_RescisOrder.pdf](http://www.sos.mo.gov/archives/resources/findingaids/miscMormRecs/eo/19760625_RescisOrder.pdf).

<sup>24</sup> See generally Dallin H. Oaks, “The Suppression of the Nauvoo Expositor” *Utah Law Review*, 9 (1965): 862-903.

a rapacious pursuit of quick wealth, and others who merely wished to make the beautiful Carson Valley their permanent home.

These facts led to unsettled judicial authority throughout the entire time the Nevada area was governed by the Utah Territory. Proponents of separation from the Utah Territory argued that Mormons had “mixed together church and state [such] that a man could not obtain justice in any of its courts.”<sup>25</sup> An informing source for understanding the religious tensions in 1859 is the *Territorial Enterprise* newspaper, which is further presented in Appendix B. The first NSC reflected in 1865 that Mormon laws “were not calculated to inspire much respect in a free and enlightened community.”<sup>26</sup> The *San Francisco Evening Bulletin* similarly editorialized in 1860:

There is no government [in Nevada]. Nominally the Mormon government bears sway over that portion of the territory as well as over Salt Lake City. But practically Mormon laws are a nullity, they are not enforced, nor could they be. Should a Mormon judge or justice of the peace attempt to hold his court at Carson City or Virginia City, he would not only find that he possessed no power to execute the mandates of his court, but also that all attempts to do so would endanger his personal safety. . . . Politically, the people are in a chaotic state, without law and without a Constitutional government. . . .<sup>27</sup>

Finally, while Nevada area courts operated under the aegis of Utah territorial authority, the “Mormon War” of 1857-58 increased sentiments against the Utah Territory. The “Mormon War” caused Brigham Young to recall Mormons from the Nevada area to defend Salt Lake City from the incursion of 2,500 U.S. troops ordered by President Buchanan. The judicial environment during this time was best described by the *Territorial Enterprise* on January 29, 1859. After lamenting the geographical distance

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<sup>25</sup> Gordon Morris Bakken, *Rocky Mountain Constitution Making, 1850-1912* (Westport, Conn.: Greenwood Press, 1987), 9. Quoted in, Michael W. Bowers and Larry D. Strate, “Judicial Selection in Nevada: An Historical, Empirical, and Normative Evaluation,” *Nevada Historical Society Quarterly* 36, no. 4. (Winter 1993): 230.

<sup>26</sup> *Reports of cases determined in the Supreme Court of the State of Nevada* (San Francisco: Sumner Whitney, 1866), 1:7.

<sup>27</sup> J. H. Purkitt, Nevada Territory, *San Francisco Evening Bulletin*, February 15, 1860. Quoted in Michael W. Bowers, *The Sagebrush State: Nevada’s History*, 14.

from the seat of government in Salt Lake City, and noting the peculiar nature of Mormonism, the *Territorial Enterprise* wrote:

Utah as a whole cannot prosper under the present condition of affairs, and without a separation as a branch we must suffer the decay of the parent trunk. The inhabitants of the proposed Territory [missing text caused by damage to the original] and under her jurisdiction; we must suffer the consequences of the distracted condition of the Territory. We sincerely sympathize with unfortunate Utah in her present deplorable condition, but cannot see any tangible reasons why we should be bound to her jurisdiction and compelled to suffer the ill effects of a continual and disgraceful civil war. It is natural for us to feel solicitous for the prosperity of the country in which we live, and we feel secure that, situated as we now are—destitute of any kind of protection whatever, either civil or military, we cannot prosper. The laws of Utah have thus far proved an entire dead letter with us, and recent events at Salt Lake lead us to believe that the efforts of the courts to enforce the laws in that portion of the Territory will be thwarted for some time to come. True, military force is in waiting at that place to maintain the supremacy of the law, but juries for the hearing of cases are necessarily composed of persons whose religious and principles are so antagonistic as to render it impossible for them to unite on unprejudiced and equitable verdicts. The laws of Utah then, so long as they remain ineffectual, are equivalent to no law at all.

Arizona and Dacota [also vying for territorial status at the time] have good and efficient Territorial laws, with the power to enforce them, and on which they can confidently rely for protection; but not so with us. The presence in our Territory of a military force is absolutely necessary to prevent an open rebellion. When peace is restored to Utah, and all her citizens manifest a willful obedience to the laws and cheerfully assist in executing them, our argument in favor of a separate and independent organization will have lost much of its force.

We are seven hundred miles from the nucleus of Mormonism and the scene of disloyalty, and as a community, were not a party to the difficulties which have proven such a deadly enemy to our progress; and we, therefore, earnestly desire to be relieved from further connection with Utah Territory, and from the odium which

justly rests upon any who would claim citizenship in the United States, and yet require the presence of any army to enforce obedience to her laws.<sup>28</sup>

Underlying the decade between 1851 and 1861 is a resistance to Mormons, Mormon law, and Mormon government officials. While this resistance inspired the first attempts for a separate territory, the influence of Mormonism decreased as mining activities and frustrated commercial endeavors increased in the early 1860s.

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<sup>28</sup> Territorial, *Territorial Enterprise*, January 29, 1859.

## Chapter 4

### Continuing Political and Judicial Uncertainty: 1852-58

**“It is necessary for a strong force to be here. The country is worthy, but Devils will reign unless we get in so thick that there is no chance for them.”<sup>29</sup>**

The years 1852-53 in “Western Utah” are bereft of any real detail. A historian noted in 1881 that “[f]rom the events making up the history of 1853 but little has been saved from the wreck of forgetfulness, which at best presents but here and there a footprint that the drifting sands of time have left uncovered.”<sup>30</sup>

The Act to Establish a Territorial Government for Utah provided that “the judicial power of said Territorial shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum . . . .” Further, “[t]he said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court . . . .”<sup>31</sup> The district judges were appointed by the President, whereas the probate judges were elected by the territorial legislature and commissioned by the governor.

The jurisdictional limits of the district and probate judges would become exceedingly problematic in the Nevada area. The district judges enjoyed civil and criminal jurisdiction (including chancery and common law), whereas the probate judges had “jurisdiction of the Probate of Wills, the administration of the estates of deceased persons, and of the guardianship of minors, idiots and insane persons.”<sup>32</sup> Justices of the peace were prohibited from exercising jurisdiction in controversies exceeding \$100 and

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<sup>29</sup> Orson Hyde quoted in Sally Springmeyer Zanjani, *Devils will Reign: How Nevada Began* (Reno: University of Nevada Press, 2006), 61.

<sup>30</sup> Myron Angel, ed., *History of Nevada* (Oakland: Thompson & West, 1881), 34.

<sup>31</sup> An Act to Establish a Territorial Government for Utah, ch. 51, 9 Stat. 453-458 (September 5, 1850).

<sup>32</sup> “An Act in Relation to the Judiciary,” *Acts, Resolutions, and Memorials passed by the First Annual, and Special Sessions of the Legislative Assembly* (Great Salt Lake City, Brigham H. Young, Printer 1851), 38-48.

when title or boundaries of land were in dispute. The historical records reveal the jurisdictional limits were more formulaic than functional.

On March 3, 1852, the Utah Territorial Legislature created several counties running parallel on north/south lines to their western terminus at the California boundary on the eastern slope of the Sierras.<sup>33</sup> The Utah Territorial Legislature did little else with respect to its far western area and no Utah officials appeared until 1855.

The first sign of judicial discontent arose in 1853 when 43 settlers petitioned California for annexation “for judicial purposes until congress should provide otherwise.”<sup>34</sup> While the petition was unsuccessful, its suggestion that *judicial purposes* compelled annexation is intriguing. Though few facts are preserved for review, the reference to *judicial purposes* implies a hunger for the rule of law, which must have been noticeably absent at the time.

In response to the annexation attempt, the Utah Territorial Legislature created Carson County on January 17, 1854.<sup>35</sup> Territorial Governor Brigham Young was authorized to commission a probate judge to the newly-created county, who was empowered “to organize said county, by dividing the county into precincts; and causing an election to be held according to law, to fill the various county and precinct offices, and locate the county seat thereof.”<sup>36</sup>

Several noteworthy events occurred in 1855. In January, Governor Young appointed his spiritual colleague and confidant Orson Hyde as the probate and county judge. Judge Hyde and several others arrived in the Nevada area on June 15, 1855.<sup>37</sup> When he arrived he found divided loyalties between the Mormon and non-Mormon residents. He immediately asked the church for reinforcements of additional men,

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<sup>33</sup> “An Act Defining the Boundaries of Counties,” *Acts, Resolutions and Memorials, Passed at the Several Annual Sessions of the Legislative Assembly of the Territory of Utah* (Great Salt Lake City: Joseph Cain, Public Printer, 1855), 224.

<sup>34</sup> Hubert Howe Bancroft, *History of Nevada, Colorado, and Wyoming, 1540–1888* (San Francisco: History Co., 1890), 74–75. Quoted in Bowers and Strate, “Judicial Selection in Nevada,” 230 (emphasis added).

<sup>35</sup> “An Act defining the boundaries of Carson County, and providing for the organization thereof,” *Acts, Resolutions and Memorials*, 261.

<sup>36</sup> *Ibid.*

<sup>37</sup> Angel, *History of Nevada*, 38.

writing: “It is necessary for a strong force to be here. The country is worthy, but Devils will reign unless we get in so thick that there is no chance for them.”<sup>38</sup> Judge Hyde presided over organizational elections in September. Sundry offices were filled, such as sheriff, surveyor, prosecuting attorney, assessor, collector, treasurer, clerk, constable, and justice of the peace. All but one of the successful candidates were Mormon.<sup>39</sup>

Judge Hyde opened his first session of court on October 3, 1855. The first case recorded was an action for “debit and damages” in which the plaintiff sought \$187.75 and was awarded \$38.50.<sup>40</sup> On November 2, 1855, Judge Hyde conducted his first criminal case. An African-American was charged with “using language of a highly threatening character.”<sup>41</sup> The alleged language was that “he had spite enough in his heart against A.J. Wyckoff to kill him,” and “that he could cut the heart out of Mrs. Jacob Rose and roast it on coals.” Judge Hyde concluded the defendant posed no threat, but he still fined the defendant \$50.00 for the costs of suit and advised him “for his own safety” to return to his master in California. The court records reveal that “[a] man may have malice enough at heart to kill another, and judgment and discretion to prevent him from committing the deed; he may have the ability to cut a lady’s heart out and roast it upon the coals, and at the same time he may have good sense enough not to do it.”<sup>42</sup>

Despite his efforts, Judge Hyde was unable to assert his sectarian authority over a diverse group of inhabitants and news of discontent soon reached Governor Young. He responded by sending more Mormons into the area. By the middle of 1856, “Carson County was organized politically, economically, and socially in the firm and able hands of the Mormons.”<sup>43</sup> However, Mormon control was short-lived, as one settler noted: “The citizens of this valley declare in language too strong to utter that they will no longer

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<sup>38</sup> Orson Hyde quoted in Zanjani, *Devils will Reign*, 61.

<sup>39</sup> Angel, *History of Nevada*, 38.

<sup>40</sup> *Ibid.*, 38, 333.

<sup>41</sup> *Ibid.*, 333.

<sup>42</sup> *Ibid.*

<sup>43</sup> Russell R. Elliott, with the assistance of William D. Rowley, *History of Nevada*, 2d ed., rev. (Lincoln: University of Nebraska Press, 1987), 56.

be governed or tried by Mormon law . . . and declare they will pay no taxes that are levied on them from that source.”<sup>44</sup>

Mormon judicial authority was further diffused when U.S. District Judge C.W. Drummond arrived in 1856. Judge Drummond was an Associate Justice of the Utah Territorial Supreme Court, having been appointed by President Franklin Pierce in 1854. His appointment was “acknowledged to have been a serious mistake,” and he was referred to as a gambler and bully.<sup>45</sup> Judge Drummond convened court in a barn and was reportedly accompanied to court by a known prostitute. One of Judge Drummond’s earlier decisions reversed a judgment entered by Judge Hyde in favor of a Mormon against a non-Mormon.<sup>46</sup>

Judge Drummond also empanelled a grand jury in which no Mormons were initially included. The grand jury was charged with bringing bills of indictment for the crimes of gambling, concubinage, and other minor frontier offenses.<sup>47</sup> No indictments were returned and Judge Drummond soon left the area with low regard for his experience.<sup>48</sup>

Non-Mormon settlers again agitated for annexation into California, and in 1856 California sent an annexation petition to Congress.<sup>49</sup> The petition was not favorably received. Judge Hyde became increasingly displeased with his assignment and he wrote to Governor Young: “There are many Mormons here, but I fear not Saints. . . . This has been the darkest and least desirable mission, and the most dull and discouraging prospects that ever presented themselves some.”<sup>50</sup>

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<sup>44</sup> Quoted in Zanjani, *Devils will Reign*, 60.

<sup>45</sup> Rothman, *Making of Modern Nevada*, 136.

<sup>46</sup> J.P. O’Brien, ed., *History of the Bench and Bar of Nevada* (San Francisco: Bench and Bar Publishing Company, 1913), 15; Zanjani, *Devils will Reign*, 62.

<sup>47</sup> Angel, *History of Nevada*, 40.

<sup>48</sup> *Ibid.*

<sup>49</sup> Michael W. Bowers, “Judicial Selection in Nevada: Choosing the Judges,” *Halcyon: A Journal of the Humanities* 11 (1989): 94.

<sup>50</sup> Orson Hyde quoted in “Legendary Mormon curse blamed for Washoe disasters” available at <http://www.lvrj.com/news/legendary-mormon-curse-blamed-for-washoe-disasters-138767239.html>.



Judge Hyde returned to Utah in November, 1856, leaving a sawmill for which he believed he was not fully compensated. He revealed antipathy in his legendary 1862 open letter to the “People of Carson and Washoe Valleys.” It reads in part:

You shall be visited of the Lord of Hosts with thunder and with earthquakes and with floods, with pestilence and with famine until your names are not known amongst men, for you have rejected the authority of God, trampled upon his laws and his ordinances, and given yourselves up to serve the god of this world; to rioting in debauchery, in abominations, drunkenness and corruption. You have chuckled and gloried in taking the property of the Mormons, and withholding from them the benefits thereof. You have despised rule and authority, and put God and man at defiance. If perchance, however, there should be an honest man amongst you, I would advise him to leave; but let him not go to California for safety, for he will not find it there.<sup>51</sup>

Two months after Judge Hyde left, and “in order to forestall complete loss of political control over the area,” the Utah Territorial Legislature “rescinded the action making Carson County a separate judicial district” and had it attached to the Great Salt Lake County “for election, revenue, and judicial purposes.”<sup>52</sup> Thus, the Nevada area was again left without an organized judicial system and the time between 1857 and 1861 has been described as an “era of anarchy and confusion.”<sup>53</sup>

Three events of note occurred in 1857. First, Governor Young called for the repatriation of Mormons to Salt Lake City to join forces against the federal government in what is known as the “Mormon War.” Approximately 450 Mormons responded to the call, leaving only 200 residents in the Carson Valley.<sup>54</sup> Without a court system, disputes were settled informally “by reference to associates and friends, or each contestant named an arbitrator, and the two referees so chosen selected a few associates to sit with them in judgment upon the case.”<sup>55</sup>

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<sup>51</sup> Orson Hyde quoted in Angel, *History of Nevada*, 41.

<sup>52</sup> Bowers, “Judicial Selection in Nevada,” 94; Elliott and Rowley, *History of Nevada*, 57.

<sup>53</sup> Bowers, *The Sagebrush State*, 11.

<sup>54</sup> Elliott and Rowley, *History of Nevada*, 57.

<sup>55</sup> Eliot Lord, *Comstock Mining and Miners* (Washington: Government Printing Office, 1883), 19.

Second, as part of the negotiated end to the “Mormon War,” President James Buchanan removed Brigham Young as Governor of the Utah Territory and appointed Alfred Cumming as his successor. This change in territorial leadership was the beginning effort to neutralize the religious control over secular events in the Utah Territory, including the Nevada area. Unfortunately, Nevada residents did not appreciate the differences between Young and Cumming, and they continued to resent their attachment to the Utah Territory.

Third, instead of seeking annexation into California again, the settlers who remained in the area sought independent territorial status from the federal government. In August 1857, Major William Ormsby convened a public meeting in Genoa to discuss territorial status. The absence of law and judicial systems was the predominant theme. One attendee argued:

From our anomalous condition during all seasons of the year, no debts can be collected by law; no offenders can be arrested, and no crime can be punished except by the code of Judge Lynch, and no obedience to government can be enforced, and for these reasons there is and can be no protection to either life or property except that which may be derived from the peaceably disposed, the good sense and patriotism of the people, or from the fearful, unsatisfactory, and terrible defense and protection which the revolver, the bowie-knife, and other deadly weapons may afford us.<sup>56</sup>

The settlers drafted a resolution noting “the absence of all law to restrain the vicious and to protect the upright” and urged that “some kind of government should be established as soon as possible for the better security of life and property to it.”<sup>57</sup>

The settlers approved a petition to Congress, noting that “for the last six or seven years, without any Territorial, State, or Federal protection” they had suffered “marauding outlaws, runaway criminals and convicts, as well as other evil-doers.”<sup>58</sup> They expressed concern that without federal protection they would “see anarchy, violence, bloodshed,

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<sup>56</sup> Angel, *History of Nevada*, 44.

<sup>57</sup> *Ibid.*, 43.

<sup>58</sup> *Ibid.*, 44.

and crime of every hue and grade waving their horrid scepter over this portion of our common country.”<sup>59</sup> The settlers also noted the increasing number of miners scouring the hills for “gold, silver, copper, lead, iron, coal, and other minerals, metals, and precious stones” and predicted that when such materials were located the Nevada area would become “one of the richest and most productive regions of the globe.”<sup>60</sup>

The settlers dispatched James M. Crane to Washington, D.C. to present their petition for territorial status to Congress. Finally, to ensure some semblance of order, they appointed a committee of 28 persons “to manage and superintend all matters necessary and proper in the premises.”<sup>61</sup> There is no record of how long the “Committee of 28” operated as an informal government. It did meet in March 1858 to establish a vigilante committee patterned after a committee that was operating in San Francisco. The vigilante committee tried and sentenced several criminals, including one who was hanged for murder.<sup>62</sup>

By letter dated February 18, 1858, Crane optimistically reported to the settlers that the chance for territorial status was good. He had located a bill sponsor and the legislation was reported favorably by the House Committee on Territories.<sup>63</sup> However, Crane’s optimism was unfounded when Congress adjourned before the legislation was completed and the petition was extinguished.<sup>64</sup>

Governor Cumming appointed Carson Valley resident and non-Mormon John Child as probate judge in 1858. Judge Child attempted to organize the area by election, but the results were undermined by evidence of voter fraud and results from four of the six voting precincts were discarded.<sup>65</sup> The settlers called for a mass meeting of citizens to be held in Genoa on December 3, 1858. Judge Child was elected president and those

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid., 43.

<sup>62</sup> Ibid.; Zanjani, *Devils will Reign*, 99.

<sup>63</sup> Ibid., 46. See also Eleanore Bushnell, *The Nevada Constitution: Origin and Growth* Rev. ed. (Reno: University of Nevada Press (1968), 26.

<sup>64</sup> Bowers, *The Sagebrush State*, 11.

<sup>65</sup> Bowers, *The Sagebrush State*, 12.

in attendance resolved to “take such steps as may be necessary to secure to us the protection of the laws of this territory.”<sup>66</sup>

Judge Child’s success would have been pyrrhic as the entire area would soon erupt into full-scale chaos when silver was discovered in early 1859 and the southern and northern ends of the Comstock Lode were located a few months later. The discovery of rich mineral deposits led to the incursion of a transient population that further exacerbated lawlessness and revealed the desperate need for order through judicial authority.

At the time the mineral wealth was discovered, and mining activity became frenetic, the editors of the *Territorial Enterprise* summarized the government environment:

The necessity of a separation from Utah, and the formation of a separate organization, began to press upon the people of this portion of the Territory as early as the Spring of 1856, and as the fertile valleys and rich gold fields situated on the eastern slope of the sierras began to attract general public attention and rapidly to settle up with an enterprising and industrious people, the matter became of more pressing importance, the citizens began to feel that the public weal, and the safety of their own lives and property, absolutely demanded a more reliable and substantial governmental protection than that extended over them by the Territory of Utah.

. . . .

It was not, however, until the fall of 1857, after the Mormons had raised in their might, in open rebellion against the government, (having driven Surveyor General Burr precipitately from the Territory and violently invaded the room of the U.S. District Court, armed with pistols and other weapons, compelling the Judge to adjourn his court *sine die*) that the people of this portion of the Territory felt that they were entirely without the protection of even a shadow of government.

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<sup>66</sup> Mass Meeting, *Territorial Enterprise*, January 1, 1859.

In view of the uncertain and deplorable condition of affairs, the citizens of western Utah felt called upon in duty to themselves, to implore the general government to extend over them that governmental protection which they had a right to claim as the birth-right of every American Citizen. Accordingly, the people, previous to the meeting of Congress in the fall of 1857, delegated to Judge Crane the authority to represent their claims before our national assembly. From the time of his arrival in Washington, up to the present day, the presence of an army in the vicinity of Salt Lake has been necessary to hold in check the belligerent and rebellious disposition of the Mormons.

. . . .

The general government has made every effort to restore quiet and establish its supremacy in this Territory, but such endeavors have been thwarted in every particular. The federal courts in the Territory have been, and are now, entirely divested of their power to act; and though our proposed Territory is a portion of the dominions of the United States, the inhabitants thereof are without any kind of government protection whatever, as much so as if they were the inhabitants of an unknown island in mid-ocean.<sup>67</sup>

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<sup>67</sup> Territorial Convention, *Territorial Enterprise*, June 11, 1859.

## Chapter 5

### The Storm before the Mining Tsunami: 1859

**“[T]he speedy organization of the District Court is a matter of doubt.”**

Few demographic details are known about the Nevada area in 1859. An incomplete census revealed three towns, an uncertain permanent population, and an unknown number of miners scouring the hills for gold. Despite low population and nominal commercial activity, the residents still felt the absence of laws and courts.

The events of 1859 are revealed through the pages of the *Territorial Enterprise*, which began publishing in Genoa in December 1858, and continued publishing in Virginia City in 1860. On February 5, 1859, the *Territorial Enterprise* lamented that the Utah Territorial Legislature had failed to fund court operations, such as trial and confinement costs. Though the presence of perceived “Mormon Law” was problematic, the absence of a judicial system to recognize and enforce competing claims to substantial mineral resources became the single most challenging event of the next few years.

John Cradlebaugh had been appointed United States Associate Judge for the Utah Territorial Supreme Court by President Buchanan on June 4, 1858, and thereafter assigned to serve as District Judge in Carson County. Upon his arrival in 1859, Judge Cradlebaugh was initially commended as a worthy jurist, and because of his critical comments to an idle “Mormon” grand jury in Provo, Utah, he was viewed as one who would not be influenced by “the horrible features of Mormonism.”<sup>68</sup> The area residents were “prepossessed in his favor, and congratulate[d] [them]selves that a man of his stamp is to preside over our Judicial District.”<sup>69</sup>

Judge Cradlebaugh’s popularity was short-lived and problems soon arose. In May 1859, the *Territorial Enterprise* noted that Probate Judge Child had not held court “in the hope that Judge Cradlebaugh would convene a term of the United States District Court in

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<sup>68</sup> Judge Cradlebaugh’s Charge, *Territorial Enterprise*, April 19, 1859

<sup>69</sup> *Ibid.*

this county” but “the speedy organization of the District Court is a matter of doubt.” The *Territorial Enterprise* further suggested “the propriety of adopting some measures by which the perplexing questions which are almost every day arising to the continual annoyance of the public, may be properly and satisfactorily adjusted.”<sup>70</sup> Noting the miners had adopted codes for their own interests, and further noting the residents were “deprived of any judicial organization under the Territorial laws, we would suggest a similar movement on the part of the citizens of this county.”<sup>71</sup>

The *Territorial Enterprise* also noted on May 28, 1859, that “when one party held a debt or civil claim against another, [the modus operandi] has been to gather his friendly hosts around him, enter upon and by force take possession of his premises. In the absence of any and all law whatever, we have no reflections to offer concerning this summary method of procedure, only simply to express our regret that circumstances should clothe such proceedings in the garb of justice.”

Two reported crimes and one courtroom event reveal the absence of any organized judiciary in 1859. In March, a man named John Hern argued with a young man named Elzy Knott about ownership of a bridle that Knott may have won from Hern in a game of chance. To recover his bridle, Hern stopped a 9-year-old boy using the bridle in a pasture a half mile from town. The boy later testified that “[Hern] pulled me off the horse, took the bridle off the horse, and put on the horse an old rope, and then put me on the horse again, saying if I or anybody else came after the bridle he would shoot us.”<sup>72</sup> Disregarding this warning, and against his wife’s wishes, Knott went to Hern’s house to get the bridle back and “whip the whole [Hern] family” if necessary. Hern shot and killed Knott with a shotgun when Knott entered his home.

Hern was apprehended but there was no court to prosecute the crime. The citizens therefore met “to take into consideration the proper steps to pursue in relation to the murder.” Judge Child noted his limited probate jurisdiction and “respectfully

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<sup>70</sup> Law Necessary, *Territorial Enterprise*, May 28, 1859.

<sup>71</sup> *Ibid.*

<sup>72</sup> *The People vs. John Hern, Territorial Enterprise*, March 19, 1859.

referred” the matter to a “People’s Jury.” The citizens in attendance appointed one judge and two associate judges from among them and a “People’s Court” was soon convened to try the matter.<sup>73</sup>

Three months later, in June, William Sides killed a young 20-year-old man named John Jessup at a claim site in Gold Canyon. The miners present at the scene “immediately arrested Sides and brought him to Carson City, where the citizens organized a Court for the investigation of the case.”<sup>74</sup> Proceedings of the “Citizens’ Court” were similarly reported in the *Territorial Enterprise*.<sup>75</sup>

A final example from 1859 illustrates how the area was tipping into lawlessness. A German immigrant woman was offended by a Hispanic man who made uninvited advances to her. He was indicted, but his victim chose frontier justice over criminal process. She shot and killed him in the courtroom immediately after his bail was set. “The spectators in the packed courtroom burst into tumultuous applause—much to the disgust of Judge Cradlebaugh.”<sup>76</sup>

Without official sanction, the settlers met in Carson City on June 6, 1859, to discuss territorial status. They selected delegates to a constitutional convention scheduled to begin in July. The convention delegates met for nine days and approved a constitution patterned after the California Constitution. They called for a separate territory to be free from Mormons who “so [mixed] together church and state that a man [could not] obtain justice in any of its courts.”<sup>77</sup> They ended their convention by forming a provisional government and electing Isaac Roop as provisional governor.

By the end of 1859, Judge Cradlebaugh lost all semblance of public support. The *Territorial Enterprise* reported in October that he had returned from a California trip in excellent health and intended to open court to “a large number of cases on . . . the

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<sup>73</sup> Ibid.

<sup>74</sup> Terrible Homicide, *Territorial Enterprise*, June 2, 1859.

<sup>75</sup> Citizens’ Court, *Territorial Enterprise*, June 11, 1859.

<sup>76</sup> Zanjani, *Devils Will Reign*, 152.

<sup>77</sup> Gordon Morris Bakken, *Rocky Mountain Constitution Making*, 9. Quoted in Bowers and Strate, “Judicial Selection in Nevada,” 230.



docket.” While Judge Cradlebaugh was affirmed personally and professionally, the court institution he represented was not. Noting that despite Judge Cradlebaugh’s determination to “bring before the bar of justice the scoundrels who have so long outraged our very name, and mete out to them the punishment they so richly deserve, we feel in duty bound to oppose the establishment of his Court.”<sup>78</sup> The *Territorial Enterprise* concluded:

The people of this Territory have never acknowledged the jurisdiction of Utah—never offered allegiance to Brigham. They now have petitioned Congress to give them a separate organization. They have formed a Constitution for their government, that Constitution has been carried by a large majority. We will not take the back track and stultify ourselves, by now submitting to the laws of Utah. Such a course would be fatal to our hopes of obtaining a separation organization from Congress, fatal to our cause and fatal to the very best interests of the people. These are our reasons for opposing the establishment of this Court. We are aware that many persons believe that we can receive Judge Cradlebaugh and acknowledge his jurisdiction as a United States officer, without at all compromising ourselves or acknowledging any connection with Utah. We think differently. One step taken in this direction, others will follow; indeed, the second step has already been taken. Mr. Child has already been issued his proclamation as Judge of Probate ordering an election today. . . . Elect the officers indicated by Child, and submit to his sacred majesty Brigham Young.

. . . .

We depreciate such action, we will oppose it to the “bitter end.” Much as we desire the protection of Law—we do not want the laws of the Utah Legislature, they are not enforced at Salt Lake, why attempt to enforce them here? To the U.S. Laws we yield cheerful obedience; further we will not go . . . .

To complicate the effort for territorial status, James Crane, who had been tirelessly lobbying congress for territorial status since 1857, died unexpectedly of a heart

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<sup>78</sup> U.S. District Court, *Territorial Enterprise*, October 8, 1859.

attack in September 1859. Colonel John Musser was selected to succeed him as the residents' representative in Washington, D.C. Upon his departure, Musser said at a settlers' meeting in Genoa: "This country is destitute of law [and] a sense of danger prevails in our community. We have no law to protect us in our private rights, or to give redress for public wrongs; for nearly five years we have asked protection of the powers that be, yet none have been granted; we have been forced to try civil and criminal cases before tribunals unauthorized by law, or submit to the even more hasty action of a guideless mob."<sup>79</sup>

As detailed in the next chapter, within a few months minerals then valued at \$275,000 would be extracted, processed, and shipped to San Francisco for sale. The area was unprepared and ill-equipped to manage the imminent population explosion and tremendous wealth soon to be discovered.<sup>80</sup> To the contrary, there was a triumvirate of chaos created by three different men competing to establish government authority and judicial order: Probate Judge Child, U.S. District Judge Cradlebaugh, and Provisional Governor Isaac Roop.

On December 16, 1859, Governor Roop attempted to convene the territorial legislature, but only four people attended. It appears the residents were far more interested in the recently discovered mineral wealth.<sup>81</sup> The next day Governor Roop issued a proclamation castigating the Utah Territory officials and courts who were "opposed to the first principle of our Constitution, 'the freedom of the ballot box.'"<sup>82</sup> But he concluded it would be "impolitic" to organize the provisional government while a representative was entreating federal officials for separate territorial status. Governor Roop's reference to the impending mining season and population expansion was

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<sup>79</sup> Colonel John J. Musser quoted in Nevada Legislative Counsel Bureau, *Nevada's Court Structure* (Carson City: Legislative Counsel Bureau, 1968,) 7. Quoted in Bowers and Strate, "Judicial Selection in Nevada," 230–31.

<sup>80</sup> Grant H. Smith, *The History of the Comstock Lode* (Reno: University of Nevada Press, 1998), 19–27.

<sup>81</sup> Bushnell, *The Nevada Constitution*, 28.

<sup>82</sup> Proclamation to the People of Western Utah Included Within the Boundaries of the Proposed Territory of Nevada, *Territorial Enterprise* December 17, 1859.

prescient, though his prediction of “obedience to laws” would soon be disproven. He proclaimed:

The recent discoveries of Gold, Silver, Copper and Lead Mines, have caused an influx of population totally unexpected at the time of our late Convention. The new immigration is composed of the bone and sinew of California, of men who are disposed to pay all due obedience to Laws which extend to them a reasonable protection.

Governor Roop’s provision regarding Judge Cradlebaugh and the District Court succinctly describes the state of the judiciary on the eve of the 1860 population and litigation crisis:

Within the past few months an attempt has been made by Judge Cradlebaugh, to establish the U.S. District Court in this District. Coming among us as he did, with the prestige of his noble stand against Salt Lake Legislation, we at once yielded to him and his Court all the respect ever accorded in any community. But notwithstanding all his endeavors, backed by the good wishes of the people, the so-called laws of Utah Territory have proved to him an insurmountable barrier.<sup>83</sup>

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<sup>83</sup> Ibid.

## Chapter 6

### Discovery of the Comstock Lode

**The past “reveals itself only grudgingly,” and the “life of the Comstock in the old days has never been written so that those who did not share it can understand; it never can be so written.”<sup>84</sup>**

At the same time permanent settlers were agitating for their own government and courts, itinerant miners were searching the hills for gold. James Finney (nicknamed “Old Virginia”) is credited as the first to find gold near Mount Davidson in 1858.<sup>85</sup> He and several other miners returned during the spring of 1859 to further prospect the area. In June they uncovered what they thought was a large gold quartz vein with an unusual “bluish cast” that looked “more like common blue limestone than anything else.”<sup>86</sup>

At the time, no miner understood that silver composed the real wealth of the Comstock Lode, yet the miners understood their need for order. They therefore formed the Gold Hill Mining District on July 11, 1859, and adopted simple rules of rights and conduct.<sup>87</sup> The preamble is significant: “Whereas, the isolated position we occupy, far from all legal tribunals, and cut off from those fountains of justice which every American citizen should enjoy, renders it necessary that we organize in body politic for our mutual protection against the lawless, and for meting out justice between man and man; therefore, we, citizens of Gold Hill, do hereby agree to adopt the following rules and laws for our government.”<sup>88</sup>

A few miners wanted to claim the ground as a placer mine, which according to the rules allotted 50 feet to each man. But other miners insisted the claim be designated as a quartz vein, which allotted 300 feet to each working man with an additional 300 feet

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<sup>84</sup> Arthur McEwen quoted in Smith, *The History of the Comstock Lode*, 31.

<sup>85</sup> Bruce Alverson, “The Limits of Power: Comstock Litigation, 1859–1864,” *Nevada Historical Society Quarterly* 43, no. 1 (Spring 2000): 75.

<sup>86</sup> Smith, *The History of the Comstock Lode*, 10.

<sup>87</sup> Hubert Howe Bancroft quoted in J.P. O’Brien, ed., *History of the Bench and Bar of Nevada* (San Francisco: Bench and Bar Publishing Co., 1913), 8. The Virginia Mining District was created and its laws adopted on September 14, 1859.

<sup>88</sup> Lord, *Comstock Mining and Miners*, 42.

awarded to the miner who first sighted the vein. The distinction was important. Because a quartz vein is perambulatory, the identification of placer surface boundaries left too much to chance. The vein could not be predicted with certainty and definite boundaries were risky. The miners ultimately designated the claim a quartz vein and they measured their respective allotments with a rope and set stakes to mark their claim boundaries.<sup>89</sup> They also adopted the Law of the Apex, which allowed them to follow their vein “together with all its dips, spurs, angles, and variations,” as deep and as far as it led them, even if the vein encroached upon contiguous claims owned by others. This single decision made chaotic litigation inevitable. Indeed, the informal rules disassembled as soon as the southern and northern ends of the Comstock Lode were located.

The race to secure claims became frenzied, as described by one historian: “The discovery at Gold Hill created a little local excitement and the placer miners, ranchers, station-keepers, and others from miles around came to locate claims both north and south of the hill. . . . The notices of location of the Comstock mines were the crudest ever written, and the source of much litigation in later years. They usually consisted of a line or two claiming so many feet north or south from a stake or from another claim, with nothing else to identify the location.”<sup>90</sup> Defining and recording the respective claims became a monumental challenge, particularly as individual claims were divided, sold, transferred, and encumbered. Purchasers did not know if they were buying a mining claim or a legal dispute.<sup>91</sup>

The first repository for mining claims was in the saloon, under the unpredictable care of the local blacksmith. The claims were “decidedly untrustworthy” and the book revealed “marks of carelessness, erasures, irregular additions, and [evidence of] positive fraud.”<sup>92</sup> As Virginia City newspaper man Dan DeQuille described it, the “boys” were accustomed to “taking the book from behind the bar whenever they desired to consult it,

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<sup>89</sup> Smith, *The History of the Comstock Lode*, 9.

<sup>90</sup> *Ibid.*, 6.

<sup>91</sup> Alverson, “The Limits of Power: Comstock Litigation,” 85.

<sup>92</sup> Lord, *Comstock Mining and Miners*, 53.

and if they thought a location made by them was not advantageously bounded, they altered the course of their lines and fixed the whole thing up in good shape, in accordance with the later developments.”<sup>93</sup>

A short excerpt about Finney illustrates the point. Finney had been prospecting the Nevada area since 1851. Though first to find gold, he reportedly sold his claim interest for an old horse, a pair of blankets, and a bottle of whiskey.<sup>94</sup> His original claim later became important:

While purchasing a claim . . . the Ophir Company demanded that the original notice of location be transferred to it. Finney claimed he had preserved the written notice but was too drunk (or too conniving) to explain where to find it. To aid his recollection, the Ophir officials induced him to enter one of their tunnels and then closed an iron gate behind him. The following morning, sober but still grumbling at his mistreatment, he demanded a shot of whiskey, then took the Ophir representatives to the area where he had concealed his notice on February 22, 1858. Finding the spot without difficulty, he removed the rocks and pulled out a script of yellow paper, covered with dust and moths’ eggs, the scrawled handwriting still legible—representing the most valuable document in Virginia City.<sup>95</sup>

Shortly after discovery in June 1859, a local rancher visited the site and obtained sulphurets the miners had “cursed as an obstruction and cast away as worthless” in their search for gold.<sup>96</sup> He immediately took the samples to an assay office in Nevada City, California. Two separate assayers discovered the material contained silver estimated to be valued at \$3,196 per ton. Mining secrets travel fast, and “by nine o’clock the next morning half the town of Grass Valley knew the wonderful news.”<sup>97</sup> Within days, hundreds of miners abandoned their California claims and descended upon Mount Davidson to obtain their own share of the great wealth. When not mining, the miners

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<sup>93</sup> Dan Dequille, *History of the Big Bonanza* (Hartford: American Publishing Co. 1876), 62.

<sup>94</sup> *Ibid.*, 93; Dan DeQuille, *The Big Bonanza* (New York: Alfred A. Knopf, 1947), 28–29, 52–53.

<sup>95</sup> Alverson, “The Limits of Power: Comstock Litigation,” 85.

<sup>96</sup> Angel, *History of Nevada*, 60–61.

<sup>97</sup> *Ibid.*

(and ancillary participants) quarreled about carelessly described claims and questionable titles.

The miners were partially to blame for the claim disputes as they negligently and sometimes deliberately disregarded their own rules. Historian Elliot Lord stated in 1883:

Some allowance may be made for their ignorance and for an easy-natured carelessness inbred by their roving and reckless habits of life, but there can be no doubt that pretended thoughtlessness was often a mask for fraud and greediness. If a locator found rich croppings, he was not anxious to define boundary lines by stakes until he was satisfied of the extent and probable dip of his ore body, for if he placed his stakes before tracing the line of his ledge and explored his seam or ore, he might inadvertently cut short his own bonanza.

. . . .

Notice after notice would be posted claiming the allotted number of feet on a ledge, but never defining the precise position of the locations, as every man naturally wished to cut off the richest slice of the prospective bonanza and was not disposed to cut the loaf until he knew the contents. If his neighbor found ore and he did not, he was thus prepared to plant his boundary stakes in that neighbor's ground, and by hook or crook obtain a share of the treasure. If he was reluctant to post stakes therefore, as required by the laws, he was still more unwilling to limit his chances further by recording a notice defining his boundaries. Stakes could be pulled up and thrown away, but records were not so easily got rid of.<sup>98</sup>

Mining rewards rapacity and attracts those seeking quick wealth through mining production, supply, and litigation. As stated by Mark Twain, who was then living in the area as Samuel Clemens, “[a] western mine is a hole in the ground owned by a liar.”<sup>99</sup>

An early Nevada historian wrote:

Nothing so excites the cupidity of man as even the reported discovery of hidden wealth, and quite naturally, as in the

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<sup>98</sup> Lord, *Comstock Mining and Miners*, 49.

<sup>99</sup> Mark Twain quoted in T.H. Watkins, *Gold and Silver in the West: The Illustrated History of an American Dream* (Palo Alto: American West Publishing Co. 1971), 247.

case of Nevada, such news attracted men of every degree of intelligence and integrity, not to mention many absolutely lacking in the latter virtue. . . . Tales of Nevada's inexhaustible mineral deposits attracted men of all conditions from all the world, and, although it is a moot question whether the Constitution always follows the flag, it is an absolute certainty that litigation always follows the discovery of great mineral deposits. This theory is founded on the most ancient authority known to the philosophical writ of the world, for thus wrote the Oriental sage, Confucius, some centuries before the dawn of our Christian era: "Men who dare delve in the earth in search of Nature's hidden treasure must of a certainty wrangle in myriad disputes over the possession of that which none hath honest title. When such evil befalls, then shall the arbiter grasp the scepter of authority."<sup>100</sup>

As miners locally and elsewhere impatiently awaited the beginning of the 1860 season, one San Francisco newspaper wisely noted the area was unsuitable for what was about to occur:

The present position of the people is deplorable. The evils to which they are exposed are terrible to contemplate and the coming season it is to be feared, will witness scenes of anarchy and bloodshed, fearful to behold, as the rich silver mines will attract thither a large crowd of desperate and abandoned men, who, in the absence of law and a well-established government will give full scope to their vicious inclinations.<sup>101</sup>

Truer words have rarely been written. Mining production quadrupled to \$1 million the following year and population quickly followed. In 1858 there were 500 residents in the Nevada area. By the end of 1859 there were 1,000 residents in Virginia City, and by 1860 it had evolved from a crude mining camp to a metropolis of 7,000. By 1862 there were 15,000 residents in Virginia City, each pursuing mining's promised wealth.<sup>102</sup> The subsequent lawlessness and litigation revealed that government authority,

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<sup>100</sup> O'Brien, ed., *History of the Bench and Bar of Nevada*, 5.

<sup>101</sup> J.H. Purkitt, "Nevada Territory," *San Francisco Evening Bulletin*, February 15, 1860. Quoted in Bowers, *The Sagebrush State*, 14.

<sup>102</sup> Johnson, *Founding the Far West*, 75.



ostensibly secular but predominantly spiritual, and located 500 miles to the east, was neither tolerable nor sufficient.

## Chapter 7

### 1860: Law or Anarchy—Order or Confusion?

**“The absence of legal authority was the major reason the settlers had lobbied for separate territorial status.”<sup>103</sup>**

The Comstock promise was delayed by the 1859-60 winter and anticipation on both sides of the Sierras for the beginning of the 1860 mining season was palpable. While hopeful miners were preparing to descend upon the area, the primitive judicial system was in chaos. It was unprepared to address the civil disputes that flowed from productive commercial activity and the criminality associated with those who pursue quick wealth. Some miners assumed dispute resolution for themselves.

For example, Henry Comstock was one of the earlier claimants, having located his claim adjacent to Finney’s first claim. Comstock sold his claim to a speculator but soon regretted the transaction. He contended the conveyance deed was invalid and induced a “jury” of miners to construe the deed in his favor. “This jury was composed of Comstock’s friends and companions, who had indistinct notions of proceedings in equity, but a clearly defined dislike of the newcomers from California who were fast taking the control of the district out of their hands. Consequently, after a short deliberation they decided to tear up the deed, which was done with all due gravity, in spite of the protest of the luckless assignee.”<sup>104</sup>

Articles from the *Territorial Enterprise* in early 1860 reveal the changing impetus for territorial status. Whereas a separate territory was first sought in 1857 to be free from “Mormon Law,” by 1860 the urgency for territorial status was grounded in both resistance to religious influences *and* the absence of a judicial system to accommodate the anticipated population increase and commercial disputes. The *Territorial Enterprise* editors wrote in January:

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<sup>103</sup> Bowers, *The Sagebrush State*, 16.

<sup>104</sup> Lord, *Comstock Mining and Miners*, 58.

The recent discovery of mineral wealth has already brought into the rugged hills and canyons hundreds of miners, in quest of the “golden fleece,” while thousands and tens of thousands of others are preparing for an exodus into this new region in the approaching Spring. . . . To add to our embarrassments, we have no Judicial officers within perhaps five hundred miles of the populous districts bordering on California. Crime has no tribunal before which it may be arraigned. No one possessing the powers, of even an examining magistrate, is to be found in the absence of the U.S. District Judges. Under these circumstances what may we not anticipate of evil from the sudden influx of the thousands, who shall come in the wild hunt for gold, incited with the passion of avarice. Disorder, confusion and violence must inevitably reign, with no possible alternative but to resort to such government as the people may see fit to institute for themselves, subject in the meantime, to the horrors of Lynch law, vigilance committees and that sort of extempore justice which every prudent man would seek to escape.<sup>105</sup>

Not only was the judiciary ineffective, there were no laws to accommodate the identification, enforcement, and transferability of mineral interests that travelled below the ground in unpredictable ways. California placer mining laws did not accommodate the complexities of mining underground quartz veins. Original claimants were seduced by easy money and sold their claims to mining speculators and consolidators, such that stock mining companies soon owned a majority of the mining interests along the original north-south line of the Comstock Lode. To add to the confusion, Virginia City was “infested with gentlemen of the bar, thirsting and hungering for chances at the Comstock.”<sup>106</sup>

Governor Cumming wrote to U.S. Secretary of State Lewis Cass in 1860 that the difficulties in Nevada were caused by “a settled determination on the part of its inhabitants to recognize no courts and obey no laws.”<sup>107</sup>

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<sup>105</sup> Nevada Territory, *Territorial Enterprise*, January 4, 1860.

<sup>106</sup> J. Ross Browne, “A Peep at Washoe,” *Harper’s New Monthly Magazine*, January 1861, 161.

<sup>107</sup> “Official Report of Governor Cumming to General Cass,” *Utah Territory: Message of the President of the United States Communication in compliance with a resolution of the House, copies of correspondence relative to the conditions of affairs in the Territory of Utah*, 36th Congress, 1st Session, House Exec. Doc. 78 (Serial 1056), (Washington, D.C.: Thomas H. Ford, 1860), 44.

The population did surge as expected, and the *Territorial Enterprise* noted the “lawless condition of the country.” It reported in April:

The spirit of disorder seems to be on the increase as our population is augmented by fresh arrivals. Men who in California had the reputation of being good law abiding citizens after a few months residence on the eastern slope, finding that there is no law here, give full scope to the very worse passions which can animate the human breast. The spirit of cupidity seems immediately to seize on all who come here. Men who under a less exciting state of affairs have conducted themselves half-way decent, now openly and unblushingly say that they have come here to make money and that they intend to do it at all hazards, *ergo* if they cannot obtain it honestly, they will obtain it by other means; they will be very good rascals for the sake of a few dollars. Men of this class are to be watched, and although such persons may attain temporary prosperity, yet nor surer is the unerring law by which the ‘sparks fly upward,’ than the fact that those who gain wealth by dishonorable means will sooner or later be the losers thereby. Men who have at times in their lives conducted business upon apparently honorable upright principles and failed, now show by their acts here that their misfortunes in other places was owing to their dishonorable practices. No person can permanently sustain a business unless they are governed by the general principles of right. Here is a new country, a wide and ample field for almost any kind of business is presenting itself, thousands whose pecuniary circumstances have been impaired by either their own imprudences [sic], or others, are proposing to make the eastern slope their future homes. Let such commence whatever business they expect to engage in, in a proper manner and conduct it fairly and they will have no cause to regret their adhesion to principle.<sup>108</sup>

Another *Territorial Enterprise* article in May reveals the area was on the verge of collapse: “During the excitement of the past two weeks, every imaginable kind of organization has been proposed by mutual protection. [Some] have favored a Provisional Government on a large scale—some District organization—others, the declaration of martial law. A meeting of many citizens united in requesting Judge Cradlebaugh to open his Court. Others again advocated Vigilance Committees, but nothing definite has yet

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<sup>108</sup> Over-Hasty, *Territorial Enterprise*, April 4, 1860.

been agreed upon. . . . It is to be hoped that Congress, ere it adjourns, will grant a remedy for all the ills of Nevada Territory.”<sup>109</sup> On August 4, 1860, the *Territorial Enterprise* led with the headline, “Shall We Have Law or Anarchy—Order or Confusion.”

Contemporaneous with the growing chaos, and most likely its primary cause, the Comstock did prove its value and reveal its larger promise in 1860. Not surprisingly, litigation began almost immediately. One scholar wrote: “The first result of the opening of the Comstock mines was wild speculation, and the second almost endless litigation.”<sup>110</sup> The litigation was grounded in the geological uncertainty of where the subsurface quartz veins began and ended. The predominant legal question litigated between 1860 and 1864 was whether the rich veins emanated from a single ledge or whether there were multiple narrow ledges, separated by walls of barren rock. Unlike the shallow placer gold mining in California, silver mining involved sub-surface horizontal moves and vertical depths of thousands of feet. Because the original locators were allowed to follow “all the dips, spurs, angles, and variation of the vein” wherever the vein may go, they claimed ownership to all outcroppings regardless of where they arose. Thus, the Comstock claims were not bounded by definite and measurable surface boundaries. By the summer of 1860, the resulting “mess of confusion” was “everybody’s spurs were running into everybody else’s angles.”<sup>111</sup>

The respective geological theories were referred to as the single-ledge and multi-ledge theories. They are described in the language of the time in an article published by *The Evening News, Gold Hill, N.T. (Gold Hill Evening News)* on November 2, 1863.<sup>112</sup> Of note was the absence of any conclusive science underlying either theory. The miners simply needed to mine downward and laterally to determine the vein’s origins.

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<sup>109</sup> *Territorial Enterprise*, May 19, 1860.

<sup>110</sup> Hubert Howe Bancroft, *History of the Pacific States of America* (San Francisco: The History Company Publishers, Co. 1890) 20: 121.

<sup>111</sup> Charles Howard Shinn, *The Story of the Mine: As Illustrated by the Great Comstock Lode of Nevada* (New York: D. Appleton and Company, 1896), 127.

<sup>112</sup> The One Ledge Theory, *Gold Hill Evening News*, November 2, 1863.

The first lawsuit adjudicating the competing theories began on September 3, 1860, before Judge Cradlebaugh. The town overflowed with lawyers, litigants, witnesses, jurors, and observers. One witness was shot at as he rode from Gold Canyon to attend court. The jury was unable to reach a verdict and the ledge theories remained unresolved.<sup>113</sup> Genoa was described as “a place full of inequities where [the residents] have small chance of a righteous jury or justice of any kind.”<sup>114</sup>

Recognizing the challenges of a unanimous verdict, the parties to the second lawsuit involving claims of trespass and possession agreed the verdict could be entered upon a majority vote of the jurors. While a verdict was reached, a juror subsequently signed an affidavit stating that he sold his vote for \$250 and a portion of the ground in dispute.<sup>115</sup> Again, the geological ledge and mining claim issues remained unresolved.

Yet when litigants needed judicial order the most, President Buchanan exacerbated judicial disorder by attempting to replace Judge Cradlebaugh with Judge Robert Flennicken.<sup>116</sup> Judge Flennicken arrived in the Nevada area toward the latter part of 1860, but when Judge Cradlebaugh opened court he refused to cede his judicial position. He asserted that President Buchanan had no authority to replace a sitting judge. For a short time the judges were both holding court (leading to a modern form of “judge shopping”) until the matter was resolved by the Utah Territorial Supreme Court. Even then, disputes about the authority of the two judges resulted in barricades, fortified mining claims, violence, and deceit.<sup>117</sup>

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<sup>113</sup> Zanjani, *Devils will Reign*, 163.

<sup>114</sup> Judge Cradlebaugh quoted in Zanjani, *Devils will Reign*, 163.

<sup>115</sup> Lord, *Comstock Mining and Miners*, 103.

<sup>116</sup> Original and secondary sources demonstrate that President Buchanan appointed R.P. Flennicken as a Utah Territorial judge on May 11, 1860. Cradlebaugh vs. Buchanan, *Territorial Enterprise*, February 2, 1861; Holding of Another Court, and the Flennicken-Crosby Order Revoked, *Sacramento Daily Union*, October 26, 1860; Rothman, *The Making of Modern Nevada*, 142. There is no reliable explanation for why Flennicken was appointed before Judge Cradlebaugh’s term ended. It could have been a simple error. It could also be explained by the Buchanan Administration’s position against Judge Cradlebaugh and General Johnston and in favor of Territorial Governor Cumming during the Mormon War. Ibid. at 139-141. Additionally, after he was appointed by President Buchanan, Judge Flennicken petitioned President Lincoln for permanent assignment to the Nevada area. He wrote, “[I]n Carson with my family I have done well. In any other place, unless I became a Mormon, I could have neither peace nor prosperity.” Ibid. at 142.

<sup>117</sup> For a more detailed discussion of the dispute between Judges Flennicken and Cradlebaugh, see Alverson, *The Limits of Power: Comstock Litigation*, 75.

The most reliable description of the judicial environment preceding territorial status and statehood was written by the NSC in 1865:

This being the first volume of Nevada State Reports, we have deemed it advisable to state a few facts in relation to the organization of the Territory, adoption of the State Government and the laws under which these reports are published. . . . In the years 1859 and 1860, the silver mines of this region began to attract attention, and population to pour into those portions of the present State which were known to possess valuable mines.

Besides those who crowded around the principal mines then discovered, a sparse population began to settle in those valleys and favored spots along the eastern base of the Sierra Nevada Mountains which were suitable for grazing and agricultural purposes. . . . [T]he inhabitants who came to work in the mines found themselves in a country, the only written laws of which were the United States Constitution, and such statutes enacted by the congress or the United States as might be applicable to their situation, and the statute laws of the Mormons. The latter were not calculated to inspire much respect in a free and enlightened community. There were no statute laws of the United States applicable to the wants and requirements of the people. It was difficult to determine what system of laws were in force among the mining population and what was then Carson County. By some it was contended that civil law was in force here, because when the Mormons settled the Territory of Utah it was within the Mexican Republic, where the civil law prevails. By others it was contended the common law was introduced into Utah because the Mormons generally came from countries where the common law prevails. And more especially did they contend that the common law must be held to have prevailed in Carson County because the entire population of miners coming from California, settling in a country then almost a desert, and without written law, must be held to have brought their own laws and customs with them.<sup>118</sup>

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<sup>118</sup> *Reports of cases determined in the Supreme Court of the State of Nevada*, 1:9

## Chapter 8

### Territory Established: March 31, 1861

“[N]o such thing as law or order exists in the Territory.”<sup>119</sup>

On February 12, 1861, Judge Cradlebaugh sent a letter resigning his position and urging “his excellency” President Abraham Lincoln to name a successor “as early after the inauguration as possible.”<sup>120</sup> Judge Cradlebaugh resigned “for the good of the public for a protracted contest here must end in destroying all respect for law.” Finally, Judge Cradlebaugh noted his next term of court was scheduled to begin on the third Monday of April and “it is highly important that my successor should be here by that time.”<sup>121</sup> As events unfolded, there was no need to replace Judge Cradlebaugh as a federal judicial officer in the Utah Territory.

On February 26, 1861, the Senate passed *An Act to Organize the Territory of Nevada*. The House of Representatives approved the Act on March 1, and President Buchanan signed it into law the next day.<sup>122</sup> According to Nevada scholar Michael Bowers, statehood was finally granted because Governor Cumming was unable to quell disorder and the increased population and lawlessness in the Nevada area required federal action. The national political environment also contributed to Nevada’s territorial

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<sup>119</sup> Eleanore Bushnell and Don W. Driggs, *The Nevada Constitution: Origin and Growth*, 6th ed. (Reno: University of Nevada Press 1980), 13.

<sup>120</sup> John Cradlebaugh to General Sherman, February 12, 1861, Vault Manuscript Collection, MSS 688, Harold B. Library, Brigham Young University, Provo.

<sup>121</sup> *Ibid.*

<sup>122</sup> The Act organizing the territory also created the Nevada Territorial Legislature, which is not examined in this dissertation. The bi-cameral legislature met in three separate sessions during territorial times, and its most significant work was to pass “An Act to Frame a Constitution and State Government for the State of Washoe,” which established the first Wednesday of September, 1863, as the time for territorial residents to vote to convene a constitutional convention for statehood. For a brief introduction of the Nevada Territorial Legislature, see Nevada Territory: Legislative Assembly of Nevada Territory,” Nevada State Library and Archives; <http://nsla.nv.gov/TerrLeg>. The 2006 Political History of Nevada (2006) also contains information about the territorial legislature. Finally, Letters from Nevada Territory 1861-1882, (published by the State of Nevada Legislative Counsel Bureau) contains a series of correspondence reports from Andrew Marsh, who attended the legislative sessions and was writing for the *Sacramento Daily Union* at the time.



success. Jefferson Davis had been inaugurated as President of the Confederacy just 12 days earlier and southern members of Congress had abandoned their offices to join the secessionist government. Creating the Nevada Territory was one of President Buchanan's final acts as President Lincoln was inaugurated just two days later.

The Act organizing the territory provided for a supreme court consisting of a chief justice and two associate justices, and three judicial districts in which "one of the justices of the supreme court" would preside. Though difficult to imagine today, the composition of the NTSC was common to the time. Each judge served as the trial judge in his assigned district, and together they composed the three-judge NTSC. Thus, the trial judge being challenged by appeal was one of the three appellate judges considering the allegations of error. The judges were initially paid an annual salary of \$1,800. The Act authorized the territorial governor to define the judicial districts and assign a judge to serve in each one.

President Lincoln commissioned James Nye as Territorial Governor and Orrin Clemens as Secretary. President Lincoln appointed George Turner as Chief Justice and Horatio Jones and Gordon Mott as Associate Justices on March 27, 1861.

Governor Nye arrived in the Nevada Territory on July 7, 1861. Upon his arrival he wrote to Secretary of State William Seward that "no such thing as law or order exists in the Territory."<sup>123</sup> President Lincoln said at his second annual address to Congress that Nevada was a region in which "the Federal officers" on their arrival there "found existing the leaven of treason."<sup>124</sup> On July 20, 1861, Governor Nye issued a proclamation defining the three judicial districts. He assigned Justice Gordon N. Mott (Judge Mott) to the First Judicial District (composing Carson City and Virginia City), which was the epicenter for litigation. Governor Nye assigned Chief Justice George E. Turner (Judge Turner) to the Second Judicial District and Justice Horatio M. Jones (Judge Jones) to the

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<sup>123</sup> Bushnell and Driggs, *The Nevada Constitution*, 13.

<sup>124</sup> Frederick Lauriston Bullard, "Abraham Lincoln and the Statehood of Nevada," *American Bar Association Journal* 26 (March and April, 1940).

Third Judicial District. The proclamation establishing the judiciary was the first important order of business because lawlessness demanded court action, and aside from the Mormon question, “the absence of legal authority was the major reason the settlers had lobbied for separate territorial status.”<sup>125</sup> Accordingly, Governor Nye established dates the First Judicial District would be in session and merely noted that dates for the Second and Third Districts would be determined in the future.

A brief introduction of the initial and subsequently appointed territorial judges is warranted. (Nevada scholar Russell McDonald compiled biographical summaries of each judge, which are included in Appendix E.)

Judge Turner was born in Ohio in 1828 and was 32 years of age when appointed to the NTSC. He was practicing law in Ohio at the time of his appointment. His political benefactors were both Ohioans: Salmon P. Chase and Benjamin F. Wade. Judge Turner arrived in Carson City the second week of September, 1861. He served for the duration of the NTSC’s existence and was its only chief justice. He resigned under the weighty cloud of suspicion on August 22, 1864. After practicing law in California and living in Europe, Judge Turner killed himself in the water closet of his San Francisco boarding house.

Judge Jones was born in Pennsylvania in 1826 and was 35 years of age when appointed to the NTSC. He graduated from Oberlin College and was a school teacher before attending Harvard Law School. Upon graduation, he practiced law in St. Louis, Missouri, until his appointment as Reporter of the Supreme Court of Missouri. He continued in this capacity until his appointment to the NTSC. Judge Jones was sworn into office on September 12, 1861, and signed his resignation letter to President Lincoln on July 20, 1863. The reasons for Jones’ resignation are unknown, but a letter he wrote to U.S. Attorney General Edward Bates reveals his dissatisfaction with the salary he was paid. He wrote that carpenters get paid three dollars more per day than he was paid, and

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<sup>125</sup> Bowers, *The Sagebrush State*, 15-16.

“[n]o person can live here with a wife on the salary allowed.”<sup>126</sup> The tone of Judge Jones’ dissents also revealed his frustration with judicial colleagues and lawyers.

Judge Jones largely avoided the corruption accusations made against his fellow judges, but he was known for not holding court as frequently as needed. *The Daily Union, Virginia, N.T. (The Daily Union)* reported that “Judge Jones resigned the position of Associate Justice, in which he became unpopular from inaction and wrong headedness, and although no one ever charged him with corruption, many accused him of legal incompetency.”<sup>127</sup> Judge Jones later practiced law in Austin, Nevada and was a vocal advocate for statehood. He was reported as saying in August 1864 that “he seldom knew of a case that was considered thoughtfully and carefully, and free from partisan influence.”<sup>128</sup> Judge Jones was a frustrated scholar: brilliantly moved by ideas but seemingly incapable of pragmatism and commercial success. He returned to Missouri, lived in California and Washington, D.C. and died penniless in Michigan.

Justice Powhatan Locke (Judge Locke) was appointed to fill the vacancy created by Judge Jones’ resignation. He was born in Kentucky and was 33 years of age at the time of his appointment to the NTSC. Judge Locke had been mayor in Savannah, Missouri and was practicing as a lawyer when he was appointed. He was involved in local and national politics while in Missouri. There is some uncertainty about whether Judge Locke was ever enrolled in the Missouri Bar Association, but the local newspaper described him as “a man of fine general information, a good lawyer and a courteous gentleman, and the people of Nevada have been fortunate in his appointment.”<sup>129</sup> He was appointed to the NTSC on August 31, 1863, and arrived in Nevada in early October. Judge Locke resigned from the Court on August 22, 1864. His reputation in Nevada was not as favorable as reported in Missouri; he was generally described as a drunk, stupid,

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<sup>126</sup> Horatio M. Jones to U.S. Attorney General Edward Bates in *Letters Received by the Attorney General 1809-1870: Western Law and Order* Edited by Fredrick S. Calhoun and Martin Schipper (Bethesda, MD: University Publications of America (1995), reel 8, Nevada, box 1, folder 3.

<sup>127</sup> A Strange Story, *Virginia Daily Union*, May 11, 1864.

<sup>128</sup> *Reese River Reville*, September 12, 1864.

<sup>129</sup> *Liberty Tribune*, August 11, 1863.

and unworthy of denunciation. Judge Locke relocated to Missouri and died of “consumption” in 1868 while visiting his father in Louisiana.

Judge Mott was born in Ohio in 1812 and was 48 years of age when President Lincoln appointed him to the NTSC. Judge Mott was admitted to the Ohio bar in 1836 and moved to California in 1849. In 1850 he lived in Marysville (Sutter County), California and was elected county judge. Judge Mott lost his bid for re-election in 1852. In February 1861, one month before the Nevada Territory was created, while practicing law in California, he applied through Attorney General Bates to be considered for the NTSC. Judge Mott arrived in Carson City on June 2nd and was sworn into office on July 12, 1861. In September 1862, Judge Mott was elected on the Union ticket to be a territorial delegate to Congress. The persistent rumor at the time, some believed to be proven, was that Judge Mott accepted \$25,000 from a mining official to resign from the NTSC. He was allegedly bribed to resign because he favored the single-ledge theory and was therefore hostile to the substantial interests advancing the multi-ledge theory. Judge Mott never appeared in Congress. He visited family in Ohio and then decided to go to California.

Justice John W. North (Judge North) was appointed to fill the vacancy created by Judge Mott’s resignation. He was born in New York. He worked as a teacher and lay preacher while attending Cazenovia Theological Seminary. He later graduated from Wesleyan University and was an ardent opponent of slavery. He studied law and began his career as a lawyer in Syracuse, in New York. He later practiced law in the Minnesota Territory and was a member of the Minnesota Territorial Legislature. While there he founded the town of Northfield and helped establish a University of Minnesota campus at St. Anthony. He also served as president of the Minnesota constitutional convention. After losing re-election to the Minnesota Territorial Legislature he became involved in railroad speculation and the Republican Party. He led the Minnesota delegation to the Republican national convention in Chicago, which nominated Abraham Lincoln for President. He lost everything, including his own home, when his railroad project failed.

President Lincoln appointed North to be Surveyor-General of Nevada when the Nevada Territory was established. He borrowed money to travel to Nevada and became involved in for-profit endeavors immediately upon his arrival. In addition to his surveying work, North practiced law and began building a mining sawmill with borrowed money. The “Minnesota Mill” was completed at about the same time he was appointed to the bench, and his ownership of the mill would bedevil him throughout his judicial service as he was accused of receiving preferential rock to process and being a creditor to litigants who appeared before him.

North’s Surveyor General position was consolidated with the Surveyor-General of California in June 1862. He sought to be appointed to replace Judge Mott, writing to U.S. Secretary of State William Seward: “Though my salary was cut off just as I got my family into the Territory I have not troubled the President or any of my friends with complaints. Being accustomed to rely on my own energies, I have done so here, and with success. My law practice is now worth much more than my salary as Surveyor-General. I stand in no need of an office. But the late election of one of our Judges as Delegate to Congress creates a vacancy which I am desired to fill.”<sup>130</sup>

Governor Nye, a unanimous Virginia City Bar Association, and others recommended North to replace Judge Mott, and he was appointed to the NTSC on August 20, 1863. He was 48 year of age at the time. Judge North resigned from the court under a cloud of suspicion on August 22, 1864. He filed suit against attorney William Stewart for defamation and was reportedly censured for some conduct, but ultimately vindicated of the serious corruption charges made against him. Judge North continued to be moved by social justice issues such as re-construction and civil rights for newly emancipated slaves. In 1865, he left Nevada for Tennessee and founded a colony promoting industry and education. The project was not successful and he later moved to California to found a communitarian colony dedicated to, among other things,

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<sup>130</sup> Merlin Stonehouse, *John Wesley North and the Reform Frontier* (Minneapolis: University of Minnesota Press 1965), 149.

temperance and suffrage. Judge North founded the town of Riverside in southern California. He died at the age of 75.

## Chapter 9

### Comstock Litigation

**“It was no wonder that lawyers flocked to Washoe, for the promise of a rich harvest was unmistakable.”<sup>131</sup>**

The “record of the extraordinary” Comstock litigation was first written in 1883 by Eliot Lord in his chapters *Inevitable Litigation* and *Interminable Litigation*, and succinctly summarized in Bruce Alverson’s article entitled *The Limits of Power: Comstock Litigation, 1859-1864*.<sup>132</sup> Some commentators have challenged the accuracy of Lord’s work because it was grounded in the *Reminiscences of William Stewart*, the principal mining attorney in Nevada between 1861 and 1865.<sup>133</sup> Charles Shinn provides a more neutral assessment of the judges in *The Story of the Mine*.<sup>134</sup> Despite some revisionist history and alignments with personality, the original papers from the time and subsequent historians agree that litigation became corrupted and the impotent judiciary was the cause of the 1864 mining recession. At least one lawyer was murdered by his client when he withdrew his representation instead of paying \$3,000 to a favorable witness.<sup>135</sup>

Litigation expenses cost approximately \$10 million and consumed 20% of all mining revenues between 1860 and 1865. This “orgy of litigation” resulted from several influences: 1) a primitive legal system without laws to accommodate the unique nature of quartz vein mining, 2) the geological uncertainty of the mineral wealth, 3) the presence of itinerant miners and attendant service providers, all seeking great and quick wealth, and 4) the importation of lawyers prepared to “mine” the miners through litigation.

The seminal legal controversy was grounded in the unknown geologic structure of the Comstock Lode, which ran on a north-south line to the east of Mt. Davidson. The

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<sup>131</sup> Lord, *Comstock Mining and Miners*, 103.

<sup>132</sup> Alverson, “The Limits of Power: Comstock Litigation,” 75.

<sup>133</sup> Lord, *Comstock Mining and Miners*, 103.

<sup>134</sup> Charles Howard Shinn, *The Story of the Mine*.

<sup>135</sup> See *People v. Johnson*, Case No. 71, discussed more fully in Chapter 15.

original Comstock claims were soon purchased by large consolidated mining companies who contended there was a single ledge from which all dips, spurs, angles, and outcroppings emanated. In contrast, the “wild-catters and speculators” who located claims to the east and west of the Comstock Lode asserted there was not a single ledge but a series of distinct ledges that were separated by barren rock and porphyry.

The single-ledge theory was illustrated at the time by reference to the palm of a human hand. The palm was the ledge with its fingers pointed upwards to the surface. Each finger may go in different directions, breach the surface in different locations, and be of different girth and length, but they were still fingers of the same hand. Given the perambulatory nature of the veins, and the apex law the miners adopted in their hastily-created mining districts, miners could follow the surface fingers downward and laterally into whatever adjacent claim they may penetrate.<sup>136</sup> The only way to prove or disprove the competing theories was to continue mining to a common ledge or distinct ledges. In a short time, everybody’s dips, spurs, and angles were running together and becoming convoluted.

By the time Judge Mott opened court in February 1862, “the multitude of suits which had been accumulating during the past twelve months were eagerly pressed for trial.”<sup>137</sup> Virtually every claim of any value was in litigation and the competing ledge theories were “passionately combated; rights of rival locators were hotly asserted, and the confusion was worse confounded by the vagueness of the notices of location and the lack of trustworthy records.”<sup>138</sup>

Judge Mott was not equipped to manage this litigation, but in fairness, no single judge could have been successful. He was confronted with a volume and value of litigation without the benefit of commensurate staff, infrastructure, or established law. Great fortunes were at issue, and Judge Mott was overwhelmed by the legal teams

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<sup>136</sup> “The salutation was that ownership of the surface part of the vein, or apex, gave the miner the right to follow that vein, together with all its dips. Spurs, angles, and variations, as deep and as far as it led him, even if it took him beneath another miner’s claim.” Watkins, *Gold and Silver in the West*.

<sup>137</sup> Lord, *Comstock Mining and Miners*, 132.

<sup>138</sup> *Ibid.*



advancing their respective clients' ledge theories. William Stewart was the leading lawyer for the large consolidated mining interests funded by San Francisco financiers. He reportedly earned \$500,000 between 1861 and 1864, and earned as much as \$200,000 in his most lucrative year. In contrast, the territorial judges were initially paid the sum of \$1,800 per year, which was later increased to \$4,200.

The *San Francisco Evening Bulletin* reported in July of 1862 that:

We shall never outgrow this perpetual litigation in mining matters until the courts here shall rule that all indefinite, floating claims and locations are worthless in a contest with claims and locations which are well defined and made in accordance with the letter and spirit of our mining laws. . . . Hundreds of the recorded claims are so ambiguous and indefinite that they will not bear examination in this light for a moment. Thus, there arises "a perpetual uncertainty in titles until it has become a by-word that, if you find anything worth having, some one [sic] will ring in with a suit to dispossess or levy black-mail."<sup>139</sup>

The *Territorial Enterprise* confirmed the prediction of the *San Francisco Evening Bulletin* correspondent on May 15, 1863:

During the present and coming terms of the district court in this city twenty-five or thirty cases of the greatest importance, involving property valued to-day at probably not less than \$50,000,000, will be reached. In three out of five the juries will fail to agree, and the remaining two will be re-heard or appealed to the supreme court of the Territory and from that tribunal to the Supreme Court of the United States, there to remain subject to the assessments of a coming generation. In the meantime the mines in dispute will be worked imperfectly and without system, and every branch of industry in the Territory must feel the effects of this interminable litigation.<sup>140</sup>

One mining engineer said in 1862: "I never knew of such quarrelsome, law-loving people as the Nevadans. There seems to be a half-a-dozen claimants to each piece of property in the Territory, and each must go to law about it."<sup>141</sup> Indeed, *Gold Hill Evening*

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<sup>139</sup> Ibid.

<sup>140</sup> Ibid., 133-134.

<sup>141</sup> Watkins, *Gold and Silver in the West*, 248.

*News* offered sage insight on November 2, 1863: “For the benefit of the Union and all those who contemplate investing in feet, we will give them a short piece of advice. Never buy at any price a foot of mining stock in a claim that is not involved in a lawsuit. If a claim is not so involved it is a certain sign that it is not worth having. The first question asked by the sagacious buyer is ‘Is the claim in litigation?’ If answered in the negatively the wise man scorns that stock and avoideth the same, even as pitch which defileth the fingers of him who toucheth the unclean thing.”<sup>142</sup> In December, 1864, after the transition from territory to state, the *Gold Hill Evening News* reported that in the First Judicial District there were 2,388 civil lawsuits and 62 criminal indictments filed during the territorial years. Twelve mining companies accounted for 247 different lawsuits.<sup>143</sup>

Judge Mott’s reputation as a jurist was conflicted. After noting his absence to the “Atlantic States,” one newspaper wrote: “The good Lord deliver us if we are to wait for justice until the return of Judge Mott; for no one knows whether he intends to return, and a great many entertain very serious doubts as to whether he will be very instrumental in administering *justice* if he does return.”<sup>144</sup>

Judge Mott was perceived as friendly to the single-ledge theory. Given the values at issue, the mining interests advancing the multi-ledge theory were understandably reluctant to allow a single underpaid and overwhelmed judge determine their fortunes. Judge Mott was reportedly induced to resign with the payment of \$25,000 from a large multi-ledge mining company. No known documents confirm the payment to Judge Mott, but the press provided specific details of the alleged bribe. Unlike Judge North, who defended himself against public allegations of corruption, Judge Mott did not seek to clear his name in the court of public opinion.

Judge Jones wrote a letter to Attorney General Bates that reveals some of the “intrigue” surrounding Judge Mott’s resignation and the selection of his successor:

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<sup>142</sup> A Sure Indication, *Gold Hill Evening News*, November 2, 1863.

<sup>143</sup> Criminal, *Gold Hill Evening News*, December 31 1864; Litigation, *Gold Hill Evening News*, December 31, 1864.

<sup>144</sup> Territorial Supreme Court, *Humboldt Register*, May 2, 1863 (emphasis in original).

[In a previous letter] I spoke somewhat urgently on the matter of the appointment of a successor to Judge Mott . . . . If no appointment of a successor shall have been made when you receive this, I hope you will consider the suggestions that I shall make on the matter. A great deal of anxiety exists among the members of the legal profession and the public at large on the subject. Suspicion also exists that moves have been made to secure the appointment of a successor entirely unacceptable to the people here. The doubt which exists is based upon a great many small facts which have only lately come to the knowledge of those more immediately interested. Nothing whatever has been done here touching the securing of the appointment of anyone in Judge Mott's place that represents the wishes of any one but schemers and plotters – men whose aims are the protection of partial interests, and who are in no identified [sic] with the general public. Nobody has been recommended by persons in this territory who is not expected to act in the interest of those recommending them. I mean precisely what I say. Intrigues are going on, of which the public know nothing, of which suspicion only exists, with a view to secure the appointment of a successor Judge Mott, who will protect the interests of those securing his appointment and this result is to be attained through the intervention of California representatives in Congress. The name of Mr. Hillyer of California has been used in this connection. I am not acquainted with Mr. Hillyer, and while I hear persons speak favorably of him, I also hear many persons denounce the efforts to secure his appointment as rascally and designed to further dishonorable aims in connection with matters judicial. While I know nothing whatever to Mr. Hillyer's discredit in any way, I know that I go no farther than the truth when I say that his possible appointment is looked upon with the greatest distrust by many honorable and intelligent men, members of the legal profession and others. The name of J.W North, late surveyor general of the territory, is also used in this connection, whether with sincerity or merely as a blind I know not. I am sure of this, however, that no expression of desire has gone from any persons who represent the public here in favor of Gen. North. Judge Mott is supposed to have entered into an engagement about the time of the election in September to further North's succession. I suppose Judge Mott seeks his appointment sincerely; he tells me so.

General North is a highly esteemed and honorable man. Whether he is the man to discharge the duties of one of the most responsible judicial positions in the United States is a matter to be determined at Washington, where he is doubtless known to several members of the cabinet.

I would reiterate the expression I made in the letter I wrote to you through Col. Anderson, that it would be best to appoint someone from the Atlantic states, who would be entirely uncompromised of any business or professional relationships with this territory. I have no other interest than that the judiciary here should not be brought into contempt and under reproach.<sup>145</sup>

Despite Judge Jones' suggestion that a neutral outsider should succeed Judge Mott, John North was appointed to fill the vacancy created by the resignation. Judge North took his seat on the bench on September 14, 1863. Judge Jones' concern appears prophetic. In contrast to Judge Mott's views of the single-ledge theory, Judge North was perceived as favorable to the multi-ledge theory.

The secondary sources and commentators generally agree the First Judicial District was animated by tampered juries, fixed judges, manufactured evidence, false witnesses available for hire, and questionable lawsuits to cloud titles. Lawyer and historian Bruce Alverson summarizes the systemic failures as follows:

Ethics among witnesses, jurors, attorneys, and judges sank to an all-time low during early years of Comstock litigation. Wholesale manufacturing of witnesses was commonplace. Parties bought and sold testimony with scarcely a pretense of secrecy. In a litigious setting shaped by those who believed that "more is better," the quantity of witnesses often prevailed over quality. Parties relied upon hoards [sic] of hired liars rather than on a few honest and competent witnesses. A hundred allegations by ignorant, prejudiced, and corrupt men often outweighed the careful reports of trained observers. Because each claimant believed his opponent was unscrupulous, the plea of self-protection justified every unethical act.

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<sup>145</sup> Horatio M. Jones to U.S. Attorney General Edward Bates, July 30, 1863, in Russell W. McDonald, *Biographical Summaries: Nevada's Territorial, District, Supreme Court, and Federal Judges: 1856-1993* (unpublished manuscript), Reno: Nevada Historical Society.

While bribery of witnesses was commonplace, bribery of jurors was a constant concern. Obtaining an unbiased jury was difficult because virtually every man in town had already committed himself to an opinion on the ledge theory. Speculation in mining stock was rampant, and prices rose and fell on rumors alone, especially those concerning litigation. Often, the ownership of a multimillion-dollar claim depended solely upon the “impartiality” of a juror’s decision. Jury duty was prized. Not only could a juror benefit from a direct bribe, but also from a future change in price as the stock market reacted to a jury verdict—arranged beforehand.

. . . .

Frequently, the absence of adequate legal references compromised the ability of well-intentioned judges. In one court opinion the judge wrote that he was compelled, with regret, to establish a rule of law without the aid of even a single textbook and with the assistance of only a few adjudicated cases to use as legal precedent. Not only was Nevada utilizing a derivative legal system imported from California, but the lack of sufficient law books and materials in Carson City hampered the thoughtful judicial analysis of legal principles as applied to Nevada issues.

The quality and conduct of the judges, however, proved to be the greatest failing of the Comstock judicial system. . . . Underpaid judges oversaw litigation of staggering financial proportions. In 1863, the district court reportedly handled litigation valued at \$50 million. Although the best lawyers in Virginia City could not, for financial reasons, accept judicial positions, the intellectual demands presiding over complicated trials involving millions of dollars really required legal minds of the highest caliber. This dilemma diminished the quality of Comstock justice. Consequently, the simple acceptance of a judgeship by a Comstock lawyer caused suspicion as to his motives, and perceived unorthodox behavior on the bench frequently transformed suspicion into outright charges of corruption. An atmosphere of distrust permeated all aspects of the legal process.<sup>146</sup>

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<sup>146</sup> Alverson, “The Limits of Power: Comstock Litigation,” 85.

In the final analysis, the rule of law was subsumed by the financial fortunes at issue. The judicial order that pre-territorial residents sought was not to be found with the territorial judiciary.

## Chapter 10

### First Constitutional Convention and Electoral Defeat: 1863-64

**“Much of Stewart’s vigorous support for the 1863 constitution, including as it did the mining-tax provision he opposed, was a result of his desire to be rid of the territorial judges, including North, whom he hated as much as, if not more than, the mining tax, and his belief that his chosen candidates for ‘the First State Legislature would amend the new Constitution to provide taxation only of the net proceeds of productive mines.’”<sup>147</sup>**

The Act creating the Nevada Territory contemplated that territorial citizens could seek statehood. James W. Nye was appointed Governor of the territory, in part, to advance the cause of statehood. In 1862, the territorial legislature passed the *Act to Frame a Constitution and State Government of the State of Washoe*. In September 1863, Nevada territorial voters *authorized* a constitutional convention by a by a four-to-one margin.<sup>148</sup> Yet four months later, these same voters *rejected* statehood by a four-to-one margin.<sup>149</sup>

Historians have explained the electoral defeat by reference to an unpopular mining tax provision and dissatisfaction with the single-slate of Union Party nominees (including judges) who would be elected concurrent with the vote for statehood. On March 25, 1864, Governor Nye explained statehood failure to U.S. Secretary of State Seward:

During the last few months we have had considerable political excitement in our territory. The Legislature of 1862 passed a law authorizing a convention for the purpose of framing a state constitution with a view of asking admission as a state at the present session of Congress. The Convention convened, framed a most excellent Constitution (a copy of which has been forwarded) & submitted it to the people for ratification which they failed to adopt. The reasons why it was not ratified are very

<sup>147</sup> Bowers, *The Sagebrush State*, 18.

<sup>148</sup> The vote on September 2 reflects 6,660 in favor of statehood with just 1,502 opposed. Bushnell, *The Nevada Constitution*, 29.

<sup>149</sup> The vote on January 19, 1864 reflects 8,851 opposed to statehood with just 2,157 in favor. *Ibid.*, 31.

obvious to those who were here and cognizant of the circumstances. The Constitution contained quite stringent provisions in regard to the right of suffrage. This arrayed all the disloyal or secession element against it. It likewise contained a provision for taxing of mines, which was unpalatable to the miners (or some of them). Neither or both of the above causes would have defeated it, but it was submitted at the same time that the election for state officers was held, & the dissatisfaction with some of the state ticket, & the proceedings of some of the county conventions, caused its opponents to act in concert, & all combined, they were strong enough to defeat it.

These explanations are initially attractive but they require deeper analysis. For example, they do not explain why William M. Stewart campaigned for statehood despite the constitutional mining tax provision he opposed, or the extent to which the statehood vote was a referendum on Judge North and a repudiation of Stewart's attempt to re-shape the judiciary. It appears the territorial judiciary was the divisive issue underlying the first statehood vote.<sup>150</sup> Historian David Johnson provides the most detailed and compelling analysis of the events between the convention and failed statehood vote.<sup>151</sup>

A record of the 1863 constitutional convention exists in limited form. The *Reports of the 1863 Constitutional Convention of the Territory of Nevada*, published in 1972, was assembled from the notes taken by Andrew Marsh, Samuel Clemens (Mark Twain), and Amos Bowman for *The Daily Union*.<sup>152</sup> The delegates met for 32 days, beginning on November 3, 1863. One of the delegates' first acts was to elect Judge North as convention president. Judge North had been known in the territory for two years before his appointment to the bench just a few months earlier, and his election as convention president reveals the confidence he still enjoyed as the newest territorial judge.

The delegates patterned their constitution after the California constitution, which is not surprising as 34 of the 39 delegates came from California. The delegates were well

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<sup>150</sup> Johnson, *Founding the Far West*, 71–97.

<sup>151</sup> *Ibid.*, 71–97, 189–230.

<sup>152</sup> William C. Miller and Eleanore Bushnell, eds., *Reports of the 1863 Constitutional Convention of the Territory of Nevada* (Carson City: Legislative Counsel Bureau, 1972).



aware of the litigation challenges of the time. They spent some time debating the judiciary, to include the percentage number of jurors necessary to reach a civil verdict, the size of the judiciary, how to increase the number of supreme court justices in the future, the lengths of judicial terms, the manner of selecting judges, and whether district judges should also sit on the supreme court. One delegate argued that judges should enjoy longer terms so they would be “removed from any of the baneful influences surrounding elections—enabling them to discharge their duties faithfully, without reversing decision, and changing doctrines to catch popular favor.”<sup>153</sup> He continued that when judges “yield to popular prejudice—then it is the mob, and not the law, which decides upon our causes.”

Delegate Stark agreed:

Sir, and gentlemen, let us lift the candidate for this high office out of the slough of politics, as far as possible; out of the mire of corrupting influences; in which he should never be allowed to crawl. . . . But, sir, just imagine, if you can, this arbiter of life and death—this high dispenser of justice, on the eve of an election, hob-nobbing [sic] with the criminal upon whose fate his decision has or may shortly be given. See him buttonholed by clients, with their promise of aid from scores of electors—clients who line his ermine robe with stock or greenback; as well as his belly with good fat capon; steep his brain in the fumes of wine that he may close his eyes upon the cause of truth! Where is his dignity? Where is the respect he should command?<sup>154</sup>

Despite the spirited judiciary debate, the central issue of the convention was how mines would be taxed. A majority of the delegates proposed that the legislature would “provide by law for a uniform and equal rate of assessment and taxation and [to] prescribe such regulation as shall secure a just valuation for taxation of all property, both real and person, including mines and mining property.”<sup>155</sup> This tax scheme would

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<sup>153</sup> *Ibid.*, 157.

<sup>154</sup> *Ibid.*, 157–158.

<sup>155</sup> *Ibid.*, 225.

include taxation upon all mining shafts, drifts, and bedrock tunnels regardless of their productivity.

In opposition, Stewart sought to exempt unproductive mines from taxation. He proposed that mines be taxed on net proceeds because an unproductive mine was nothing more than a “hole in the ground.”<sup>156</sup> Although Stewart represented the largest mining interests financed out of San Francisco, he fashioned his argument in favor of the individual prospector who worked every day with the hope of success and ever-present risk of failure.<sup>157</sup>

The delegates debated the tax provision for three days. Judge North joined the debate and argued that a tax on net proceeds would allow the largest companies to escape taxation altogether through creative “sleight of hand” accounting practices. Judge North noted that mining companies had already accomplished the impossible by distributing stockholder dividends in excess of gross proceeds. According to Judge North, a net tax was ripe for manipulation and “in framing our organic law, we should seek to make it so fair and so just, and clear, that if a man is disposed to do wrong he cannot do it without great difficulty.”<sup>158</sup> Although Stewart lost the argument, the convention ended with “kindly feelings” and all delegates announced their support for statehood, which was scheduled for a vote more than a month later on January 19, 1864.

The election defeat can only be understood by reference to Stewart’s vehement opposition to Judge North and other territorial judges he could not control. Stewart had supported Judge North’s appointment to the bench and election as convention president.

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<sup>156</sup> Ibid., 226.

<sup>157</sup> Before 1862, mining stocks and real estate were privately traded. The San Francisco Stock Exchange Board was created in 1862, which led to frenzied trading and speculation. As many as 3,000 mining companies were incorporated and 30,000 persons bought stock in them. Bullard, “Abraham Lincoln and the Statehood of Nevada,” *American Bar Association Journal* 26 (March and April, 1940). “Thousands of mining companies were formed in 1863 alone, sometimes offering hundreds of thousands of dollars worth of new mining stock for sale in a single month. Thousands of San Franciscans from the rich to the poor engaged in the speculation, mainly in silver mines, many of them completely worthless.” The market crashed in May, 1864 and “[i]n only ten days, there was a decline of \$60 million in stock values, and hundreds of people who had considered themselves rich were suddenly bankrupt.” Laurence H. Shoup, *Rulers and Rebels: A People’s History of Early California, 1769-1901* (New York: IUniverse Inc., 2010), 169 – 172.

<sup>158</sup> Ibid., Johnson, *Founding the Far West*, 81.

But while the convention was underway, Judge North rendered a decision in favor of the multi-ledge theory. After personally observing the mines, Judge North concluded:

It is difficult to see how these two bodies of quartz, separated at one point by 50 or 55 feet of porphyry, as appears both from the weight of evidence and from my personal examination, and at another point by 90 feet of the same material, can be one and the same ledge. In view of the facts, at least, I cannot hold that they are proven to be one, and without this fact being proven the plaintiff falls far short of proving title to the ground on which defendant's works are situated. At the depth where the controversy arises the evidence on both sides shows that there are several and distinct ledges. *If at a greater depth there shall be found conclusive evidence that all these are blended in one, when that depth is reached and that evidence is adduced, then will be the proper time to determine what ledges run out and what continue.*<sup>159</sup>

Despite the caveat of a future, different outcome, Judge North's decision sorely aggrieved Stewart and the powerful interests he represented. It was perceived by the individual miners as a repudiation of the consolidated mining interests. The *Gold Hill Evening News* reported: "The one-ledge theory meets with almost universal condemnation. Its adherents have no basis for their idea save the mere opinion of self-styled 'experts,' and [it] cannot by any possibility be established by any actual demonstration. One thing is morally certain, and that is that its endorsement by the courts would have the most disastrous effects upon the interest and prosperity of the Territory."<sup>160</sup>

While statehood initially seemed inevitable, public sentiment quickly changed because of perceptions that Stewart was advocating for statehood to enrich himself and his wealthy clients against the interests of the individual miners. Stewart was distrusted because of fears that 1) statehood would strengthen his mining clients through control of the legislature, which in turned controlled taxation, and 2) statehood would remove Judge North and result in judges favorable to the single-ledge theory.

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<sup>159</sup> Judge North quoted in Lord, *Comstock Mining and Miners*, 144 (emphasis added).

<sup>160</sup> The Ophir and Moscow Case, *The Gold Hill Evening News*, November 4, 1863.

Turning first to the mining tax provision, even though Stewart lost the constitutional convention battle, he believed he could win the war by controlling who was elected to office after Nevada became a state. He was convinced the legislature had “the power to decide that a mere hole in the ground was not property” and was willing to accept the initial tax provision in exchange for a government he could control.<sup>161</sup>

On December 28, 1863 Stewart packed the Storey County Union Party convention with supporters and was elected chair of the committee on nominations. He successfully passed two resolutions: 1) the power to control the taxing of mines was conferred upon the legislature and the legislature should “only subject to the burdens of Government such claims as yield net profits to their owners,” and 2) the Storey County delegates were “to oppose by all honorable means the nomination . . . of John W. North to [gubernatorial] office by said State Convention.”<sup>162</sup> Stewart succeeded in gaining control of who would be nominated for state office. These nominees would appear as a single slate and be voted upon at the same time as the vote on the proposed constitution. Thus, upon statehood, several state officials would owe their positions to Stewart, who was known to be a proxy for the larger mining interests.

Opposition began to mount because the Union Party had come under “a base and unparalleled submission of imposter leaders . . . whose effrontery and heartlessness impel them to infer that *their* rights are the first rights to be known and guaranteed in all this part of Nevada.”<sup>163</sup> North was seen by many as “too honest to be bribed; too intelligent to be hoodwinked, and too firm to be driven.”<sup>164</sup> *The Daily Union* reported:

William M. Stewart played a leading part in our [Storey] County Convention, and was successful in the State Convention to a very great degree. He succeeded in defeating Judge North for Governor. . . . It was stated weeks ago, that Mr. Stewart’s sole aim was to defeat Judge North and secure a District and County Judge for Storey

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<sup>161</sup> Russell R. Elliott, *Servant of Power: A Political Biography of Senator William M. Stewart* (Reno: University of Nevada Press, 1983), 26.

<sup>162</sup> Johnson, *Founding the Far West*, 86.

<sup>163</sup> *Ibid.*, 85.

<sup>164</sup> *Ibid.*, 86.

County, and a Supreme Bench for the new State of Nevada of his own choice. . . . It is a notorious fact that Mr. Stewart had the reputation of dictating the decisions of the District Court, to a very great extent, previous to the time at which Judge North took his seat. . . . Why does he want North removed? Because he cannot be used as a tool.<sup>165</sup>

*The Daily Union* also reported:

Stewart and Company want a state government because they have come to the conclusion that our present judiciary care more for the people and for justice than they do for the influence of improper combinations; and there are several legal gentlemen who like to have an opportunity to try the “one-ledge” theory before new and different judges. All the representatives of these private interests would like a State Government, and if they can obtain one, and thereby achieve their personal ends and advancement, it matters but little to them how immeasurable the disaster which would be inflicted on this Territory.<sup>166</sup>

At the same time Stewart was using his influence to shape the new state through its elected leaders, he turned on Judge North by challenging his integrity and fitness to serve as a judge. Stewart accused Judge North of 1) being favorable to black suffrage, 2) being placed upon the bench by the multi-ledge mining companies, 3) accepting loans from litigants to build a sawmill and quartz-crushing mill, and 4) accepting bribes to render certain opinions. The bribery allegation deserves special mention.

Alex W. Baldwin, who was Stewart’s law partner, recounted a detailed series of events in which another man named James Hardy had told him that during a trial Judge North accepted a bribe of 100 feet of stock from one of the litigants. Hardy was so convinced the story was true he invested \$20,000 in the bribing company’s stock. To his credit, Baldwin acknowledged Hardy was a notorious drunk and insisted that Hardy renew the allegations when he was sober.<sup>167</sup> Word began to spread that Hardy was acting at Stewart’s behest. When Judge North heard the allegations he demanded that Stewart

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<sup>165</sup> Stonehouse, *John Wesley North and the Reform Frontier*, 164.

<sup>166</sup> Virginia Daily Union, January 1, 1864; see also David Johnson, “A Case of Mistaken Identity: William M. Stewart and the Rejection of Nevada’s First Constitution,” *Nevada Historical Society Quarterly*, 30, no. 2: 118-130.

<sup>167</sup> Sauce for the Goose, *Gold Hill Daily News*, July 23, 1864.

and Baldwin accompany him as he confronted Hardy. Hardy was confined by sickness in his home at the time. Stewart and Baldwin did accompany Judge North to visit Hardy, who softened the details but maintained his accusations. Judge North also made his personal and banking records available to Stewart for inspection.

Judge North announced that he intended to sue Stewart, who responded on December 22, 1863, by inserting a card in the newspapers acknowledging the Hardy story was not true.

Dear Sir:—Proceeding upon facts and statements, which appeared to warrant me in doing so, I have recently made public charges reflecting upon your character as a judge, and as an honest man. With your assistance I have investigated these charges, and I pronounce them unsustainable [sic], and take great pleasure in so stating. In my judgment, there can be no just occasion for the indulgence of any suspicion of your judicial integrity or private character.

Yours, very truly,  
WM. M. STEWART.<sup>168</sup>

Stewart's public retraction did not end the dispute between Stewart and Judge North, and it appears that Judge North remained critical of Stewart. The statehood vote was scheduled to occur on January 19, 1864. On January 15th, Stewart published a challenge to Judge North in the *Gold Hill Evening News*:

VIRGINIA CITY, January 15, 1864  
HON. J. W. NORTH—Sir: Herewith in-closed find notice of a public meeting which will be held at Maguire's Opera House, in this city, to-morrow (Saturday) night, at which time I shall take occasion to defend myself against charges made against me by yourself. If it suits your convenience, I shall be happy to meet you on that occasion.  
Your obedient servant,  
WM. M. STEWART

It is not known if Stewart expected Judge North to respond or be present, but he must have been surprised by Judge North's immediate response the same day:

WASHOE CITY, January 15, 1864.

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<sup>168</sup> Judge North and His Assailants, *Virginia Daily Union*, July 27, 1864.

WM. M. STEWART, Esq.—Sir: Yours of this morning is just received, inviting me to meet you at Maguire’s Opera House to-morrow evening. In compliance with your invitation, I will be present on that occasion.

Yours, very truly,  
J. W. NORTH

The debate occurred before a full house and Stewart renewed the allegations about black suffrage, taxation of mines, loans, and receiving preferred rock to crush. He then called upon Baldwin, who repeated Hardy’s bribery story. Although newspaper and personal accounts differ, it is generally accepted that Judge North vindicated himself well. *The Daily Union* reported:

Judge North, in response to loud calls from the audience came forward, and in about fifteen minutes convinced every one in the House with perhaps the exception of Stewart and Baldwin, that a man can have made a speech in Minnesota in favor of all male inhabitants being allowed to vote, occupy the position of Judge in the First Judicial District of Nevada Territory, own a quartz mill, owe \$15,000, and still be honest and do justice to the people. He did not reply to Baldwin’s remarks in regard to what Hardy had told Stewart and Baldwin. He left that for Hardy to do.<sup>169</sup>

Hardy did later retract his allegations, saying: “he believed himself the biggest coward as he was, he had too much courage not to atone for any wrong he may have done, by publicly begging the pardons of the person he had injured.”<sup>170</sup> Ironically, Baldwin also recanted, but not until several months later on May 17th:

It affords me pleasure to put in writing, my deliberate opinion of the public and private character of John W. North, 1<sup>st</sup> District Judge – after having practiced my profession before him for nearly a year. *I regard Judge North as an upright man, and an untainted judge.* Whatever statements I have made to the contrary of this my present conviction, I deeply regret, and would never have made, but being blinded by passion and excitement.<sup>171</sup>  
(Emphasis in original.)

<sup>169</sup> Stonehouse, *John Wesley North and the Reform Frontier*, 164, 168.

<sup>170</sup> Judge North and His Assailants, *Virginia Daily Union*, July 27, 1864.

<sup>171</sup> *Ibid.*, (emphasis in original).

In February, North described the events of the Maguire's Opera House debate in a letter to his brother-in-law:

William M. Stewart (a son-in-law of Hangman Foote [who was a member of the confederate congress]) is the most prominent lawyer in the Territory, and is retained as counsel for all the wealthiest mining companies . . . . I issued an injunction against the far-famed Ophir Company for which Stewart was counsel; and about the same time decided another important case against him. But a few days passed before I learned that he was openly charging me with the grossest corruption and with having been bribed to decide against the Ophir Company. I went to Virginia City and made him publish a card pronouncing that all those slanders were without foundation . . . I returned home supposing all was right. But he had deliberately determined to destroy me and by free use of money got control of the County Convention, and got a resolution adopted instructing the delegates to the State convention not to favor my nomination for any State office. That county had sixteen delegates out of the fifty-one in the State Convention. There again he set his slanders in circulation . . . [saying] he wanted to be called out in the Convention to show up my corrupt character. I arranged to have him called out, but he dared not speak them in my presence. . . . After the Convention he went to San Francisco and there reiterated the same stale slanders, and I soon heard what he was doing. By this time the people of Virginia City and Storey County had become thoroughly roused with indignation at his conduct, and called on me to expose Stewart. This I did boldly, and successfully. When my antagonist returned home and found the whole tide of popular feeling against him, he became desperate and called a public meeting at the largest theater in the city and sent a note of invitation to me to be present while he "vindicated" himself . . . The audience was *immense*, and I had at least seven-tenths of them to start with and nine-tenths at the close. I have experienced so complete a triumph as I had that night in the meeting he had called. The meeting wound up with three cheers for me and the groans for him."<sup>172</sup>

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<sup>172</sup> Stonehouse, *John Wesley North and the Reform Frontier*, 168–69; David A. Johnson, "The Courts and the Comstock Lode: The Travail of John Wesley North," *Pacific Historian*, 27 (1983): 31–46.



The *Reese River Reveille* reported two days after debate: “The defeat of the constitution is a foregone conclusion.” Indeed, it was. Newspapers that had previously supported statehood now changed their positions. A newspaper in Aurora reported: “The constitution would have been adopted had it not been for riding Stewart and his Clique into power.”<sup>173</sup> *The Daily Union* similarly reported:

The UNION was in favor of a State Government when it supposed that the people would be protected; it opposes a State Government now that it discovers that under a State Government the people would be hopelessly subject to a very mean kind of “one man power.” We prefer that the people should elect their own officers rather than those officers should be appointed at Washington. But as it stands, they are appointed by one man, and as the people have no choice anyhow, we prefer Uncle Abe to Bill Stewart as an appointment power.<sup>174</sup>

Stewart’s political calculation backfired. Many perceived his attacks to be spurious and self-serving because he had supported Judge North until the decision in favor of the multi-ledge theory. The vote was a crushing defeat for statehood and a validation of Judge North and the smaller mining interests dependent on the multi-ledge theory. The final tally was 8,851 votes against and a mere 2,157 for statehood. Nonetheless, the statehood question would soon return to a much different answer.

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<sup>173</sup> Johnson, “A Case of Mistaken Identity,” 126.

<sup>174</sup> *Virginia Daily Union*, January 1, 1864.

## Chapter 11

### **Chollar v. Potosi: A Case Study of Judicial Impropriety**

**“[G]ravesest rumors [are] rife upon the streets; in the mouths of men.”**

The most striking example of the dysfunctional judicial system is found in the litigation between the Chollar and Potosi companies, who owned adjacent mining claims. A surface outcropping of ore appeared on the Chollar’s property, but it extended laterally and downward beyond the vertical boundary of the Potosi claim. Given the apex law that allowed claim originators to follow the “spurs, dips, angles, and variations” of the vein, the Chollar contended it could follow its surface claim to wherever it led. In contrast, the Potosi argued the Chollar surface claim did not grant ownership to Potosi’s well-defined single underground ledge. At the end, the Potosi and Chollar spent a combined \$1.3 million in litigation expenses over four years before they merged just to survive.

In December of 1861, the Chollar filed suit alleging the Potosi had encroached upon its claim. A two-week trial in May 1862, resulted in a hung jury. The case was re-tried in October and a verdict was rendered in favor of the Chollar. The NTSC affirmed the verdict. But neither mining nor litigation ended. The Potosi sunk a deep shaft below its surface claim and hit upon a rich “chimney” that was outside the ground at issue in the first litigation. Again, both the Potosi and Chollar claimed ownership. Before the second dispute was resolved, Judge Mott resigned and Judge North was appointed in his place. Critics later charged that Judge North was always a “Potosi Man” who was known to favor the multi-ledge theory. As described later, Judge North’s pre-bench allegiance to the multi-ledge theory is uncertain.

In March of 1864, Judge North granted an injunction to the Potosi, and the Chollar appealed to the NTSC. Appellate arguments began on April 28th. Judge Turner was suspected to be in favor of Chollar because of a \$20,000 bribe. Because Judge North had ruled in favor of the Potosi in the district court, Judge Locke became the swing vote.

The sequence of events next recounted permanently stained the NTSC and caused Judge Locke to be accused of “stupidity” and “want of a back-bone” that rendered all future judicial decisions doubtful.<sup>175</sup>

Judges Turner and North reportedly lobbied Judge Locke to their respective positions. During oral arguments Judge North became “too ill to sit” and the arguments were adjourned. Later that evening Judges North and Locke rode the considerable distance from Carson City to Lake Tahoe. The Chollar, suspicious of this late journey, dispatched a few men to follow the judges because it “wanted to see who the brokers of the Potosi were, and if possible, stop the negotiations.” The judges arrived at the Glenbrook home of William Lent, a “heavy owner” of the Potosi. The judges stayed only a short while, and later in the evening the Chollar “took possession of Locke and enjoyed a supper at 11:00 p.m. Judge Locke reportedly got “drunk as a boiled owl” and stood “on his head as a jolly old judicial acrobat.”

Oral arguments resumed the next day, after which Judge North retired with the Potosi men and Judge Locke enjoyed the company of Baldwin, Stewart’s partner and attorney for the Chollar. Nonetheless, during the weekend before arguments resumed on Monday, Judges North and Locke were seen together again and observers began suspecting that Judge Locke would rule in favor of the Potosi. Some speculating investors even purchased Potosi stock. After meeting with Judge North, Judge Locke “got drunk as an admiral and started for Carson in a two-seated carriage, accompanied by one of the Chollar lawyers and two others.” He insisted on driving and he “capsized the buggy over a high bank, and the buggy was smashed to smithereens.” Judge Locke continued to drink and hug his companions until he arrived at Carson City and went to bed.

On Monday morning the opening of court was delayed until the afternoon. Judges North and Locke reportedly spent the mid-morning in consultation with a Potosi

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<sup>175</sup> This account is drawn from two newspaper articles. See Unpublished Chapters, *Gold Hill Evening News*, August 3 and 4, 1864.

representative. The three judges then consulted with each other. The NTSC opened its session at 3:30 and decided 16 cases, “several of the most important of these had been argued the week before, and neither Judges Turner, Locke, nor North had looked at the record of either of them since the arguments, and did not look at them during their consultation.”

The NTSC then affirmed Judge North’s injunction decision in favor of the Potosi. Judge North announced the decision, to which Judge Locke concurred. Judge Turner dissented. The NTSC’s decision barred the Chollar from further discovery or litigation regarding the ground in controversy. The Chollar was understandably aggrieved and “anxious not to have the decision based on this ground, lest it be used for other cases and preclude introduction of further evidence.” For the next few days the Chollar people stuck to Judge Locke “like a sick kitten to a hot rock.” Inexplicably, Judge Locke then filed an “addendum” to his earlier decision that removed the bar on future litigation. The addendum read:

It is unnecessary to express any opinion as to the merits of this cause. Both parties may be heard upon the trial as to what was adjudicated on a former.

Judge Turner immediately re-joined the issue by filing his own concurrence to the addendum:

Opposing the whole doctrine in the former opinion, I concur with Justice Locke in the views expressed in the latter clause, to-wit: that ‘it is unnecessary to express any opinion as to the merits,’—and that on the final trial before the court and jury, both parties should be heard in evidence as to what premises were adjudicated in the former trial, these or others.

This strange turn of events did not end the matter. Judge North reportedly got to Judge Locke, and after being under Judge North’s “tutelage” for a week, Judge Locke revoked his addendum by directing the clerk of the NTSC as follows:

You are directed to strike from the files in your office, any addendum or qualification to the opinion delivered by North, Judge, and concurred in by me. Said addendum or

qualification is hereby revoked by me, and rendered null and void and to be of no legal effect.

It is impossible to see what happened through the lens of modern times, but these were the contemporaneously reported facts. (To read another factual rendition favorable to Judge North and the Potosi, see the *Daily Alta California* (May 15, 1864) in Appendix C.) It is certain, however, that Judge Locke changed his mind several times without explanation. This is a matter of public record. It is also certain that the newspapers immediately cried foul in the court of public opinion.

The day after Judge Locke directed the clerk to not file his addendum, *The Daily Union* offered additional details and demanded an explanation:

It is said that just before the late important decision in the case of the Chollar vs. the Potosi was made, a party of four gentlemen, one of whom was a well known lawyer of this city, and another, a well known capitalist, went into Locke's room and accused him of having been bribed by the holders of Potosi stock to decide against the Chollar. On his denial of the charge, one of the parties produced a pistol, and by threatening his life compelled him to sign such a modification of his concurrence in the opinion of Judge North as they dictated; it is further alleged that one of the party then told him he must resign and leave the Territory, and that this was the reason why he failed to appear at the District Court room yesterday morning, according to argument with Judge North. How much of truth there may be in all this, or if the whole story be not the coinage of the brain of some disappointed litigant, we are unable to say. If there be no truth in it Judge Locke should immediately take measures to silence the calumny and punish its originators. If there be any truth in it Judge Locke should either explain the whole matter to the satisfaction of all concerned, or immediately resign his seat upon the bench. The character of all the Judges of the Supreme Court is of the very highest consequence to the people of Nevada. If the springs of justice be attainted or corrupted, the whole body politic must suffer immeasurably, and it is the duty of the bar and the press to see that grave imputations upon the purity of the judiciary be at once silenced or corrected.<sup>176</sup>

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<sup>176</sup> Judge Locke's Case, *Gold Hill Evening News*, May 11, 1864.

The *Gold Hill Evening News* noted that “gravest rumors” were “rife upon the streets; in the mouths of men.” It too demanded an explanation:

The truth or falsity of these reports is a matter of the most vital interest to the people of the Territory, and it behooves citizens to thoroughly investigate the facts. We have the following story this morning, very directly and positively. We learn that within a few days one of the parties interested in the Chollar charged Judge Locke to his face with having received a direct bribe from the North Potosi Company, to render the decision against the Chollar Company, and declared his ability to produce the person who gave the bribe, and to name the amount of the stock which Locke received. Our informant says that Locke did not directly deny the accusation, but merely said that he wished to have no fuss with his accuser; that the latter denounced Locke as a perjured scoundrel, ect., and afterwards went upon the street and publicly reiterated his charges. Judge Locke owes it to the community, to the Government which appointed him, and his own honor as a Judge and as a man, to explain this matter.<sup>177</sup>

The demand for answers continued for the next several weeks. Although lengthy, the following newspaper articles reveal growing dissatisfaction and decreasing public support for the NTSC, which failed to promote public confidence in its work:

The *Washoe Star* says that Judge Locke will in the next issue of that paper, on Saturday next, make an explanation setting himself right with the public, in regard to the tremendous charges of corruption which are so rife in the community. We sincerely hope that the Judge may be able to show that he is not what he is so boldly charged with being. It is a fearful state of things, when the people are forced to look upon the Supreme Bench as the throne of perjury, bribery and crime. The *Star* requests for the Judge a suspension of public opinion until his explanations are published. At the same time that we earnestly desire to see the stain removed from his name, we must inform Judge Locke that his already too long silence, has served to fix public suspicion very deeply, if not indelibly. Many days have now elapsed since the heavy charges were first made against his honor in the columns of the public journals. Instead of hiding himself from the gaze of men, in an

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<sup>177</sup> Ibid.

adjoining, but still secluded locality, he should have bodily faced his accusers and openly and promptly denounced the charges as false, if false they were. Furthermore, with all due deference and respect to the *Star*, it suggests itself to us, and will to a majority of the community, that a weekly paper of limited circulation published in Washoe city is not the proper medium for the promulgation of Judge Locke's defense. The charges were made in the principal city of the Territory, in the midst of the great mass of, not only parties [sic] litigant, but of the people of the Territory. In that city are published several dailies, which reach every reading man and woman in the community. It was through those columns his character as a judge and as a man was assailed. Those columns are open to him, and it is through that medium that his defense should be laid before all the people. The matter is one in which every citizen is deeply interested, and we await, with much anxiety, the promised explanation.<sup>178</sup>

....

More than two weeks ago, Judge Locke, of the Supreme Court, was charged through the columns of the press, with acts of fraud and corruption of character calculated to make the popular hair stand. The people are not willing to believe charges of so terrible a nature against one whose character has thus far stood unimpeached, and the public judgment was suspended for a time, hoping that the injustice of the allegations would be speedily shown. Day after day passed by without a word of denial or explanation from Judge Locke, who, so far from boldly confronting his accusers, remains hidden in some unknown retreat. This silence seemed to virtually admit his guilt, and the public murmuring became more general and outspoken. A week ago last Saturday, the *Washoe Star* announced that the Judge was in that town, and would in the next number of that paper publish a full explanation of the charges made against him, and asked for a suspension of the public opinion until such published explanation could be made. The people awaited the forthcoming of that paper with interest. The *Washoe Star* was published last Saturday, as usual; but there was in its columns no allusion to Judge Locke. Judge Locke has vanished from the gaze of the people of Nevada Territory; the place of his whereabouts none may conjecture. It looks, however, to the speculative

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<sup>178</sup> Judge Locke, *Gold Hill Evening News*, May 16, 1864.

eye as though, overwhelmed with the shame of detected guilt, he had fled the country forever. If we wrong the man by this publicly expressed suspicion of the truth of the charges made against him, we are sorry for it; but the fault is his own. The suspicion is the natural sequence of every act of the man since the charges were made.<sup>179</sup>

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We are informed by the *Piute* (which has four separate articles upon the subject,) that Judge Locke is, or was, yesterday in Virginia, and that he will at “a proper time and place” answer the charges which have been made against him through the columns of the press of the Territory. What the proper place and when the proper time will be, we are left to conjecture. The Judge will use his own discretion in the matter, of course, and the people must be content to await his pleasure in the premises. It is a subject upon which the public mind is deeply agitated, and the sooner it is explained to the exculpation of the judge, the better the people will be satisfied. The cavalier, nonchalant talk about the proper time and place ill becomes Judge Locke, if such is his manner of treating the matter. His judicial position makes him naturally an object of public scrutiny, and doubts as to his moral integrity a matter of the deepest public concern. Such doubts have been created by articles in the columns of those journals to which the public look for information upon topics relating to their welfare. Instead of having promptly answered these charges, Judge Locke has (perhaps through an overestimate of the peculiar dignity of his position) seen fit to adopt a totally opposite policy. He, perhaps, entertains so profound a contempt for those who have assailed his character that he deems their attacks unworthy of his notice. Judge Locke is but a stranger to this people, and it may, perhaps, not be considered impertinent in us to suggest to him, that he is mistaken in his estimate of them. This people (and we speak advisedly, for it is a subject of much public comment) regard this silence on his part, with great dissatisfaction. Many consider it as a tacit admission of his guilt; while others, less prone to jump at conclusions and condemn hastily, consider it as at least a most contemptuous course towards those to whom the question of his innocence or his corruption is a matter of such vital

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<sup>179</sup> Judge Locke, *Gold Hill Evening News*, May 23, 1864.



import. We will further say to Judge Locke, and we say it from the bottom of our heart, that we would rejoice most heartily at a perfect clearing up of the heavy charges now laying at his door, and in so speaking we know that we are uttering the sentiment of every honest citizen in the community.<sup>180</sup>

Finally, Judge Locke offered an explanation, which was both brief and unpersuasive:

TO THE PUBLIC.—Concerning the Chollar and Potosi cases that were determined at the last term of the Supreme Court, I will state that I had no knowledge of such cases until they were called upon the Supreme Court calendar; that the Potosi Company, nor any of its members, nor any person connected with it directly or indirectly, ever conversed with me about the case or mentioned it in my presence, except as argued in the Supreme Court. That I ever had any complicity with the Potosi Company is without foundation, and those who circulate such reports are guilty of willful and deliberate falsehood and slander.

Respectfully,  
P. B. Locke.

VIRGINIA CITY, May 26, 1864

*“Multum in parvo !!!”*<sup>181</sup>

The entire episode condemned the territorial judges to public scrutiny and infamy. As noted by one newspaper, “What do the people think of these men, who, clothed in the robes and with the authority of Judges of the Supreme Court can demean themselves in the shameless manner which we have recorded?”<sup>182</sup> The timing of the Chollar v. Potosi spectacle cannot be overstated. It occurred after Governor Nye had called for a second constitutional convention and a mere two weeks before convention delegates would be selected. The convention delegates and public were undoubtedly aware of the NTSC’s fall from grace. The event precipitated a summer of discontent and led to the public’s rejection of territorial justice in September.

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<sup>180</sup> Judge Locke, *Gold Hill Evening News*, May 25, 1864.

<sup>181</sup> Judge Locke, *Gold Hill Evening News*, May 27, 1864. The Latin phrase *multum in parvo* is translated as “much in little.”

<sup>182</sup> Unpublished Chapters, *Gold Hill Evening News*, August, 6, 1864.

## Chapter 12

### Second Constitutional Convention: 1864

**“I know that many are going to vote for the Constitution in order that we may be released from the present judiciary system.”<sup>183</sup>**

The first battle for statehood left political and personal bruises that would take some time to heal. One newspaper suggested that any future statehood attempt should be delayed for at least a year.<sup>184</sup> But President Lincoln and Governor Nye had other plans. A mere 20 days after the failed statehood vote in January, Wisconsin Senator James R. Doolittle introduced a bill to allow the Territories of Nevada, Colorado, and Nebraska to hold constitutional conventions and establish state governments. President Lincoln signed *an Act to enable the People of Nevada to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States* on March 21, 1864.

On May 2, 1864, Governor Nye proclaimed that elections of delegates to a constitutional convention would occur in June. The delegates were to be elected by county, according to county population. Voter turnout was low, probably because “the people generally felt no interest in the matter. They care but little who goes to the convention since they are determined to vote down the constitution anyway.”<sup>185</sup>

Storey County had twice the population and twice the number of delegates than the next most populous county. Of the 39 delegates elected to the convention, 10 were from Storey County, which is significant because the First Judicial District was essentially vacant by an ailing Judge North, hundreds of cases were pending without the hope of resolution, the devastating mining recession was ascribed to judicial impotence, and there were widespread stock failures, bankruptcies, and a collapse in capital investments. Of the 39 elected delegates only 35 attended the conference.<sup>186</sup> Not all delegates attended all the time and the chairman had to periodically

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<sup>183</sup>Andrew J. Marsh, *Debates and Proceedings in the Constitutional Convention of the State of Nevada*, (San Francisco: Frank Eastman 1866), 173.

<sup>184</sup>The Petition, *Gold Hill Evening News*, August 11, 1864.

<sup>185</sup>Johnson, *Founding the Far West*, 91.

<sup>186</sup>Bushnell, *The Nevada Constitution*, 36–37.

send sergeants at arms to retrieve absent delegates so a quorum could be declared. Ten of the delegates had participated in the first convention. “Eleven of the delegates were lawyers, seven were connected with mining, three were in the lumber business, three were merchants, two were editors, two were farmers, two were mechanics, two were connected with mills, one was a banker, one was a physician, and one was a surveyor. Every delegate but two had come from California.”<sup>187</sup>

The convention began in Carson City on July 4th and continued until July 27th. Unlike the incomplete notes from the prior constitutional convention, the second constitutional convention is reported in the *Official Report of the Debates and Proceedings of the Constitutional Convention of the State of Nevada*.

The delegates began with the unsuccessful constitution from earlier in the year. Their primary disagreements were grounded in mining taxation, courts and judges, loyalty to the Union, and a railroad subsidy. A recurring theme was the judiciary’s impediment to the mining industry. The delegates were well aware of the ineffective territorial judiciary and their experiences with the courts informed several constitutional features, such as the composition of civil juries, the preference of district courts over county courts, election of judges, the size and composition of the Supreme Court, the propriety of civil filing fees, and most notably, the provisions for impeachment and removal of judges from office.

In 1992, the NSC noted that “Nevadans have historically manifested a pronounced sensitivity to potential abuses of judicial power [that originates] from early public dissatisfaction and criticism of the Nevada Territorial bench,” which explains why there are four separate constitutional provisions allowing for the removal of state judges.<sup>188</sup> Earlier, in 1957, the NSC described the convention judiciary arguments as follows:

In the Constitutional debates involving the adoption of Article VII of the constitution entitled “Impeachment and Removal from Office” over twenty-five pages of fine print are devoted to the four sections and to the proposed amendments to the four sections comprising that article. Portions of these debates are not only

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<sup>187</sup> Ibid., 37.

<sup>188</sup> *Goldman v. Nevada Comm’n on Judicial Discipline*, 108 Nev. 251, 256, 830 P.2d 107, 110 (1992).

eloquent but impassioned, particularly the portions relating to proposed provisions for impeachment of members of the judiciary. *They reflect some of the tragic history of the territorial court.*<sup>189</sup>

The Chairman of the convention was J. Neeley Johnson, who had previously served as the fourth Governor of California. (Johnson later served as a justice of the NSC from 1867 to 1871; he died in 1872 at the age of 47.) The first order of business was electing a president and other officers. During this process, in the first minutes of the convention, the delegates discussed whether county delegates should sit together. One delegate “with great amusement from the larger body,” suggested the delegation from Storey County was a “litigious group” and should be scattered among the entire group.<sup>190</sup> This light-hearted moment revealed a truth known to all: Virginia City was defined by its interminable litigation and a crisis in judicial confidence.

The first resolution offered was to permanently adjourn the convention without action. It quickly died on the floor. The second proposed resolution revealed that judiciary reform was an underlying and important purpose of the convention. Delegate Earl suggested the statehood question be postponed, and instead, the delegates petition “Congress to give us a change in our Judiciary” and “if this change is granted us, we think it better for the present to remain as we are, under a Territorial Government.”<sup>191</sup> This resolution led to a spirited discussion of the territorial judiciary.

Charles DeLong was an active and influential delegate. (DeLong had been law partners with Judge Mott in Yuba City, California before they moved to the Nevada Territory). DeLong argued that “[i]f the recommendation could be carried into effect immediately, and we could be assured that the desired change in our judicial system would be effected in that mode, I would certainly favor it, and it would be all I should ask.”<sup>192</sup> He further explained that although he voted against statehood eight months earlier, he had since seen in the judges:

Such an extraordinary lack of ability to come up to the requirements of our condition . . . that I have come to the conclusion that some remedy is absolutely demanded. Nor is it alone a lack of ability on the part of our judges. Of our three

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<sup>189</sup> *Robinson v. First Judicial District Court*, 73 Nev.169, 313 P.2d 436 (1957). (Emphasis added.)

<sup>190</sup> Marsh, *Debates and Proceedings in the Constitutional Convention of the State of Nevada*, 13.

<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*

judges a nisi prius, at this time, one is sick and the others have absented themselves, and thus blocked the wheels of justice; so that in reality we have no Courts at all; although I know, and every lawyer knows, that we have interests in litigation so vast in importance that the parties interested in them could almost afford to pay the expenses of a State Government for one year if by that means they could have their rights judicially determined. That is what impels me to favor a State organization. It is to obtain the power of electing our own judges, and just as many of them as we want, to transact our criminal and civil business.<sup>193</sup>

Other delegates joined DeLong and expressed concern that Congress would not act quickly to reform the territorial judiciary, and statehood was the fastest and surest way to be free from the existing judges and courts. The resolution was postponed “indefinitely,” although it was unsuccessfully renewed six days later.<sup>194</sup>

While the delegates were in convention, the local newspapers were agitating almost daily against the judges, thus turning public sentiment toward statehood. The delegates were aware of the newspaper battle raging in the public domain. Indeed, the delegates expressed hope the judiciary provisions of Article VI would be published for the public to review carefully.<sup>195</sup>

Throughout the convention the delegates expressed frustration with the judges and territorial courts. Themes of corruption, accountability, and judicial independence are woven throughout the deliberations. The judiciary was referred to as the “the great evil” and judicial reform the “most important business to come before the convention.”<sup>196</sup> Delegate McClinton summarized the sentiment against the judiciary, and statehood as the antidote for judiciary impotence:

I am tired of this rat-trap of a Territorial Government, sir. I want a government of a more substantial character—one which will encourage the development of our rich mines and all our resources. I want to see the numerous valuable mines which are now locked up by litigation, unlocked, and developed as they should be, in order that their hidden stores of wealth may be brought forth and

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<sup>193</sup> Ibid., 13-14.

<sup>194</sup> Ibid., 172.

<sup>195</sup> “This article, and possibly one or two other matters, will in all probability be the only matters, not already disposed of, which the convention will find it necessary to order printed, for the reason that for the most part we have followed in the track of the old Constitution. This article, however, is an exception, and as it involves very important changes I hope it will be printed.” Ibid., 548.

<sup>196</sup> Ibid., 174.

cast upon the commerce of the world. I want to see the two thousand men now idle in Storey County . . . and scarcely possessing the wherewithal to obtain a living, once more in constant employment, and to accomplish that end I desire to see the Judiciary so reformed that the numerous cases now in litigation may be promptly disposed of and the mining claims unlocked, and allowed to be developed. Then those strong men, now idle, can be put to work in the mines, earning their four dollars a day, and so obtaining an honest and honorable livelihood.<sup>197</sup>

The territorial judiciary was more than a significant cause for statehood—it influenced several constitutional provisions. The composition of civil juries illustrates the point. The jury system in Nevada today is directly traceable to the experiences in Storey County during territorial times. All criminal jurors must be unanimous in their verdict. At present, approximately two-thirds of the states require similar unanimity in civil cases. Nevada is in the minority of states that allow a civil verdict upon some percentage less than unanimity. In Nevada, a verdict may be rendered when three-fourths of the jurors agree. The arguments in favor of this then-innovative concept demonstrate how the litigation chaos in Virginia City influenced the delegates' analyses and arguments.

In response to the proposal that a civil jury verdict could be predicated upon a three-fourths majority vote, several delegates reflected upon judicial impotence in Virginia City, which was exacerbated by the requirement that all jurors agree before a verdict can be delivered.

It is well known that there is no place under the canopy of Heaven where, in the experience of men, it has been found so difficult to prevent one man at least, on a jury, from being tampered with, as in this country; and especially in these mining cases, involving immense interests. One man stands out, and thus enables a company to continue in possession of a rich mine, administering its proceeds, and enjoying its revenue, to the detriment of the proper owners, all through the trickery, and dishonesty, perhaps, of that one man, until, in the course of time, perhaps a year or two, the cases comes up on the calendar for a new trial.<sup>198</sup>

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<sup>197</sup> Ibid., 824.

<sup>198</sup> Ibid., 55.

I have heard in Virginia City of cases of this kind, where men have been known to say in advance that such and such cases could never come to trial, because, as they said, “we can hang the jury.” I think it is necessary for the general interest and good of the country, and for the progress and development of our mines, that we should retain that section as it now stands. The civil cases which come before our Courts are of great importance.<sup>199</sup>

.....

As the gentleman has urged upon the Convention, it is the easiest matter in the world, in cases pending before the Courts with probably a million of dollars [sic], more or less, in the balance, to get at least one individual on the jury who can be improperly influenced. It would certainly be easier to do that than it would if a verdict could be rendered by eight or nine out of the twelve. . . . In a civil case, and, sometimes, perhaps, one of the utmost importance, involving millions, or, at all events, hundreds of thousands of dollars, I certainly think that a three-fourths verdict would be more apt to secure justice to all parties than a unanimous verdict would be likely to do. I suppose that there is no gentleman, either exercising any judicial functions or engaged in practicing law in Nevada, but is fully aware of the manifest injustice which time and again litigants are subjected to, and the sometimes immense expense to which they are put, on account of there being some improper persons on the jury. Perhaps, while the party thinks that he has carefully guarded every avenue of approach, he finds that still, by some means or other, some one man out of the twelve has been secured to the adverse interest, and he loses the verdict. The man who is thus secured by the artful policy of one or other of the litigants, is enabled to defeat the ends of justice.<sup>200</sup>

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I want to try that experiment, or that innovation. This is the very country to try it in. Our circumstances are not like those of any other people in these United States. We are, as my friend from Washoe remarked yesterday, mostly immigrants here. We are from all parts of the world, unknown to each other. We have our juries sitting upon cases where millions of dollars are at stake, and we are obliged to take men for such juries who are unknown to us, whose integrity has never had a test; and we know that it has been proved, time and again, that some of those men can be approached—that they can be bribed to stand out—and verdicts

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<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

have, in that manner, been prevented in cases where the greatest injustice has thereby been done. I have resided more than four years in this Territory, and I can go out into this community and count up scores of men who have been ruined in that very manner; simply because twelve men were required to find a verdict, and perhaps one single man who stood out would prevent it. The result has been, that where poor men have been engaged in litigation which rich companies, they have been utterly unable to come into Court to try their causes over again. I see a great deal more safety in depending upon a verdict of three-fourths of a jury, than in requiring a unanimous verdict from twelve men whom you do not know.<sup>201</sup>

The outcome never seemed in doubt, and at the conclusion of the convention only two delegates voted against the proposed constitution. The dissenting delegates expressed displeasure with the mining tax provision.<sup>202</sup> Unlike the earlier vote in January, statehood and state officers would not be voted upon at the same time. The vote on statehood was scheduled for September 7th and the election of state officers was scheduled for November 8, 1864. (Appendix D contains additional delegate statements regarding the need to reform the territorial judiciary.)

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<sup>201</sup> Ibid., 56.

<sup>202</sup> Bushnell, *The Nevada Constitution*, 55.



## Chapter 13

### The Summer of Newspaper Discontent: 1864

**“It is a fact, flagrant and notorious, that thousands, and hundreds of thousands of dollars have been expended in obtaining corrupt decisions from infamous Judges.”<sup>203</sup>**

The press frames public perception by selective reporting and editorial content. The press provides more than a passive report; it is often a powerful influence in the event to be reported. It becomes part of the story. In Nevada, the territorial press was a critical participant in the statehood decision. During the summer of 1864, the newspapers engaged in a relentless attack upon the judiciary, and ultimately called for all three territorial judges to resign.

The leading newspaper was the *Territorial Enterprise*. Regrettably, its newspapers from 1864 have been lost. The *Territorial Enterprise's* activity during this time is known by its many references in the *Gold Hill Evening News* and *The Daily Union*. These three newspapers (and a few regional and weekly papers elsewhere) published sensational, partisan articles in the months preceding statehood. The *Territorial Enterprise* and *Gold Hill Evening News* condemned the judiciary, whereas the *Daily Union* generally defended it. The crescendo of criticism reached a fevered pitch in July and August, and culminated in the resignation of all three territorial judges at the end of August and before the successful statehood vote on September 7, 1864.

The newspapers provide a glimpse into the passion and depth of the public's sentiments toward the judiciary. Beginning when the second constitutional convention was still in session, there were more than 70 articles condemning the judiciary with scandalous and sensational language. (This number omits the lost *Territorial Enterprise* articles, which would likely increase the number of articles to well over one hundred.) A summary of the articles is inadequate to convey their tone and cumulative effect, and the more colorful articles are included in Appendix C. On July 17, 1864, the *Gold Hill Evening News* proposed to publish a series on the judiciary. Its first article is excerpted in its entirety because it demonstrates the style and vigor of the times:

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<sup>203</sup> Let them Resign, *Gold Hill Evening News*, August 4, 1864.

As dark clouds hanging in the distant horizon and the low rumbling of the thunder afar off betoken the coming of the storm, so do the gloom that darkens the brows of our citizens and the deep murmurings of popular discontent portend the approach of a fierce storm of public indignation which must ere long burst upon the heads of those to whom the evil conditions of affairs in this Territory is most distinctly traceable. As has, time and again, been said by ourselves and our contemporaries, the dead and ruinous stagnation of all the leading business interests of the Territory is, more than to anything else, attributable to the condition of matters in what are ironically termed our "Court of Justice." It is not alone that from vexations, inexcusable, if not culpable delay is the disposition of hundreds of important mining suits, vast numbers of mines which would now be in active operation employing hundreds upon hundreds of now idle men, are to-day tied upon with injunctions or occupying an uncertainty of tenure that renders the risk of working them too great, until some decision has been made upon the conflicting titles. It is not alone that the utter hopelessness of obtaining a decision for years to come, under the present condition of the calendar, deters citizens from applying to the Courts for relief in causes of difference that are daily arising. It is not alone that the doors of our court houses are shut; and our judges wandering hither and thither in search of health or pleasure or in the transaction of their own private business, while that of the people is neglected and ruined by delay. It is neither of these that is the chief cause of gloom and evil foreboding, the reason why the name of "Court" is mentioned with disgust, of "Judge" with loathing and scorn, and those of "Law and Justice" have become a by-word and a mocking. It is because the impression has been forced upon the unwilling minds of the people, has spread abroad through the whole mass of the community, and has taken a deep hold upon their conviction, that is ineradicable, that from the highest to the lowest, in every department, the Judiciary of this Territory is CORRUPT. Be that impression true, or be it false; be it just or unjust, that such an impression prevails in the breast of nine citizens out of every ten who give the subject a thought, let any man who doubts ask the first ten of his neighbors that he meets. The existence of such a conviction in the public mind, is a calamity equally terrible to the interests of the country whether it be true or false. Has this universal conviction been a spontaneous generation, without any shadow of creating cause? We apprehend that such a thing were impossible. The seed of this suspicion has been planted, harrowed and watered into a vigorous growth by a thousand acts and circumstances and conditions capable, perhaps, of satisfactory explanation by those upon who the suspicion rests; but with cool, insulting, exasperating contempt of public opinion,

left unexplained. Charges, direct in their nature and most direct in their application accompanied by a minuteness of detail, which, uncontradicted [sic] as circumstantially and minutely, necessarily carry conviction of their truth, have either been passed silently by, or answered (?) by a paltry, that, simple denial, such as is filed by a pettifogger “for delay” when his defense has no merit. These Judges, thus accused, have flouted the people in the face, laughed to scorn their demands for explanation, and treated with cold derision their complainings [sic]. They defy the people, whose dearest rights are charged to have been spit upon and trampled under foot, and dare to “produce their proofs before the United States Senate, to whom alone the Judiciary are amenable.” Proofs indeed! The crimes with which the Judiciary of this Territory are charged, are not like those of the fearless and unmasked highwaymen, who bids the traveler “stand and deliver;” or the murderer, who strikes down his foe in the light of day and before the gaze of the multitude and who trusts to the fleetness of his steed and trustiness of his weapons for his immunity from punishment. Their crime, if they are guilty at all, is like that of the masked midnight thief, or the stealthy adulterer, whose guilt must be shown by the multitude of connected circumstances, which, when no link is missing, constitute proof irrefragible [sic], satisfactory and indubitable. Such proof is said to exist in this Territory to-day. Its outlines are in our hands, and in justice to the people among whom we dwell, of whom we are a unit, bound by the ties of a common interest, we have it in our mind to lay before the public, facts susceptible of proof, circumstances undeniable, and conditions as palpable to the eyes as that the sun is round and not square, that the cannon shot is heavier than the feather. Out of these facts, circumstances and conditions, we propose to form a chain of evidence, of the perfection of which we shall ask the people to judge, and, having judged, to punish. Let those, whose consciences warn them of the fate in store for the offender, stand from under.<sup>204</sup>

Thus began the battle of the newspapers in the court of public opinion. The newspapers spared no detail when writing about the judges, and their conflicting content reveals the truth was fluid and only a minor part of the story. All judges were accused of being carpetbaggers, legally inept, and morally corrupt. The deepening mining recession was ascribed to endless litigation and the impotent judiciary.

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<sup>204</sup> Thunder in the Sky, Gold Hill Evening News, July 19, 1864.

With regard to Judge Turner, he was accused of arriving in the Nevada area as a poor man and immediately acquiring wealth well beyond his judicial salary. He reportedly owned “six feet in the Gould and Curry mine which cost him \$24,000” and “25 feet in the Yellow Jacket, which cost him \$25,000.” He was further accused of making loans, and “the exact amount of Judge Turner’s wealth cannot be accurately or even proximately ascertained; but rumor, and surmises of those who have watched matters with a close attention, and for a purpose, fix it at from \$75,000 to \$100,000.”<sup>205</sup> Judge Turner’s brother-in-law also received attention, for “without mill or mine, he trades in sulpherets in a custom-house business in quartz. He purchases the Gould & Curry rock, and then re-sells it to others.”<sup>206</sup> Judge Turner’s wife was also named by the press as a bribery participant and co-conspirator.

After the Chollar v. Potosi scandal and public scrutiny earlier in the year, Judge Locke was largely ignored by the newspapers. On July 25, 1864, the *Gold Hill Evening News* dismissed Judge Locke with the following brief article:

A flunkey of Judge Locke’s residing in Lyon County, has taken it upon himself to write us an insulting letter, concerning our ventilation of the corruption of the Judiciary, and which he, flunkey-like, designates as “dastardly.” This fellow howls before his master is hit—as we have not yet pointed out the remissnesses [sic] and corruptions. His turn will come, and in the meantime we would advise this understrapper to keep his mouth shut –as his own insignificance is enough to keep *him* out of the NEWS.<sup>207</sup>

Judge North received the most scrutiny, partly because he was the presiding judge in the First Judicial District, and partly because he had the highest public profile and was inclined to defend himself. The accusations against the judges, and Judge North in particular, can be placed in several different categories.

1. Absence from duty. A recurring theme was the judges were absent from their districts, whether to the Atlantic states or California. Even though four hundred cases were on calendar in the First District in 1864, only three civil cases had been submitted to a jury and only

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<sup>205</sup> The Ax Began to Fall, *Gold Hill Evening News*, July 21, 1864.

<sup>206</sup> Brothers-in-law, *Gold Hill Evening News*, July 30, 1864.

<sup>207</sup> Wincing, *Gold Hill Evening News*, July 25, 1864.

one of those resulted in a verdict. In May, the *Gold Hill Evening News* reported that Judge North had adjourned court on account of his ill-health and “[t]he calendar is crowded to an extent that would require three years of ordinary court routine to clear, and some measures for a very general reference of cases must be adopted or the business of the territory must suffer beyond computation.”<sup>208</sup> The *Gold Hill Evening News* continued the theme in July:

Anyone who has capital is loth to invest in our mining interests. Our judges are away from here, and the lawyers have nothing to do. No one will commence suits now as they cannot get into court for probably a year. A writ of habeas corpus cannot be issued without sending to Aurora, to be signed to Judge Turner. The District Court calendar is filled up with cases enough to occupy a year to try them.<sup>209</sup>

The *Gold Hill Evening News* wrote three days later:

Let people ponder upon the distressing results inevitable upon this long delay, and the still farther time that must elapse before the property tied up in these suits will be freed from the trammels of litigation and made available to the Territory. Vast tracts of mining country, hundreds of mining claims in a partial stage of development are lying still, the workmen idle, business at a stand-still and creditors seeking into bankruptcy. Who is responsible for this wretched state of things? Judge J.W. North. Had the business of the Court been dispatched with reasonable diligence the calendar of the court might have been in a great measure cleared. There has been no court because there has been no judge. North has been at the Lake, San Francisco, San Jose, Napa, Santa Cruz. He has been everywhere and anywhere but where his duty called him, and the very life-blood of the Territory demanded his presence—on the bench. He claims he is sick. There are conflicting reports of his health, but even if sick, he should have resigned. Early in May he declared his inability to finish the term. But he did not resign because of personal gain.<sup>210</sup>

Judge Turner was not immune from this criticism. He reportedly opened court on July 5th, and had been in session for only seven days during the previous four months. He granted an injunction,

but did not hear the case himself within a few days, but appointed his clerk to hear the testimony and submit it to him for a decision.

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<sup>208</sup> District Court, *Gold Hill Evening News*, May 23, 1864.

<sup>209</sup> Beauties of our Judiciary, *Gold Hill Evening News*, July 25, 1864.

<sup>210</sup> The One Man Power, *Gold Hill Evening News*, July 28, 1864.

The mining company who obtained the injunction hopes to call one hundred witnesses to delay, free, or starve out it[s] opponent. Meanwhile it furiously works the mine. The other side is totally deprived by the caprice of the court.<sup>211</sup>

2. Ownership of a quartz mill and improper loans. Judge North became involved in several commercial ventures before his appointment to the court, which he continued during his judicial service. His critics alleged that his mill had no value before he became judge, but he began receiving highly profitable rock to process from mining companies seeking to curry favor with him. He also crushed rock in exchange for mining shares, and his mill “eclipses and throws into the darkest shade all the other mill enterprises in this Territory.”<sup>212</sup> His principal benefactor was the Gould & Curry, whom he was accused of never ruling against. He even reportedly denied the city’s request to widen the street in front of the Gould & Curry office. Judge North also reportedly borrowed \$15,000 from the Potosi to improve his mill. (The Gould & Curry and Potosi were inter-related corporate entities.)

3. Bribery. The newspapers resuscitated the Hardy/Baldwin/Stewart bribery allegations that were made during the first statehood attempt earlier in the year. This was particularly scandalous as Judge North had confronted these charges and all three participants recanted their allegations in some measure. The newspapers also reported specific allegations of Judge Turner’s professional favors in exchange for money funneled through his wife and brother-in-law.

4. Ascension to the bench. The circumstances of Judge Mott’s resignation and North’s appointment were repeated several times. As one example, the *Gold Hill Evening News* wrote about the manner in which Judge North became a judge:

We assert that his place on the bench was bought for him. The price paid was twenty-five thousand dollars. The payee was G.N. Mott. The person paying it was John H. Atchison. The parties for whom it was paid were John H. Atchison and the Potosi Gold and Silver Mining Company. The reasons for buying Mott off and North on were these: The Potosi Company had litigation involving the title to a valuable mine. Mott as a Judge has shown himself hostile to the Potosi Company. Mott could not be bought to decide

<sup>211</sup> The Jury in Esmeralda, *Gold Hill Evening News*, August 8, 1864.

<sup>212</sup> More Facts for Consideration, *Gold Hill Evening News*, July 25, 1864.

in favor of the Potosi Company, but he got twenty-five thousand dollars to make room for North.<sup>213</sup>

5. Conflicts of Interest. Judge North was a practicing attorney before becoming a judge. He reportedly represented the Potosi when he was an attorney. Several newspapers alleged that Judge North gave counsel as an attorney and then sat in judgment of the very disputes he was involved in while in the practice of law. The examples are detailed, supported by attorney affidavits, and may have merit.

6. Writs of injunction. Few trials occurred despite the overwhelming number of lawsuits filed. The greatest pre-trial risk was the writ of injunction in which one side to a mining dispute was enjoined from mining the disputed claim. The application was made to the judge alone, and he granted or denied the application according to his own discretion. Judge North reportedly granted writs to those in his favor, was unavailable to others, and postponed hearings on the writs according to his pleasure. Several specific details were alleged. The evil of the writ was described as follows:

He is the sole judge of the justice or injustice of the proceedings. *If the arguments are sound and the reasons weighty*, he issues the writ. This is before the trial, and before the merits of the case have been traversed. The operation of the writ is to effectually close out one of the parties to the suit *until after the trial*. It allows one party to work exclusively the disputed ground, and make it a criminal offense for the other to remove a pound of rock therefrom. At the present time there are several of the most important mining companies in the Territory tied hard and fast by these writs of injunction, and how many more of the lesser importance we are not prepared to say. . . . Must the enjoined parties remain until North is healthy to adjudicate the cases? For all present purposes, the operation of these writs are equivalent to a final decision to the parties in whose favor they operate. Consequently, the longer the trials are postponed, the better for those parties. The parties in possession achieve their purpose *without any trial at all*, for by the time there will be nothing left of the disputed ground to have any trial about. We further say that when all this mighty interest depends upon the gracious pleasure of the sanitary condition of one man, and that man willfully protracts the period of calamity, he is wielding his one man power to an extent that is repugnant to every

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<sup>213</sup> How Judge North Got His Seat, *Gold Hill Evening News*, July 26, 1864.

principle of free government. When wielded for personal benefit, the judge is corrupt.<sup>214</sup>

7. Cause of the mining recession. During the spring of 1864, the endless litigation and uncertain results began to show in declining mining productivity. Fault was placed with the judges, and Judge North in particular. To illustrate, a speaker before a “miners’ league” in Storey County offered that “a most potential cause of the present depression of mining industry, is the universal distrust of our judiciary.”<sup>215</sup> The *Nevada Transcript* reported: “It is possible—barely possible—that [the territorial judiciary] may be above reproach. But enough has been brought to light to destroy all confidence in their integrity. [Nevada] never can prosper while the judiciary is suspected. Capital will refuse to go there for investment unless at heavy premium for risk, and men of families will decline to make a spot for their homes where vice instead of virtue reigns.”<sup>216</sup>

The newspapers repeatedly called upon the judges to answer the charges. Even the *Daily Union*, which was the judiciary’s defender, called for some response on July 23, 1864:

Citizens cannot view without pain the positions now occupied by the Judiciary of the Nevada Territory. The public demands personal explanations of suspicious facts, which if true, damn them to infamy. “No longer remain silent under the accusations of the press, the bar and the people, but openly, manfully and fearlessly come forward in your own defense. If guiltless we pledge ourselves to stand up as your vindicators.”

The days of silence in light of whispered complaints is past. “Three of the respectable journals of the Territory have endorsed the charges, and are flooding the public mind with the most astounding particulars.”

The character of a Judge is the property of the people. If as, pure as the ermine he wears, they are proud of the magistrate and glory in his praise. He is bound to vindicate that purity whenever and wherever assailed—provided only that the accuser is known and the libel stated. Such is now the state of affairs in the Territory of Nevada. The Chief Justice, and his Associates, are by name held up to the public as criminals of the darkest line and the peculiar

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<sup>214</sup> The One Man Power, *Gold Hill Evening News*, July 29, 1864.

<sup>215</sup> Johnson, *Founding the Far West*, 316.

<sup>216</sup> *Ibid.*



circumstances of their crimes vociferated in the public ear. Silence now becomes criminal. It half admits the charge by not daring to confront the accusers. We don't call upon the bench to resign. That would, perhaps be to plead guilty. But, in the name of our fellow citizens, we do call upon them, for under their own signatures, to disclaim ◇◇◇ these dishonorable accusations . . . .<sup>217</sup>

Judge North responded the same day, and his response was published on July 24th. He denied the charges and denounced his critics.

TO THE VIRGINIA DAILY UNION—MR. EDITOR:—My attention is just called to your editorial of this morning, which discusses the recent attacks upon the Judiciary of this Territory, and calls upon the Judges respectively to “come forward and no longer remain silent under the accusations of the press.”

You further say: “We shall insist upon our Judges not only being pure, but whenever properly assailed, coming forward with intrepidity and establishing that innocence to the world.”

In this sentiment I may heartily concur. As one of the Judges, I have waited patiently to be “properly assailed.” I not only challenge, but invite the closest scrutiny into my official conduct. If respectable men will make definite charges that can be met, and let their names be known, so that I can know who is, or who are my accusers, nothing will give me greater pleasure than to meet the issue promptly and boldly.

The people of this territory, and especially the people of Virginia, do not need to be told that I am always glad to meet such an issue. But to start on a random chase, after a pack of hired slanderers, is not the business of a judge, as I understand it.

Now, let us come to the point. *Let no other Judge suffer for what I have done; nor let me be held responsible for the acts of others.* Let the question be upon my conduct as a Judge, and let the allegations be made definitely and distinctly.

No one is in doubt as to *whence* these slanders come. Now, let their authors come out like men of honor, if they have honor, and give us their names, and something definite to aim at. This hiring of newspapers to blacken character, by surprises and innuendos, is not the way to benefit the public, or to promote Judicial purity. A Judge who is corrupt should be speedily removed. If not corrupt, it

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<sup>217</sup> Guilty or Not Guilty, *Virginia Daily Union*, July 23, 1864.

is infinitely base and cowardly to seek to impair the public confidence in him by stirring up vague and irresponsible rumor.

To the issue, gentlemen; to the issue.

The judges and others believed William Stewart was the anonymous agitator responsible for the newspaper crusade against the courts. Sometime in early August the three judges met to discuss how to respond, and it was reported that they intended to summons Stewart to the NTSC for disbarment proceedings. They also discussed holding the press in contempt of court, which only emboldened their critics. On August 4, 1864, the *Gold Hill Evening News* joined the *Territorial Enterprise* in calling for the judges to resign. It noted “unanimous dissatisfaction with the present condition of our judicial affairs” and “an absolute loss of all confidence in the Courts so long as they are presided over by the present judges.”<sup>218</sup> Accordingly, the *Territorial Enterprise* prepared a resignation petition and announced “let every man who feels and believes that the broad charges of corruption and incapacity made against these judges to be well founded, boldly, honestly and fearlessly record that belief, upon the petition.”

The petition was circulated the next day. “It is a matter that interests every citizen who has a dollar’s worth of property in the Territory, or who breathes the air polluted by this judicial corruption, and it is the duty of every citizen, by signing the petition, to affix the seal of his condemnation upon this official rottenness.”<sup>219</sup>

North went silent again and was reportedly “gone to the trees and mountains of California.”<sup>220</sup> Judge Turner was also reported to be in California. Judge Locke’s location is unknown, though “it don’t make any difference. He has not got either of his accomplices here to tell him what to do, and he does not know enough to hatch up any deviltry himself.”<sup>221</sup>

The petition for the judges’ resignation grew in numbers until it was signed by more than 3,500 men. (To provide numerical context, 5,690 men in Virginia City voted in the statehood election the following month.) While the judges’ defenders countered that “not one in ten of the

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<sup>218</sup> Let them Resign, *Gold Hill Evening News*, August 4, 1864.

<sup>219</sup> The Petition, *Gold Hill Evening News*, August 5, 1864.

<sup>220</sup> Lame and Shuffling Defenses, *Gold Hill Evening News*, August 5, 1864. Lame and Shuffling Defenses; August 8, 1864 The Judiciary in Esmeralda, *Gold Hill Evening News*, August 8, 1864.

<sup>221</sup> A Stampede, *Gold Hill Evening News*, August 9, 1864.

prominent business men have signed it” and “[j]udging from the names one would conclude that most were obtained by having the procession of workingmen, which paraded our streets a few days ago, stop at the corner and sign it in a body,”<sup>222</sup> the perceptive strength of the petition grew. A tide of public sentiment had crested against the judges.

Less than a month before the statehood vote, the newspapers increased their attacks. They had previously argued the judges were corrupt and responsible for the mining recession. They then urged the citizens to call upon the judges to resign. They next made subtle references of physical harm and mobocracy.

It is a feeling of unpleasantness that the people of this Territory can only be relieved of by the death or resignation of the whole three.<sup>223</sup>

. . . .

They should be removed without the grace of a single day. It is possible they are above reproach, but enough has been brought to light to destroy all confidence in their integrity. There is now talk in some circles of revolution being preferable to the existing state of things. Little provocation is necessary to fan now smouldering [sic] embers into a blaze.<sup>224</sup>

. . . .

[Regarding a vigilante hanging in Dayton,] “[m]ob law is resorted to with a frequency that bears exactly an inverse proportion with the confidence reposed in the regularly constituted courts. The people see the facts and they know the root of the evil. The fault is with the courts. Try and obtain better courts. We have spoken.<sup>225</sup>

. . . .

The petition calling upon them to resign has already several thousand signatures, but we are of the opinion that it will require more formidable means than a peaceful and respectful petition to get rid of them. But we shall see what we shall see.<sup>226</sup>

The press’ last frenzied argument was that statehood was the quickest cure for a terminally ill judiciary. A few excerpts illustrate the point.

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<sup>222</sup> The Petition, *Gold Hill Evening News*, August 11, 1864.

<sup>223</sup> A Stampede, *Gold Hill Evening News*, August 9, 1864.

<sup>224</sup> Another Echo, *Gold Hill Evening News*, August 11, 1864.

<sup>225</sup> Mob Law, *Gold Hill Evening News*, August 11, 1864.

<sup>226</sup> A Stampede, *Gold Hill Evening News*, August 9, 1864.

The people have generally come to the conclusion to vote for the Constitution which is to be submitted in September, as no relief is looked for until they can have a Judge of their own selection and a resident of this county, and there is no probability of one being brought to trial until we have a Judge of more firmness and reliability.<sup>227</sup>

....

Our cotemporaries of the would-be state of Nevada are doing all they can to prove the Supreme Judges of the Territory unworthy of confidence, and so far as we are capable of judging, they make out a clear case.<sup>228</sup>

....

The only persons whom we have heard speak favorably of a State Government do so because they are convinced of the corruption of our Judiciary and think it the quickest way to purify the bench.”<sup>229</sup>

....

The impression is fast gaining ground here that the people will adopt the Constitution now offered, and become a State. The advantages of a sound judiciary will more than counterbalance the additional expense of a State Government.<sup>230</sup>

....

A year ago our streets were teeming with a busy population. Where has trade gone? Where has our prosperity gone? Remember this at the next election. Remember the hundreds of cases which cannot be decided for want of courts, which might be settled if our Judges would heed the popular interests, or at least devise some remedy. I do not stand here to say our Judges are corrupt, because I do not know it myself personally; but I have my opinion privately. I have not the slightest hesitation in saying to you publicly, that if in the opinion of the many, the judicial ermine has been tarnished [cheers and hisses] whether charges could be preferred against them or not, the people have lost confidence in them, and they should resign, and listen to the voice of the people, who have recently addressed them telling them that they could no

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<sup>227</sup> A Stampede, *Gold Hill Evening News*, August 9, 1864.

<sup>228</sup> Another Echo, *Gold Hill Evening News*, August 11, 1864.

<sup>229</sup> Flip-Flap-Flop, *Gold Hill Evening News*, August 13, 1864.

<sup>230</sup> The Prospect at Reese, *Gold Hill Evening News*, August 13, 1864.

longer hold office with honor to themselves or profit to the people.<sup>231</sup>

. . . .

We concur most heartily in the views expressed by our cotemporaries, and if the people generally take the same view of the question, there can scarcely be an argument brought to bear against the adoption of the proposed Constitution, which will have any considerable weight as an offset to the advantages which must accrue to the country from a renovation of the judiciary and the restoration of confidence in the security of contracts. These two points alone ought to carry the Constitution by an overwhelming vote.<sup>232</sup>

. . . .

It is a nice mess, to be sure! The people will settle it on the 7th of next month, by adopting the Constitution ten to one.<sup>233</sup>

. . . .

The prospects of statehood have never been better. On September 7 the people will rise up and adopt the constitution. Many of the large taxpayers met yesterday (representing one million of taxable property). They had been opposed. But after debating for several hours, they are united to vote yes. Miners, business men, and everybody else, have fully concluded to have an entire change of Government—the principal reason for which is to get rid of our corrupt and trifling Judiciary. When this great and much-desired change takes place it will remove a dark cloud of adversity which is not overhanging every department of trade, mining and business in Washoe—and e'er the frosts of winter fall upon our now comparatively idle country, confidence will again be restored, and business will again move on.<sup>234</sup>

. . . .

The Virginia Union stated yesterday that Judge North was to resign today. We hope it is true. Do it, Judge North, or the adoption of the Constitution will settle your hash effectually.<sup>235</sup>

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<sup>231</sup> A Lawyer's Opinion of the Judges, *Gold Hill Evening News*, August 17, 1864.

<sup>232</sup> A Welcome Decision, *Gold Hill Evening News*, August 17, 1864.

<sup>233</sup> The Judicial Muddle, *Virginia Daily Union*, August 26, 1864.

<sup>234</sup> State Government, *Gold Hill Evening News*, August 17, 1864.

<sup>235</sup> To Resign, *Gold Hill Evening News*, August 22, 1864.

The judges did resign, which is the subject of the next chapter. However, one final note regarding the newspapers is warranted. On August 16th and August 19th, three leading lawyers published separate letters supporting Judge North. They wrote:

HON J. W. NORTH – *Dear Sir*:—I learn through a mutual friend that your continued ill-health and consequent incapacity to discharge onerous duties of your Judicial position, compels you to resign. The public attacks which have been made upon you within the past month or so demands, in my judgment, at the hands of attorneys who have had the pleasure of practicing in your Courts a more substantial evidence of their regret at their professional separation from you than is usual on such occasions.

Allow me, therefore, to say that in practicing in your Courts, I have ever found you courteous and considerate in the highest degree; that I have had and still have entire confidence in your honesty, integrity, and purity of motive and purpose; that your capacity to discharge the duties of your office cannot be – and so far as I have heard, has not been – questioned; and that for industry and an earnest desire to dispatch business, it has seldom been my pleasure to practice before your equal.

I regret exceedingly that parties have seen proper to make the severe, and as I conceive, unjustifiable attacks upon you before alluded to, and particularly at a time when, from severe illness and prostration brought on by over-work in the discharge of your Judicial labors, you were not in a condition to meet and combat them.

I write this in the discharge of a duty which I owe a fellow-man and an honorable member of the noble profession to which we belong, and therefore authorize any use of it which you deem proper.

With the best wishes for your prosperity, and the hope that your health will soon permit you to meet your enemies as they should be met, I am your friend, etc.<sup>236</sup>

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HON J. W. NORTH – *My very dear Sir*:—I was delighted to learn of your safe arrival home, and trust that your journey materially improved your physical health. I cannot but hope that the

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<sup>236</sup> Correspondence, *Virginia Daily Union*, May 25, 1864.

newspaper assaults upon your moral and Judicial integrity will give you no alarm or uneasiness. You have hosts of warm and devoted friends in this county both within and without the limits of the legal profession, who consider the continued assaults upon your judicial character as the product and result of your unswerving integrity – of your refusal to become the instrument of a clique and the Judicial organ of a mooted theory. There is, however, a very large number of your most true and devoted friends, who entertain fears that you will allow yourself to resign before our State Constitution shall be voted on by the people. I express the earnest wish of this class of friends, when I beg you to postpone your resignation till after that time.

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HON J. W. NORTH – *Dear Sir:*—Being about to leave for San Francisco, I desire, before my departure, to assure you of my hearty concurrence in the sentiments of confidence and regard expressed in the letter addressed to you by certain members of the bar of this city, and which is shortly to be handed to you. While I sincerely join in its expressions of regret at your ill health and of hope of your speedy recovery, I wish to add, that though your ill health may temporarily postpone some of the business of your Court, and thus be productive of some injury – it will be, in my judgment, a small one compared with the loss which the public would sustain by your retirement from the bench in the present condition of affairs in this Territory.

Also on August 16, 1864, 31 Storey County lawyers joined their names to a common letter expressing support for Judge North:

HON J. W. NORTH – *Judge First Judicial District—Dear Sir:* – Recent charges involving your reputation, impose a duty on us as attorney’s practicing in your Court (understanding as we think your public and private character), to assure you that we have undiminished confidence in the purity and integrity of your public and private life.

In the trying position of Judge of this Court, the most onerous (we venture to say) of any *nisi prius* Court in the United States, you have given the highest evidence of prompt attention, patient industry, energetic dispatch, commendable legal ability, official courtesy, and the more crowning quality of a Judge – stern, unflinching integrity of purpose.

We deeply regret the vast accumulation of pressing, complicated business in your Court, involving and suspending in litigation the great interests of our Territory, and we more deeply regret the continued ill health, which has heretofore delayed you in the discharge of the duties of your office so fully as you otherwise would have done.<sup>237</sup>

Judge North published a lengthy response on August 22, 1864, the day he resigned from the court. It reads:

[To the lawyers and citizens] who have recently expressed to me by letter, their cordial friendship and steadfast confidence.

GENTLEMEN:—Were I in health, it would give me great pleasure to reply to each of your kind and valued letters, separately and at length. As it is, I am sure you will excuse me for saving myself labor, by addressing you jointly.

The voice of friendship, which is always welcome, is especially so when one is prostrated by illness, and when enemies are desperate in their efforts to injure reputation and destroy the public confidence. These expressions of approval from leading members of the bar are the more welcome, since they come spontaneously, and in the face of earnest efforts to induce you to hold a different language. For your disinterested friendship and esteem as well as for the kind interest you have ever taken in sustaining me in the faithful discharge of duty, I sincerely thank you. Had my health permitted the relation we have sustained to each other for the past year, would have continued until the fourth of March next; as it is, I must let it terminate now.

Since my illness at the term of the Supreme Court in April last, I have contemplated resigning my office during the present vacation, so as to give ample time for the selection of my successor before the next term of Court. The attacks of a few enemies, together with the solicitation of many friends, have caused me to hesitate in this determination, until all that could be said against me could be heard and fully considered. Being, much of the time, too unwell to give attention to the matter, I have not seen many of the articles which I am informed have appeared pro and con in the papers. From what I have learned I am entirely content and satisfied with the result, and glad that I have given an opportunity for calumny to do its worst. And now, since the clamor has about ceased, and the dust and smoke have passed away, we look back upon a rehash, in

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<sup>237</sup> Correspondence, *Virginia Daily Union*, August 25, 1864.



the newspapers, of the stale and thrice refuted slanders of the man who distinguished himself at the Opera House last winter, aided by the note of one prison convict. One of these individuals seems to writhe under disappointment at the thwarting of some of his pet schemes; and the other thinks it an outrage that she should be sent to prison for shooting a man through the head. These make complaints on their own account, and call to their aid such assistance as can be lead into the service.

“No rogue e’er felt the halter draw,  
With good opinion of the law.”

Or with good opinion of the Judge who applied the law to his case. It is not strange that such persons should sometimes get angry and indulge in billingsgate. It is a little strange, however, that some honest men should be misled by them, and allow themselves to be used as tools for a base purpose. The frequent messages I receive from the few *real* men, whose names have been paraded before the public as asking all our Judges to resign, and their earnest expressions of confidence in me, shows that they are beginning to be sensible of the wrong they have done. I have never doubted for a moment that I have the confidence and approval of the great body of the good citizens of the Territory; and I am equally confident that I am not popular with criminals and corrupt men. And it is a significant fact, that after all the noise that has been made, not one of my decisions is attacked, as either illegal or unjust. That I have been able to discharge the difficult duties of my position so as to secure this as a result, is a source of sincere gratification. This being the position of affairs I regard it as idle longer to heed the stale repetition of old slanders, and wrong to allow it to influence me in the action, which as a good citizen it is my duty to take.

My continued illness wholly unfits me for the severe labor of a Judge of this District. A due regard for the public welfare requires that I should make way for my successor before the commencement of the next term of Court. I had hoped to be able to finish the business which is in progress before me; but I have tried my strength sufficiently to satisfy me that this is impracticable. I have given to the labors of the office what health and strength I possessed, and I am now compelled to give up my time to regaining the health I have lost.

Of the uniform courtesy and kindness of the members of the bar, and the cordial and sustaining confidence of the good people of the District, I shall always preserve a grateful recollection. The

position has been, as I expected, laborious and trying. I was not so vain as to expect to discharge all of its duties perfectly. I did expect to do my duty with fidelity, and this I have done, conscientiously and fearlessly. I am glad to have had the opportunity of rendering some service to the District, in securing the ends of justice, and in preventing corruption and crime. I can only wish that my health had enabled me to do more.

There is much need of improvement in our Judicial system, as is shown by the inevitable accumulation of business in Virginia; and I earnestly hope that by the adoption of a State Government, a sufficient number of Judges may be obtained to do the business of this District. And I also hope that your future Judges may be in all respects what good citizens could wish.

For the few virulent enemies who have labored so hard, during my illness, to destroy my good name, I cherish no vindictive feeling; though I shall probably ask some of them to come before a judicial tribunal and prove their calumnies or retract them once more. I know the errors of honest men will be corrected in due time. I hope to remain in the Territory in the practice of my profession, if my health permits, and we shall all have an opportunity to look back on present events, after time shall have tested the correctness of our present views. My resignation is telegraphed to Washington to-day, to take effect when my successor shall have been appointed and qualified.<sup>238</sup>

The relentless public campaign caused its intended result. The judges could never recover from the stain upon their work. Whether true or not, the accusations created a public perception that demanded change.

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<sup>238</sup> Ibid.

## Chapter 14

### Resignation of Territorial Supreme Court Justices and Statehood: August 22, 1864; October 31, 1864

**“On the 22nd instant, from the overwhelming pressure of public sentiment and the imperative demand of the members of the Bar, our Supreme Judges were forced to resign.”<sup>239</sup>**

The NTSC scheduled August 22, 1864 as the day William Stewart must appear and defend himself against disbarment based upon his attacks on the judges. Stewart prepared for the proceeding by obtaining evidence that Judge Turner accepted a bribe of \$5,000. Stewart described in his memoirs:

When I received the notice that I would be disbarred, I told Meyer I wanted an affidavit with exhibits showing that he had paid Chief Justice George Turner for the Hale and Norcross injunction. [Meyer was local moneylender and president of the Hale and Norcross mine.] Meyer came back in about three minutes with a receipt signed by Turner for \$2,000 and a check drawn in favor of Judge Turner for \$3,000, and endorsed by him, making a total of \$5,000 paid for the injunction.<sup>240</sup>

What few people knew, however, was the extent of Judge North’s physical and mental weariness. The week before, he had met or communicated with California Governor Frederick Low, U.S. Senator from California John Conness, and California Supreme Court Chief Justice Stephen Johnson Field to tell them he intended to resign and ask them to ensure that his replacement, if appointed by President Lincoln instead of local election if statehood was successful, would not be handpicked by Stewart or other lawyers involved in the local mining litigation. (Justice Field, Governor Low, and Senator Conness did telegraph President Lincoln and advised him to delay appointing a successor until after the September election.<sup>241</sup> Governor Low also telegraphed the Lawyer’s Committee in Virginia City regarding its attempt to select

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<sup>239</sup> The Curse of a Territorial Government, *Gold Hill Evening News*, August 24, 1864.

<sup>240</sup> Stonehouse, *John Wesley North and the Reform Frontier*, 170.

<sup>241</sup> The Judiciary Muddle, *Virginia Daily Union*, August 26, 1864.

Judge North's replacement: "In my judgment, no action should be taken until the fate of the Constitution is decided. The President is so advised."<sup>242</sup>)

When the judges took the bench, North announced that he was "compelled by severe and protracted illness to relinquish the office of Associate Justice of the Supreme Court and Judge of the First Judicial District of this Territory." He therefore resigned from the bench, effective immediately. His resignation letter to President Lincoln is revealing:

Having been obliged by severe illness to resign my office as Judge, and that after a clique of corrupt men have sought to injure my good name, with no other cause than that I had withstood their corruption; I beg leave to submit to you a brief correspondence between the members of the Bar at Virginia and myself, which will show my position.

The Attorneys who have writhed so restlessly under my administration of Justice for the past six or eight months, are a Mr. Stewart, son-in-law to Senator Foote, now in the Rebel Congress, and his partner [Alexander] Baldwin, a brother of one of the *Chapman* pirates of San Francisco . . . .

All agree that I have done more business in court during the past year than all that was done in the three years preceding. Yet there are about 450 cases now on the calendar; and scores of them are suits on the decision of which millions are turning. Everything is intensified to the highest degree, and corruption has to be with a firm hand. To hold the helm in these troubled waters is like navigating a whirlpool continually.

While my health lasted I could push business along, and make the rascals toe the mark; but when my health failed they had nothing to do but to abuse the Judge who had held them in check. But I will leave you to learn from others my true position. Professor Silliman and Dr. Bellows have been here and have seen for themselves. Governor Low, Judge Hoffman and other of California, are also fully informed.

I am glad to have had the opportunity of tendering my public service, as I know I have done, and now I am content to resume my place in private life.<sup>243</sup>

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<sup>242</sup> *Gold Hill Evening News*, August 26, 1864.

<sup>243</sup> Stonehouse, *John Wesley North and the Reform Frontier*, 176.

The following circumstances are told through the prism of Stewart's recollection and potential revision. After Judge North announced his resignation, Judge Turner declared a recess until later that evening. He reportedly sent notice to Stewart that he would resign if Stewart "would let up on him." Stewart responded by demanding that Judge Turner sign a resignation letter and cause it to be telegraphed to President Lincoln before returning to the bench. Otherwise, Stewart intended to swear out a warrant for Judge Turner's arrest on bribery charges. Judge Turner acquiesced. He returned to the bench later that evening and made a speech, which he sent to Attorney General Bates two days later. Stewart referred to the speech as "self-glorifying." Interestingly, Judge Turner included his prediction that the statehood vote would succeed:

Judge North having given notice of his resignation during the afternoon session of said Court, at the opening of the Evening session of the same, Chief Justice Turner said to the Bar from his place as follows;

This Court has been emasculated by the resignation of one of its members at its previous session, this was entirely new and unexpected to me, I never heard of Judge North's design to resign until today and his resignation has placed the Court in a new condition.

This tribunal consists when full, of only three members, the lowest number to which the majority rule can apply:-one of our number has left us. He declines to participate further in our judicial action here, two judges cannot conduct this Court; Counsel have publically here objected to the hearing of their causes by only two judges; in this I think they are right, a divided bench consisting of two can decide nothing. This is the last Term of this Court; before the next Term provided for by law the new judiciary under the State Government will sit.

In this State of facts it is evident that the usefulness of this Court is at an end, for the judges to remain and pretend to act as we are now left is but an empty form; by the resignation of one more of our member the business will not be retarded, nor will the public suffer an inconvenience, we cannot do the business here as we are now left.

I have served upon this Bench for nearly four years faithfully as I believe and I am happy to know that no matter how other Districts

may be situated as to their business, the duties of my Judicial District have been fully attended to, every Court has been regularly held, every case has been tried as fast as they were gotten ready for trial, no cause is at issue in my district and awaiting trial, all are disposed of; the public I am assured are fully satisfied and no complaints from any quarter in my District have been made, as a member of this Court and its presiding officer I am pleased to state that all the business of this Court has been regularly and fully done.

In this state of the case I have concluded of my own motion to resign my place upon this Bench – I have notified no one of this determination until this occasion; you are the first persons to [sic] receive this notice, and the conditions in which the Court is left as I have before stated are the reasons and the only ones that govern me in my action.

I never dreamed of taking this course until this day, and since the action of my associate.

I wish further to express to you, Gentlemen of the Bar, my sincere thanks for the uniform kindness & courtesy which you have all extended to me for the past three years, even in the difficult and often heated controversies which my duty has required me to adjust with you, a courtesy I may say which exceeds that ordinarily extended.

I therefore have concluded to give you notice my intention to resign my position, and that I shall therefore no longer participate in the proceedings of this Court.<sup>244</sup>

According to Stewart, the lawyers who were present then retired to Pete Hopkins' Saloon to await action from Judge Locke. After a few drinks they took matters into their own hands. Knowing that Judge Locke would not appear without inducement, Stewart ordered two young lawyers who were “physically strong and endowed with a reasonable amount of courage” to Locke’s room with directions to break in if necessary.<sup>245</sup> They found Judge Locke, dressed him, and sat him on a bench next to Stewart. When invited to resign he turned to Stewart for advice,

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<sup>244</sup> George Turner to U.S. Attorney General Edward Bates in *Letters Received by the Attorney General 1809-1870*, reel 8, Nevada, box 1, folder 3.

<sup>245</sup> William M. Stewart and George Rothwell Brown, *Reminiscences of Senator William M. Stewart, of Nevada* (New York and Washington: The Neale Publishing Company, 1903), 162.

and was told to do it quickly. He wrote out his resignation on the spot. “He then drank so much he became even more stupid than normal.”<sup>246</sup>

Thus ended the NTSC, just 16 days before the vote on statehood. The historian Hubert Howe Bancroft wrote in 1890:

Probably the first federal judges would have been able to hold their own against the criminal element in Nevada; but opposed to the combined capital and legal talent of California and Nevada, as they sometimes were, in important mining suits, they were powerless. Statutes regarding the points at issue did not exist, and the questions involved were largely determined by the rules and regulations of mining districts, and the application of common law. Immense fees were paid to able and oftentimes unprincipled lawyers, and money lavished on suborned witnesses.<sup>247</sup>

The Nevada Attorney General said in 1867 that “Nevada became a State to escape the dead-fall of her Territorial courts. Her temple of justice had been transformed into a den of iniquity, from which the ermine seldom escapes untainted and justice never unscathed.”<sup>248</sup> The statehood vote on September 7th was an anti-climactic, foregone conclusion. In total, 10,375 residents voted for statehood, whereas only 1,184 voted against. In the two most populous counties the vote was 5,448 to 142 (Storey) and 1,055 to 115 (Washoe). Only Humboldt County voted against statehood (320 to 544).<sup>249</sup>

California was never a territory before it became a state. Of the 12 western states that began as territories, Nevada stands alone for its shortest territorial duration. The other states progressed from territory to state in the following spans of time: Oregon in 11 years, Colorado in 15, Washington in 21, Wyoming in 22, Montana in 25, Idaho in 27, Utah in 46, Alaska in 47, Arizona in 49, Hawaii in 59, and New Mexico in 62 years.<sup>250</sup> In contrast, Nevada became a state after only three years of territorial status. While statehood would have occurred at some point, and President Lincoln’s supporters were agitating for statehood for other reasons, there appears

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<sup>246</sup> Ibid.

<sup>247</sup> Bancroft, *History of Nevada, Colorado, and Wyoming, 1540-1888*, 172.

<sup>248</sup> Address of R.M. Clarke, Attorney General, May 13, 1867 in *Reports of Cases Determined in the Supreme Court of the State of Nevada* (San Francisco: Towne & Bacon 1866), 3:17.

<sup>249</sup> Bushnell, *The Nevada Constitution*, 55.

<sup>250</sup> Ibid., 19.

no question that the perceived deficiencies of the territorial judiciary was a significant cause for the overwhelming electoral approval.

Returning to how this work began, the federal government was anxious to effectuate statehood as soon as possible. Certified copies of the constitution were sent to Washington, D.C. by mail and sea. When the copies were not received by October 24, 1864, Nevada Governor Nye ordered that the entire constitution be sent by Morse Code over the telegraph wire. Because there was no direct telegraphic link between Carson City and Washington, D.C., the lengthy 125-page telegraph, composing 16,593 words, was transmitted to Salt Lake City, where it was forwarded to Chicago, through Philadelphia, before arriving in Washington, D.C. The process took three days and cost \$4,313.27, which would be more than \$60,000 in contemporary value. The telegraphic transmission was successful and the constitution arrived just eight days before the presidential election. Nevada was admitted as the 36th state on October 31, 1864.



## Chapter 15

### Nevada Territorial Supreme Court Decisions

**“Everything was done loosely in the Supreme Court, no rules of the Court were observed or enforced when I was Clerk. . . . I mean to be understood as saying that no system was observed in the Court. Cases were often argued without points or briefs being filed. . . .”<sup>251</sup>**

A complete record of the NTSC can never be produced. The procedural formalities known at present, such as file-stamping, indexing, and document preservation, were unknown when the court was created. Unlike now, where the NSC is a structured institution that transcends its temporary judicial occupants, the NTSC was defined by its judicial personalities. The “court” was personified through its justices. Colorado Supreme Court Justice Wilbur Fisk Stone recognized this fact when writing about territorial courts: “Every court takes its quality and complexion from the judge . . . and its influence and effects are measured by the structure of the man and not the machine.”<sup>252</sup>

It is generally reported that the NTSC issued 88 opinions during its existence between 1861 and 1864. This number is gleaned from docket entries prepared by its two successive clerks of court. Upon review, however, it can only be stated that the NTSC *entertained* 88 appeals in various ways. There is no historical support for the proposition that the NTSC actually resolved 88 appeals or issued 88 opinions. The NTSC’s “decisions” and “opinions” are distinguished in the historical records. The “decision” was an oral pronouncement merely affirming or reversing the judgment below. When an “opinion” was written it generally followed the decision by several months. It appears that many oral decisions were not followed by written opinions. In some instances, appeals were dismissed before a decision was even announced. Other appeals were filed late in the territorial time and held over for the post-statehood NSC. The exact number of decisions and opinions was unknown even at the time and cannot be re-created with certainty from the records. As demonstrated later in this chapter, it

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<sup>251</sup> Testimony of James Reardon in *Appendix to Journals of Senate of the First Session of the Legislature of the State of Nevada*, 8a, 3-5.

<sup>252</sup> Wilbur Fisk Stone, Ed., *History of Colorado* (Chicago: The S.J. Clarke Publishing Co. 1918), 734.

appears there were 52 appeals in which the NTSC rendered a decision. Several appeals were held over or affirmatively continued until the first session of the NSC after statehood. Of the 52 known dispositions, an unknowable number of opinions were issued. Now, for the first time, 32 of the opinions have been re-created from the newspapers of the time and included in this work. (The NSC issued an additional eight opinions examining appeals that began in the NTSC.)

The NSC became the successor to the NTSC upon statehood. Unfortunately, the NTSC's opinions were not included in the official court records upon transition from territory to state. (Other NTSC records were preserved and are located at the Nevada State Archives.) The location of the NTSC's opinions was investigated by a senate special subcommittee during Nevada's first legislative session. On January 28, 1865, NTSC Chief Justice Turner appeared with the two NTSC clerks and provided sworn testimony to the subcommittee.<sup>253</sup> Their collective testimony reveals how disorganized the NTSC was during its existence and how its papers were unreliable just three months after statehood.

Mr. James Reardon was appointed clerk of the NTSC in January, 1862 and served until July or September of 1863.<sup>254</sup> He testified:

About seven opinions of the Court were in my possession during my continuance in office. Mott wrote five of them, and Turner two. There may have been two additional dissenting opinions, making nine in all, not more.

The decisions were during the terms of Court; the opinions sustaining them were generally filed long afterward. I do not recollect of any opinions being filed within less than two or three months after the decisions to which they referred.

The points of decisions when given by the Court were not stated, but a simple order was made affirming or reversing the decision below.

The opinions, when written out, were handed me by the Judge who prepared them. I filed them and placed them in my desk for want of better accommodations.

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<sup>253</sup> *Appendix to Journals of Senate of the First Session of the Legislature of the State of Nevada*, 8a: 3-5.

<sup>254</sup> Reardon testified he served as clerk until September, but his predecessor testified that he assumed duties as clerk on July 27, 1863.

When I went out of office I handed them over, with other papers, to my successor, I am positive that opinions were among the papers handed over by me. I cannot say that all were so handed over, or how many. I remember seeing opinions among the papers when delivered. One was an opinion in the case of Griggsby against Rice, rendered, I think, by Judge Turner.

I do not know where those opinions are now. I have never seen them since they were handed over to my successor. I never recorded any of them for the reason that I had no facilities for so doing.

Everything was done loosely in the Supreme Court; no rules of the Court were observed or enforced when I was Clerk.

No office was furnished me, except for six, or perhaps seven months. The Legislature refused to audit and pay my accounts for books, stationery, tables and seal.

....

A few days before I resigned, Judge Turner desired of me a list of cases in which no opinions were filed, which I failed to give him. Soon after this the opinions began to appear in the Virginia papers.

....

I mean to be understood as saying that no system was observed in the Court. Cases were often argued without points or briefs being filed.

Mr. Alfred Helm was appointed clerk of the NTSC after Mr. Reardon resigned. He acknowledged there may "have been one or two opinions among the papers handed me by Reardon, but I do not positively recollect any." He suspected that some of the opinions issued before his appointment were published. He then testified:

I have not the possession of the originals of all the opinions rendered in my time. Just after I was appointed Clerk, Thomas Fitch was appointed Reporter of the Supreme Court. Under the rules of the Court the Reporter was entitled to the original opinions and briefs. Mr. Fitch was at that time acting editor of the *Union*, at Virginia, and the original opinions were sent to him. At the same time the *Independent* was published here, and copies were furnished to that paper. There was no provision then made to pay for copies.

I sent the originals to Fitch—A large proportion of them were rendered by Judge Turner.

The originals sent to Virginia, to Fitch, being probably from twenty to thirty, were not recovered. When I found that they were lost, I made two copies of all other opinions, and afterwards preserved the originals in my office.

.....

The opinions, as printed, were correct. Their publication was watched closely by Judge Turner and myself.

Judge Turner carefully collected and preserved all printed copies of opinions given by the Court. They were cut from newspapers.

I think the originals in Reardon's time were sent to the printing office.

Thomas Fitch was subpoenaed but he did not appear before the subcommittee. Judge Turner testified that he had no original opinions and the only opinions he possessed were copies previously printed in the newspapers. He indicated that “the circuit duties of the Judges often rendered it impossible to prepare opinions when judgments were given, and from this cause delays occurred in filing such opinions.”

The special subcommittee closed its investigation and concluded the original opinions sent to Mr. Fitch for publication in the *Virginia Union* were destroyed in the “course of such publication . . . in consequence of being taken to pieces and scattered among the compositors for the setting up the type.”<sup>255</sup> The subcommittee further exonerated Judge Turner “from all censure; that all statements, wherever and whenever made, to the effect that he had, at any time, improperly obtained possession of the original opinions of the Supreme Court of said Territory, are unsustainable, and that the copies of such opinions now in his possession, and which he proposes to publish under the sanction and by the authority of the State, are correct copies of the opinions actually rendered by said Court.”<sup>256</sup>

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<sup>255</sup> *The Journal of the Senate during the First Session of the Legislature of the State of Nevada* (Carson City: State Printer), 200.

<sup>256</sup> *Ibid.*

The 1865 legislature passed legislation authorizing Judge Turner to publish the opinions he possessed at public expense. It was reported that Judge Turner would receive \$5,000 for publishing 300 copies of the “69 decisions of the late territorial Supreme Court.” On February 11, 1965, the *Humboldt Register* criticized the legislature as follows:

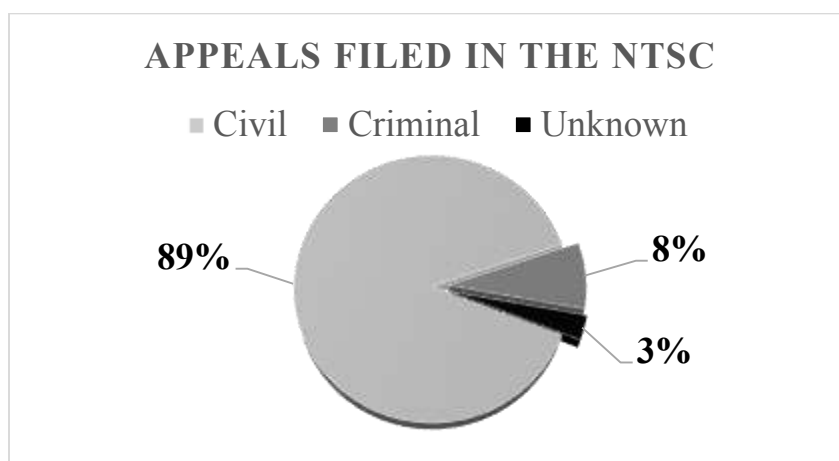
ANOTHER NICE APPROPRIATION.—The State Senate, on the 3d, passed a bill making an appropriation for the publication of the decisions of the late Territorial Supreme Court. Judge Turner, of that Court, has the decisions, and the understanding is that he will make a handsome speculation of their publication. Where, now, is the sense—the decency—of taxpaying the State for such a work? The judges composing that Court were each severally charged with corruption; with selling their decisions; with so deciding mining suits as to turn quartz into their own mill, or the mill of a dear brother-in-law; of purposely delaying hearings, through favor. The Supreme Judges each suffered such charges to be thrust in their faces, till the public was nauseated of them. The unanimous [sic] popular judgment at last was, that the judges ought to resign—that, even if possibly innocent, they were no longer respected. They were importuned by the Bar, and petitioned by the community; and at last yielding to so great a pressure, the Supreme Court went out under a cloud—none opposing. It is now proposed to expend sundry thousands from the State treasury, in the publication of a book—a book containing the decisions of that Court—those decisions which the community said were bought. If the judges were so obnoxious as not to be tolerated, how much respect will their book of decisions command? Faugh: there’s corruption in other places than the poor dead and gone Supreme Court.

Governor Henry Blasdel vetoed the funding bill, in part, because Judge Turner possessed only 18 authentic copies of the 69 reported decisions and “the other 51 to be obtained only of some scavenger.” Despite the loss of many original documents, a broad record of the NTSC’s work can be re-created from the newspapers and Nevada State Archives. The following tables illustrate the allocation of subject area, affirmance and reversal trends, the availability of published opinions, and the number of appeals resolved by the NSC after statehood. Following the tables are summaries compiled from opinions published in local newspapers, docket records

at the Nevada State Archives, and the Russell W. McDonald collection at the Nevada Historical Society.<sup>257</sup> All transcribed decisions are set forth in Appendix A.

The NTSC confronted several legal issues confined to the time and other issues that remain applicable today. While the opinions may only have limited legal relevance they provide a fascinating insight into the legal affairs and life in the western frontier. They also reveal structural limitations, judicial personalities, procedural irregularities, frustrated lawyers, inadequate laws, and unsophisticated lawyering. On several occasions the judges demonstrated they understood the importance of precedent and settled law. The judges also understood the deferential review role of an appellate court and they revealed a keen respect for juries and jury instructions.

Legal disputes that continue to appeal after trial court disposition represent the more controversial, substantive, or valuable questions in law. A review of the NTSC's work confirms that mining was the predominant theme and economic indicator of the time. There were few criminal and non-mining civil appeals. Most appeals touched mining though breach of contract, water issues, ejectment, and trespass. A review of the available information also shows a recurring use of trial "referees" to assist with judicial functions. The following graph and tables summarize the categorical details of the NTSC's work.



NOTE: This chart represents the percentage of civil and criminal appeals filed in the NTSC, including appeals that were ultimately heard and resolved by the NSC.

<sup>257</sup> See Territorial Transcripts Nevada Supreme Court (Carson City: Nevada Records Management Services, 1971), microfilm Reels 0001-0007; Russell McDonald Collection, Nevada Territorial Supreme Court Opinions, Box 4, Nevada Historical Society, Reno. Handwritten dockets books, transcripts, and case files are on site at the Nevada State Archives in Carson City.

TABLE 1: AVAILABILITY OF OPINIONS

	Number	Percentage
Total opinions	40	45%
NTSC opinions	32	36%
NSC opinions resolving NTSC appeals	8	9%
Known disposition but unknown if opinion issued	20	23%
No opinion issued and case dismissed	8	9%
No opinion issued for unknown reasons	17	19%
No opinion because appeal was never heard	1	1%
No opinion because appeal held over to statehood	2	2%

NOTE: Table 1 represents all 88 appeals that were filed in the NTSC and the total number of available written opinions, including decisions by the NSC for appeals that began in the NTSC. The table also identifies the number of appeals where a decision was rendered but no written opinion has been located. Finally, it recognizes the number of appeals where no written opinion exists because an appeal was dismissed, it was never heard, or there is insufficient information in the historical record to determine whether a written opinion was ever issued. One opinion resolved two appeals. See No. 60 and No. 61.

TABLE 2: ALLOCATION OF CRIMINAL SUBJECT AREAS

	Number
Murder	3
Robbery	1
Brandishing Weapon	1
Nuisance	1
Manslaughter	1

NOTE: Table 2 lists the number of criminal case types filed in the NTSC.

TABLE 3: ALLOCATION OF CIVIL SUBJECT AREAS

	Number	Percentage
Property	35	40%
Contract	20	23%
Criminal	7	8%
Injunction/Equity	7	8%
Tax	7	8%
Tort	2	2%
Unknown	10 <sup>a</sup>	11%

NOTE: Table 3 broadly classifies the primary legal themes in the 88 appeals filed in the NTSC.

<sup>a</sup>. There are 3 appeals where no information is available. The other 7 are classified as civil appeals based upon the party names, but listed as unknown because the specific legal issue cannot be identified.

TABLE 4: NATURE OF DISPOSITION BY NTSC

	Percentage
Affirmed	55%
Reversed	13%
Dismissed	10%
Unknown	22%
Never heard	1%

1. PEOPLE V. MAYFIELD

- *Criminal. Second Judicial District (Ormsby County) (Turner, District Judge)*
- *Trial record filed in NTSC on February 19, 1862*
- *Appeal continued on June 2, 1862*
- *No opinion ever published but portions of record exist*
- *Stay of execution ordered*



The first appeal filed in the NTSC is a criminal case involving murder. Defendant William Mayfield stabbed Ormsby County Sheriff John Blackburn to death on November 18, 1861. The crime engendered considerable public attention. Even Territorial Governor Nye became involved by securing Mayfield's custody and corresponding with U.S. Secretary of State William Seward about the murder. Sheriff Blackburn was not well liked by many residents and some felt Mayfield was justified in his actions. Mayfield was convicted and sentenced by Judge Turner to hang until he was "dead, dead, dead." Mayfield subsequently filed an appeal and requested a stay of execution, which Judge Turner denied. However, Judges Mott and Jones, acting as a majority of the NTSC, entered a stay of execution until June 2, 1862. Mayfield subsequently escaped from custody and fled the Territory before the appeal could be heard. No other official record exists.

A lengthy news article about the murder and escape was published in 1892 in the *San Francisco Examiner*. The author of the article, Joseph T. Goodman, made subtle references to judicial misconduct when he described the stay order: "But an effort was made, and by means notoriously effective in influencing some of the Supreme Judges in those days, two of them were induced to order a stay of proceedings in Mayfield's sentence until his case could be brought before the court." Goodman did not explain his suggestion against the judiciary. What is evident, however, is that distrust was a public concern the judges would have to confront from the beginning of territorial times.

**Legal Concepts:** *Crime and Punishment; Stay of Execution*

2. ATWILL V. NOYES

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*
- *Dissenting opinion and portions of record exist (Jones, Justice)*
- *Judgment affirmed (June 10, 1862)*

This case involved a dispute relating to the election of a local justice of the peace. The formal claim for relief was "usurpation of office." Multiple candidate names appeared on the ballot and voters were to cast only one vote. However, several hundred voters cast two votes on the same ballot and the election results were distorted when the noncompliant ballots were

counted. The argument in favor of counting the noncompliant ballots was voter confusion because candidates for justices of the peace for both Gold Hill Township and Virginia Township appeared on the same ballot. The district court sustained a demurrer to the information or complaint. The opinion affirming the judgment has not been located but a copy of Judge Jones' dissenting opinion is available. He wrote: "The grand aim of election laws is to provide machinery for the ascertainment of the will of the legal voters of the commonwealth. The courts have construed these laws in the light of this great aim, and have consequently been very reluctant to invalidate elections for irregularities in their conduct." Judge Jones concluded the elections results should have been declared void because the ballots cast "were void, *prima facie*, for uncertainty." His dissent is one of a few that was actually published, which signifies the importance of the case to the general public.

**Legal Concepts:** *Election; Judicial Notice; Conjecture; Justice Court Townships*

### 3. GRIGGSBY V. RICE

- *Civil. First Judicial District (Washoe County) (Mott, District Judge)*
- *Complaint filed September 18, 1861*
- *Injunction granted March 26, 1862*
- *Notice of appeal filed March 27, 1862*
- *Full opinion (Turner & Mott, Justices) (September 3, 1863)*
- *Judgment reversed*

This appeal presents the first NTSC opinion examining water rights. The specific issue was the diversion of water for a quartz mill. Plaintiff sought an injunction enjoining defendants from building a dam or diverting water from its natural course. Defendants admitted they intended to divert the water and relied upon a county survey made in June 1860, to justify their position. Defendants also claimed to own the water by reference to a decree previously entered by Probate Judge John S. Child. Judge Mott entered an order enjoining the diversion "of waters until such times as defendants shall be prepared to return same quantity and quality of water to natural channel of creek above plaintiff's boundaries as usually flows in all seasons of year." The NTSC reversed the injunction. In rendering its opinion, the court concluded: "It will not be necessary ... to go fully into a discussion of the legal principles involved in the appropriation of

water for the various purposes of mining, milling, and irrigation. As we have elaborated these matters very thoroughly in the opinions of this Court, recently published in two important cases, to-wit: [CHILDERS V. BROOKS No. 9 and COOVER V. HOBART No. 15] for the correct legal doctrines and the authorities supporting them in this branch of judicial jurisprudence we would refer to those cases, and therefore shall not quote authorities here.” This case serves as an example of the NTSC’s reliance upon earlier decisions to establish legal precedent. As the judges noted in subsequent decisions, the lack of written legal precedents was an obstacle to be overcome as more appeals were filed.

**Legal Concepts:** *Real Property; Water Law; Surveys; Land Title; Detrimental Reliance; Injunction*

4. CORD V. FOSTER

- *Civil. First Judicial District Court (Storey County) (Mott, District Judge)*
- *Complaint filed January 21, 1862.*
- *Judgment entered March 12, 1862*
- *Full opinion. (Turner & Mott, Justices)*
- *Judgment affirmed*

This is the first appeal involving a contractual dispute. The contract in dispute was for the construction of a home/hotel. Both parties alleged a material breach. Plaintiff sought payment and defendant alleged delay in performance and damages for lost rental income. Plaintiff prevailed and was awarded damages in the amount of \$1,002 and costs of \$49.60. The NTSC affirming order was exceedingly short: “This case is in a nutshell and we will dispose of it in a summary way.” The brevity of the opinion could signify simplicity of the legal issue, lack of an extensive trial record, or inadequate briefing of the appeal. A number of NTSC decisions were resolved in similarly short opinions.

**Legal Concepts:** *Construction; Promissory Note/Deed of Trust; Security; Contract; Foreclosure; Counter-Claim; Onus Probandi; Evidence; Burden of Proof*

5. NASH V. CARLISLE

- *Civil. Second Judicial District Court (Ormsby County) (Turner, District Judge)*
- *Complaint filed December 31, 1861*
- *Jury verdict entered April 24, 1862*

- *No opinion but portions of record exist*
- *Judgment affirmed (Mott, Jones & Turner, Justices) (June 21, 1862)*

This is a property action for ejectment in which plaintiff claimed ownership of a parcel in “King’s canon and Eagle Valley bounded on north by King’s Ranch and on south by a range of mountains.” Plaintiff had never enclosed the land and Judge Turner ordered the property surveyed. The jury returned a verdict for plaintiff. Defendants sought a re-trial because of 1) “irregularity in proceedings of court in setting cause for trial before the issues were made up after amended complaint was filed and not allowing defendant ten days to answer,” 2) “surprise to this defendant as to time cause would be tried,” and 3) errors in the jury instructions. Judge Turner denied the request and the defendant appealed. Defendant contended that his witnesses “had to leave to protect cattle ranging in Carson” because of “Indian depredations (and by driving away by other stockman.)” The NTSC rejected the excuse and affirmed the trial court’s decision. This case serves as an example of an appeal based solely upon procedural error. Contemporary appeals raise similar issues and judges constantly struggle to balance procedural obligations with substantive rights.

**Legal Concepts:** *Real Property; Mining Claims; Surveys; Land Boundaries; Jury Instructions; Procedural Due Process; New Trial; Unavailability of Witnesses; Continuance*

6. ALFORD V. DEWING

- *Civil. First Judicial District (Washoe County) (Mott, District Judge)*
- *Complaint filed August 7, 1861*
- *Verdict entered March 24, 1862*
- *No opinion ever published but portions of record exist*
- *Judgment affirmed. (Turner & Mott, Justices; Jones, Justice dissenting) (June 21, 1862)*
- *August 12, 1862: Appellants “failed and neglected to file the [trial record] in this court, and that the time therefore expired. It is ordered that the said appeal be dismissed, at appellant’s costs.”*

This appeal was an action for trespass because of improper timber lumbering. The minutes from Ormsby County on January 6, 1862, indicate Judge Turner transferred this matter from the Second Judicial District to the First Judicial District. Plaintiff alleged the defendants “forcibly entered land with axes, saw and other iron instruments and unlawfully and wrongfully cut down and felled, removed and carried away large quantity and number of trees and timber.”

The jury returned a verdict for plaintiff and awarded damages in the amount of \$25.00. Defendants were also “perpetually restrained and enjoined from trespassing on premises or cutting down and removing timber.” No opinion exists, but the matter was subject to a rehearing petition before the NSC in 1865.<sup>258</sup> The NSC remarked: “This case was decided by the territorial court of Nevada, and comes before us on petition for rehearing. That our views of the case may be made more intelligible (the original opinion not being published), we will treat it rather as one coming before us for decision than as a mere application for rehearing.”<sup>259</sup> This case demonstrates one of the many problems caused by the lack of recorded opinions. The NSC had little choice but to start anew when the NTSC’s reasoning and decision were unavailable.

**Legal Concepts:** *Trespass; Real Property; Rehearing; Injunction; Nonsuit; Appellate Practice*

7. WALLACE V. JOHNSON

- *Civil. Second Judicial District (Ormsby County) (Turner, District Judge)*
- *Complaint filed January 22, 1862*
- *Judgment entered March 10, 1862*
- *Opinion*
- *Judgment affirmed (Turner, Jones & Mott, Justices)*

This was an appeal to enforce a promissory note. Plaintiff obtained a default judgment of \$239.85 with costs of \$19.10 and defendant appealed alleging error in the summons and return. He argued the sheriff had no authority to issue and serve the summons as he was no longer in office. The return was amended after the fact to reflect the identity of the new sheriff. The NTSC held it was proper “to allow a Sheriff to amend his return even at a subsequent term, and the amendment will relate to the return date.” The judgment was affirmed because the “return imports verity.”

**Legal Concepts:** *Service of Process; Sheriff’s Return*

8. HAYBACK V. STEUDMAN

- *Civil. Second Judicial District Court (Ormsby County) (Turner, District Judge)*
- *Complaint filed December 30, 1861*
- *Judgment entered April 7, 1862*

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<sup>258</sup> See *Alford v. Dewing*, 1 Nev. 207 (1865).

<sup>259</sup> *Ibid.*

- *Judgment vacated April 10, 1862*
- *Judgment re-entered April 10, 1862*
- *No opinion but portions of record exist*
- *Judgment reversed (Mott & Jones, Justices; Turner, Justice dissenting)*

This was an action to enforce a promissory note. Default judgment was entered after defendant was “duly served by publication.” The defendant appealed, alleging 1) no evidence that a copy of the summons was placed in the post office as ordered by the court, and 2) the affidavit of publication was deficient because it was not made “by the Printer or his foreman or principal clerk” as required by law. There are unexplained procedural irregularities in the appellate proceeding. On June 21, 1862, Justices Turner and Mott ordered the appeal dismissed, to which Justice Jones dissented. Yet on August 12, 1862, Justice Turner delivered an opinion with the full bench concurring that judgment be reversed and remanded for further proceedings.

**Legal Concepts:** *Service by Publication; Notice of Publication; Appellate Procedure*

#### 9. CHILDERS V. BROOKS

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*
- *Complaint filed July 31, 1861*
- *Judgment entered March 15, 1862*
- *Opinion and concurring opinions. Dissenting opinion does not exist*
- *Judgment reversed (Turner & Jones, Justices; Mott, Justice dissenting) (June 21, 1862) (Jones filed his opinion on March 28, 1863)*

This is the first decision to reveal judicial personalities and alignments between the judges. It also illustrates the structural challenges of having trial judges sit together in judgment of each other’s decisions. The underlying action was to recognize and enforce water rights. The primary issue on appeal, however, was the way Judge Mott instructed the jury before it began its deliberations.

Judge Mott revealed judicial impatience when he stated to the jury: “It was claimed by counsel for defendants, and persistently urged by one of them in your presence, that the right to the use of the water claimed by the plaintiff, was not in issue in this case. But this proposition, although pressed upon the attention of the Court with so much pertinacity as well nigh to exhaust its patience, seemed to the Court so manifestly untenable, that further argument upon it was positively forbidden.”

Judge Mott revealed judicial independence and subtle indignation when he stated to the jury: “But this Court holds, and will continue to hold, until overruled by a higher tribunal, that the plaintiff in this and like cases, may have his claim fully determined in one action. The Court will not drive a party to the necessity, the trouble and expense of bringing two actions, when his rights may be fairly and fully settled and adjudicated upon in one.”

Finally, Judge Mott revealed his frustration with the absence of controlling case authority when he stated:

In the view which the Court has seen proper to take of this case, there is very little of the law, as read by counsel in your hearing, that can have any legitimate bearing upon the issues involved in this action. In this territory a new kind of mining is extensively carried on, unlike the mining done in California. Our miners seem to have adopted different laws and different usages and rules, in regard to mining, and the location of mining claims; and also in regard to the location of water rights, for milling and other purpose; cases like this, must stand or fall upon their own merits and must be determined by the peculiar circumstances by which they are surrounded. . . . I stated in a former trial as I do in this, that very little of the written law, contained in our law books, can be found which is applicable to this case. In disposing of such cases as this, we must resort to the “lex non scripta” the unwritten law, as our guide, while administering justice between these parties.

. . . .

We must appeal then to the immutable principles of natural right, and natural justice, as a guide in determining the merits of this case. Fortunately for us, it requires no extensive knowledge of human laws, of Reports and Statutes, to enable us to arrive at a just conclusion in regard to the rights of these parties. . . . In judging of a simple question of natural right, by bringing your own innate sense of justice and your knowledge and experience of the conduct of men in their business relations, to bear upon the testimony in the case, you will be most likely to arrive at a correct conclusion. Take then the testimony in this case, of which you are the sole judges, examine it carefully, apply to it the rules and principles to which I have alluded, and determine which of the parties to this record had the best right to the possession of the premises in controversy, and the use of the water at the time laid in the complaint in this action.

In his written opinion, Justice Turner effusively referred to his colleague Judge Mott as “the very honorable, worthy and learned Judge” and “the learned and most estimable Judge.” Judge Turner noted that “verbal criticism is seldom useful in judicial discussion, the effort of the Judge in an appellate Court, should rather be to settle principles of law, than to enter into a wordy warfare with his colleagues or the bar.”

Nonetheless, Judge Turner gently found error in Judge Mott’s charge that the dispute could not be resolved by settled law. He examined the legal principles in detail and implicitly criticized the lawyers for “blinding and confounding . . . the clear principles of the law, in a manner that it would be fatal to tolerate.” Judge Turner ended his opinion by concluding that “[p]urely speculative appropriations of land, water, and mines, in a new country situated like this, are not to be encouraged, but every wholesome and proper aid, and all reasonable protection, should be extended to those persons, who not only give notice to the world that they seek to appropriate these various elements of wealth, but after such notice go forward with various acts of appropriate, which finally culminate in a deep and thorough dominion over the property.”

Judge Jones concurred in the reversal but wrote separately to express his own views. He was not as politic or polite as Judge Turner, writing: “Yet the Judge of the District Court in his charge, in a manner peculiarly well calculated to mislead the jury, sweeps aside that whole system, telling the jury that very little of the law read in their hearing could have any legitimate bearing upon the issues involved in the action.” Judge Jones’ concurring opinion reveals professional animus and condescension toward his colleague Judge Mott: “I scarcely know what to say touching this charge of the Court. I conceive it to be my duty to protect most earnestly and solemnly against it in its entire bearing, scope, purpose, and effect. It is characterized by a bewildering vagueness and uncertainty, by confusion of thought and misconception of the law. Its only tendency was to confuse and mislead.”

Judges often speak to one another in written opinions. This case illustrates how territorial judges publicly announced their differences of legal opinion. It is also an example of how legal precedent from outside the territory influenced the NTSC decisions. For Judge Mott, the



authority was not helpful because there were social, political, and economic conditions unique to the area. For Judges Turner and Jones, case law provided a template for resolving the dispute in an efficient and just manner. Judge Jones' Harvard law training becomes apparent in this appeal.

**Legal Concepts:** *Water Rights; Mills; Ejectment; Title to Land; Possession; Trespass; Jury Instructions; Jury Province; Appellate Decorum; Judicial Economy; Absence of Law; Nisi Prius*

10. DUNCAN V. WAGNER

- *Civil. Second Judicial District Court (Ormsby County) (Mott, District Judge)*
- *Complaint filed September 6, 1861*
- *Writ of attachment entered September 6, 1861*
- *Case transferred from First Judicial District to Second Judicial District January 9, 1862*
- *Default entered February 15, 1862*
- *No opinion published but portions of record exist*
- *Appeal dismissed*

This was another action to enforce a promissory note, but included allegations of fraudulent conveyance in an effort to defraud creditors. The district court issued a writ of attachment with a bond requirement in the amount of \$500. The sheriff attached the real property and the court denied a motion to dissolve. Defendant filed a notice of appeal but subsequently requested the appeal be dismissed. This is the first example of a case being voluntarily dismissed before the appeal was heard, which illustrates why there are not 88 decisions or written opinions from the NTSC. There is no need for an opinion when the appeal is dismissed.

**Legal Concepts:** *Writ of Attachment; Affidavit; Return; Equitable Relief; Real Property*

11. BEDFORD V. RAYMOND

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*
- *Complaint filed October 22, 1861*
- *Judgment entered March 15, 1862*
- *No opinion published but portions of record exist*
- *Appeal dismissed*

This was an action to enforce a promissory note that was executed in Grass Valley, California on July 5, 1855. The note contemplated performance of the terms within 90 days and

interest to accrue at 3% per month after the 90 days expired. Defendant contended the case should be dismissed because it was time-barred by the statute of limitations. However, judgment was entered for the plaintiff in the amount of \$1,692.85, and costs in the amount of \$60.00. The district court minutes indicate the defendant ultimately confessed judgment. Unfortunately, there is no official record of what occurred in the NTSC on appeal, except that the appeal was dismissed.

**Legal Concepts:** *Contracts; Statute of Limitations*

12. SHELDON V. SMITH

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*
- *Complaint filed January 29, 1862*
- *Jury verdict May 17, 1862*
- *Opinion. (Turner & Mott, Justices)*
- *Judgment affirmed*

This was an action for payment in exchange for services rendered (“crushing gold and silver-bearing quartz rock”). Defendant answered and alleged “the crushing of said rock was imperfectly done, and deny any indebtedness to the plaintiff.” A jury rendered a verdict for plaintiff in the amount of \$3,795.23. Defendant subsequently moved for a new trial, but Judge Mott denied the motion. Defendant then appealed asserting several allegations of error: 1) the verdict was contrary to controlling law, 2) the verdict was contrary to the evidence presented, and 3) the district court should have granted a demurrer. The NTSC ultimately concluded in language reminiscent of modern times: “It is sufficient to say the evidence was conflicting upon matters of fact fairly submitted upon both sides; no fraud or misconduct occurred, and no rule of law was violated; hence it is our duty to leave the verdict undisturbed.”

This appeal serves as an example of deference that appellate courts will give to a lower court’s decision, especially one resulting from a jury trial. Unless an error is manifest it is usually unnecessary to disturb a verdict based upon trial evidence.

**Legal Concepts:** *New Trial; Judicial Discretion; Contracts; Evidence; Province of Jury*

13. ROCKWELL V. TAYLOR

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*

- *Complaint filed April 5, 1862*
- *Judgment entered May 31, 1862*
- *Opinion*
- *Judgment affirmed*

This was an action to enforce a promissory note. Defendants challenged plaintiff's status as owner and legal holder of the note. Defendants also asserted insufficiency of consideration for the endorsement. Plaintiffs prevailed and were awarded \$1,000, and costs in the amount of \$37.50. Defendants filed a notice of appeal but no briefs were filed by either party and the judgment was affirmed. The NTSC concluded the appeal was filed "without cause and for delay." The disposition of this appeal is intuitive. The party seeking to reverse a trial court's decision must give the appellate court sufficient justification for intervening to a different conclusion. Without adequate briefing, an appellate court has no valid basis to reverse a lower court judgment. The NTSC's language also implies the existence of invidious legal strategy, which periodically emerges in contemporary jurisprudence.

**Legal Concepts:** *Promissory Note; Bad Faith Purposes in Appeal; Holder in Due Course*

14. STEELE V. HUMPHREYS

- *Civil. First Judicial District Court (Storey County) (Mott; District Judge)*
- *Complaint filed September 14, 1861*
- *Verdict returned for plaintiff May 12, 1862*
- *Opinion*
- *Judgment affirmed on August 12, 1862*
- *Motion for remittitur filed on October 13, 1865*

The underlying action in this case was to recover possession of real property through claims of trespass and ejectment. The property in dispute was a residential lot in Virginia City. Plaintiff claimed he owned and possessed the lot and "defendants entered with force and arms and ejected" him. Defendants asserted the plaintiff improperly pled the matter because trespass, ejectment, and money damages "cannot by law be blended or comprehended in the same action." Judge Mott denied defendants' motion to dismiss and a jury returned a verdict in favor of plaintiff. The trial record was not transmitted, which prompted the NTSC to establish an important principle of appellate procedure: "The record does not contain the evidence produced at the trial, and this court will presume every thing in favor of the regularity of the proceedings

of the court below.” This procedural principle is a standard that appellate courts follow to this day. Appeals are often summarily dismissed or affirmed simply because of such procedural derelictions.

The matter was subsequently appealed to the U.S. Supreme Court but defendants again failed to perfect their appeal by filing a trial transcript. The challenges of frontier justice are revealed through plaintiff’s affidavit seeking a remittitur from the U.S. Supreme Court:

O.C. Steele being duly sworn deposes and says, that on the 12th day of May A.D. 1862 he recovered a judgment in the District Court of the First Judicial Dist. in the County of Storey, in the then Territory – now State of Nevada, against the Defendants for the recovery of the possession of certain real estate described in plaintiff’s complaint . . . .

That said cause was afterwards heard in the Supreme Court of said Territory and the judgment and decision of the Court below affirmed. Whereupon said Defendants appealed said cause to the Supreme Court of the United States, that said defendants have failed to file a transcript on appeal in the Supreme Court of the United States, or to take the steps necessary to perfect the appeal in said cause to that court. Affiant further shows that he has applied to the Clerk of the Supreme Court of the United States, for a certificate, that no transcript has been filed in said cause, and that the Clerk informs him that after diligent search it does not appear that any transcript has been filed, or other steps taken for the prosecution of an appeal from Nevada Territory, in the case of O.C. Steele vs. G.O. Humphries, and further informing affiant that it is not the practice of that office to give official certificates of a negative.

Wherefore affiant prays that a Remittitur issue in said cause, directing that he be put into possession of the premises described. In his complaint in the above entitled action, and that he have such other relief as the nature of the case may warrant.

**Legal Concepts:** *Ejectment; Real Property; Trespass; Rents/Profits; Title to Property; Witnesses; Evidence; Admissions; Quiet Title*

15. COOVER V. HOBART

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*
- *Complaint filed August 21, 1861*
- *Judgment entered February 25, 1862*

- *Opinion (Turner & Mott, Justices) (September 3, 1863)*
- *Judgment reversed*

A trespass action relating to a quartz mill and water rights. The parties owned and operated competing quartz mills. Plaintiffs alleged defendants “cut sluices, trenches, channels in the bed and sides of a stream and built 200 feet up from plaintiffs’ mill and ashes, cinders, and dirt so muddled, riled and adulterated quality of water as to make it unfit for plaintiffs’ use.” The jury returned a verdict for plaintiffs. The issue on appeal was Judge Mott’s charge to the jury regarding the timing of damages accrual, *i.e.*, from date of the complaint or date of the verdict. The NTSC held that damages accrued from the date of the complaint. It noted that water rights for mineral processing was “unknown at common law” and presents issues “entirely novel in the history of jurisprudence.” The opinion is lengthy and contains significant authorities from other jurisdictions. This was likely done to establish precedent in the territory. In fact, the opinion was subsequently relied upon in GRIGGSBY V. RICE (No. 3). The court also took time to analyze the principles of damages and water law because they were “fundamental and elementary matters of peculiar importance” to the people and “immense suits already brought and bringing in this new country. They are also interesting to all using hydraulic power. For the public good, therefore, we have disposed of this case with reference to the general, rather than the especially important issues.” The NTSC should be commended for its effort to provide decisional guidance in this dense subject area of law.

**Legal Concepts:** *Water Rights; Damages; Easement; Notice Pleading*

16. PEOPLE V. OPHIR GOLD AND SILVER MINING CO.

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*
- *Complaint filed November 6, 1862*
- *Judgment entered November 13, 1862*
- *Transcript on appeal filed December 18, 1862*
- *Opinion entered on March 16, 1863 (Turner & Mott, Justices)*
- *Judgment affirmed*

The trial issue was whether ore extracted from the ground but lying on a dump pile could be taxed. The NTSC noted the “statement of facts was exceedingly brief” and “no briefs are on file on either side.” It concluded there was no showing of error and the matter was moot due to

“a new tax law having been passed, [therefore] a further discussion of this matter would be fruitless.” (This case has an unusual procedural history. An opinion entered on March 16, 1863, concurred in judgment below. But, it was not until September 5, 1863, that the judgment was affirmed in the clerk’s binder.)

**Legal Concepts:** *Taxation; Mootness; Appellate Practice*

17. GAYLORD V. RUNKLE

- *Civil. First Judicial District Court (Storey County) (Mott; District Judge)*
- *Complaint filed March 13, 1862*
- *Judgment entered November 3, 1862*
- *No opinion but appeal reheard by Nevada Supreme Court. See Runkle v. Gaylord, 1 Nev. 100 (1865)*
- *Judgment affirmed*

This action involved a mortgage securing a promissory note that was transferred for estate distribution purposes. The matter was referred to a referee, and the district court adopted the referee’s report. A petition for rehearing languished in the NTSC, which resulted in the Nevada Supreme Court’s involvement after statehood. NSC Justice Beatty described the procedural history as follows:

This cause was heard and determined by the Supreme Court of the Territory of Nevada, and after its determination a petition for rehearing was presented to that Court, which was never acted on. It now comes before us to determine whether that petition shall be granted or refused. The opinion of the late Court is not to be found among the files of the Court, and we are therefore under the necessity of treating this case almost as if it were before us on trial.

The statement on appeal filed with the NSC on January 23, 1865, reveals something about the NTSC: “We must humbly and respectfully appeal to this Court to grant us a rehearing in this case—and that if we can have a rehearing when the Court is not pressed with business, and when unfortunate difficulties that have surrounded our judiciary are removed we can convince the Court of the sincerity of our motives and legality of our rights and opinions.” This statement is important because it expresses the frustration of litigants, which in this case appears to be inaction by the NTSC in resolving pending matters.

**Legal Concepts:** *Mortgage; Agency; Assignment; Fraud; Conveyance; Trustee Duties; Encumbrance*

18. BRUMFIELD V. ELLISON

- *Civil. Third Judicial District Court (Lyon County) (Jones, District Judge)*
- *Complaint filed on August 20, 1861*
- *Transfer*
- *Judgment entered on July 17, 1862*
- *Opinion (Turner & Mott, Justices) (March 16, 1863)*
- *Judgment affirmed*

This was a typical error correction appeal. The underlying action was to eject and recover a tract of land near Carson River. At issue was the right to timber and hay. The jury returned a verdict for plaintiff and Judge Jones denied a motion for new trial. The NTSC noted that “no assignment of error, points of error, or brief, is presented to us on the part of the appellants. The respondent furnishes us a brief. This case must be disposed of, then, upon the judgment roll and record.” The Court further indicated it had “carefully” reviewed the record and could not find error. “The issues were chiefly matters of fact, fairly submitted to a jury upon the evidence offered . . . and a verdict was rendered which seems to be in consonance with law and testimony.” The NTSC demonstrated high deference to the jury’s verdict because it related to issues of fact as opposed to issues of law. Appellate courts today use similar standards when reviewing appeals.

**Legal Concepts:** *Appellate Practice*

19. LUCE V. GRIER

- *Civil. Third Judicial District Court (Lyon County) (Jones, District Judge)*
- *Complaint filed March 4, 1862*
- *Judgment entered August 9, 1862*
- *Opinion (Turner & Mott, Justices)*
- *Judgment reversed (September 5, 1863)*

A parcel of property in Silver City was sold under a “constable’s deed” on March 30, 1861, shortly after the Nevada Territory was authorized by President Lincoln. The appellate issues were: 1) whether the justice of the peace was authorized to act once the Nevada territory was created, and 2) whether the sale was proper or defective for want of jurisdiction and service

of process. As to the first issue, the “law abhors an interregnum” and if the Utah territorial officials were not allowed to act until the Nevada Territory was fully organized there would be an “interregnum of chaos,” which is why “this people aided in passing [territorial status] for their own protection.” As with many appeals, the court did not have full briefing in the matter, and instead of relying on a return, it had to rely on the pledged ‘judicial integrity of the magistrate’ that proper service was perfected.

**Legal Concepts:** *Jurisdiction; Judicial Sale; Notice; Interim Authority; Service of Process; Innocent Purchaser*

20. SCHINDLER V. ROSSENBURG

- *Civil*
- *No other information is available*

21. CHOLLAR S. MINING CO. V. POTOSI G. & S. MINING CO.

- *Civil. First Judicial District Court (Storey County) (Mott, District Judge)*
- *Complaint filed January 17, 1862*
- *District court verdict/judgment/order October 22, 1862*
- *Opinion and Dissenting Opinion (March 18, 1863) (Mott & Turner, Justices; Jones, Justice Dissenting)*

The dispute between the Chollar and Potosi mining companies, which is the subject of Chapter 11, illustrates the depths of judicial dysfunction of the Nevada Territory. The NTSC’s resolution of this appeal directly influenced the public’s perception of the judiciary. This is the first of three appeals involving the same parties.

This particular action involves ejection to recover possession of mining ground comprised of seven consolidated claims composing 1,400 feet in length from north to south and two hundred feet in breadth from east to west. The animating issue was whether there were multiple geological ledges or a single ledge with “dips, angles, spurs, and variations thereof.” Trial occurred in October 1862, and the jury returned a verdict for the Chollar.

During jury instructions Judge Mott told the jury he wanted to prepare his own instructions but reviewing counsels’ proposed instructions “has exhausted pretty nearly all the time I have been able to devote to the instructions which I should give you. I have been in ill



health ever since the commencement of this trial and have scarcely been able to sit it out.” Judge Mott also reportedly said: “I do not want to hear any statements. I want to get through as quick as I can and get out of this courthouse.” The issues on appeal were:

1. The irregularity in the proceedings of the court and of the jury and of the plaintiff and for abuse of discretion and irregular orders of the court.
2. Misconduct of the jury.
3. Accident and surprise, which ordinary prudence on the part of defendant could not have guarded against.
4. Newly discovered evidence material for the defendant which it could not with reasonable diligence have discovered and produced at the trial.
5. Insufficiency of the evidence to justify the verdict of the jury and that it is against law.
6. Errors in law occurring at the trial and excepted to by defendant.

After briefing and arguments, Justices Turner and Mott entered an opinion affirming the judgment. There are several legal issues embedded in the opinion, but the opinion is most interesting because of underlying public interest in the outcome of the case. The length of the opinion alone demonstrates the large financial interests at stake. It also demonstrates the legal complexity and importance of the questions at issue. In fact, the judges began with an introductory paragraph illustrating the complexity of the case:

The character of the interests involved, as well as the importance of the questions presented, has induced us to give its consideration an amount of time and labor rarely bestowed upon any single cause by an appellate court. It has been argued by the respective counsel with a degree of ability and learning not often equaled and without the aid of which we should have had great difficulties in arriving at a conclusion satisfactory to ourselves. The transcript on appeal is exceedingly voluminous, and necessarily involves a large amount of labor in its examination. Much that can have no real bearing upon the case is embraced within it, answering no other purpose than to increase the costs of appeal and enhance the labor of investigation. Nevertheless we have waded through the huge mass and believe that we now have a proper conception of the numerous points presented for our consideration.

The court generally introduced the real property concepts of warranty, covenants, recordation, and title/description. It then turned to the real issue driving the defendants' discontent: Judge Mott's comments when charging the jury. The first challenge was to his statements regarding "verbal admissions and declarations." The court made several legal observations about hearsay that remain applicable to contemporary jurisprudence:

In giving this instruction the court below, we think did not transcend its legitimate authority. No court is justified in assuming the duty of weighing the evidence—as this would be palpable usurpation of the functions of a jury, and would in the end cause the trial by jury to become a mere farce.

But where the law attributes a specific character or right to any particular kind of testimony, it is both the right and duty of the judge to point out to the jury the legal rule, and call their attention to its operation. This is the daily practice of the courts, and they might well be accused of neglecting their duties were they to fail in this respect. Thus we see courts of law constantly explaining to juries the legal difference between primary and secondary-direct and circumstantial-prima facie and conclusive evidence. In doing this, they merely declare the legal rule, and in no sense can they be said to invade the province of the jury. That the contents of the instruction constitute a legal rule, and not the mere enunciation of a natural standard for judging of evidence, is manifest from all the authorities . . .

That the instruction is correct in point of law, we think there can be no doubt. Of all evidence known to the law, hearsay evidence is the most dangerous—the most uncertain—most liable to be fabricated and to be tampered with. It is deemed, in the great majority of cases, to be of very little consequence, and never to be much regarded, except where, for want of positive proof, the Jury is necessitated to give a determination even upon such slight probabilities as may be laid before it. For, besides that this kind of testimony is weakened by its removal from its first source, it is liable from its very nature to important objections which must greatly diminish its authority.

Very few persons impose upon themselves such strict laws of veracity, that every word which drops from them in conversation, can be regarded as judicial testimony. Vanity, self-interest, talkativeness—a variety of motives, even the most frivolous—make men indulge themselves in fictions of this nature. And they think themselves the more secure both as detection is not attended

with any important consequences, and as their hearers never dreamed of sifting their story, or examining circumstances, so as to render detection possible. . . .

Such is the character ascribed to hearsay evidence by law and reason alike, and we are at a loss to understand how a Judge, who in proper terms calls the attention of jurors to its inherent vices and infirmities, and warns them against its too great influence, can be said with propriety to have erred in so doing. The present was eminently a case calling for the warning. A large portion of the evidence introduced consisted of the very class of loose declarations, uttered without thought, and scarcely remembered a moment afterward, by those who uttered them—which the authorities consider the most hazardous of all kinds, to the cause of truth. The parties to whom the allusions were imputed, in most instances either deny the facts, or seek to place a different construction upon their words, and thus the complication of conflicting testimony is added to the intrusive frailty of the testimony itself.

It is not necessary for us to determine whether the Court below ought to have given or withheld the qualification mentioned above. It is enough to say that it removed the only possible objection to the body of the instruction, viz: its possible tendency to mislead the jury. We have elaborated this point thus far because of its great practical importance.

Very few cases of any magnitude are tried in the Territory, in which evidence of verbal admission and declarations is not given; and it is well, therefore, for the Courts and Bar to understand, that when such admission are old and stale, they are the most feeble kind of testimony, and ought not to weigh much in the decision of a cause, except in the absence of a higher and more certain character.

The defendant had objected to the jury charge as follows: “We except to all the charges given at the instance of the plaintiff, in the whole of the charge given by the court upon its own motion, and to the refusal of the court to give our instructions—each and every one asked.” On appeal, the NTSC concluded the general objection was not “particularly stated” as required by law; the court also analyzed why contemporaneous objections were so important (and remain critical in contemporary jurisprudence):

The object of the law is manifest: it is intended both for the protection of the Judge, and the promotion of justice. The most

careful Judge may easily fall into an error in the statement of a fact, or of expression which would be corrected instantly were his attention called to it, and it would be most unjust for a party to keep silence at the trial when he should speak, and afterwards for the first time in an appellate Court, suddenly, by means of a general exception, spring some accidental error, which would have been corrected at the time had the exception been special instead of general in its terms. Such a practice would often defeat the ends of justice, for a Judge may commit an error of law through inadvertence or mistake, which would in like manner be corrected, were his attention properly raised by it . . . .

A final issue is the NTSC's deference to the lower court's ruling. It stated:

Upon the whole record then we believe the verdict of the Jury was right, and in accordance with the law and evidence in the case. In the rulings of the Court, we can perceive no material error—no such error as could have influenced the minds of the Jury so as to have led them to a wrong conclusion upon the facts of the case. Even were we of opinion that errors of law had been committed, unless such errors were of a vital character we should deem it our duty to affirm the judgment. The sole object of exercising the power of granting new trials is in the attainment of justice, and when the Court can clearly perceive that the ends of justice have been attained, and the same verdict might to be returned upon a new trial, it will refrain from exercising the power. . . . In our opinion there is no reasonable probability that a different result would follow if the judgment of the Court below were reversed and a new trial ordered, although it is proper to state that we were strongly impressed for a time with the idea that the initial or north-easter point, perhaps, was placed too far by the east by the Jury.

This passage is significant because it acknowledges the legal principle often referred to as the “harmless error doctrine.” Even if there was an error in the lower court, a judgment will still be affirmed if a second trial would likely yield the same result.

Judge Jones' dissenting opinion is not gentle. Reminiscent of his dissent in *CHILDERS*, he directly comments upon his colleague Judge Mott and the structure of the court. Like the majority, Judge Jones begins by introducing the significance of the controversy, but he enlarges the significance by directly referring to Judge Mott's personal interests:

The amount in controversy being very great, and accidental circumstances concurring, an extraordinary degree of earnestness, not to say passion, has been developed in the progress of the case. The Judge who tried the cause is charged to have thrown the

weight of his character, personal and official, unduly into the scale, and to have prejudiced the result. By the vice of our judicial system, this Judge is a member of this Court—which is composed of the lowest number of persons to whose action the majority rule can be applied—and to that degree of interest which men naturally take in their own decisions, there is added the feeling provoked by the bitter criticism indulged in. He makes no secret of his intense interest in the result of the present appeal. Characterized as the case is, he conceives his judicial character as involved in it to some extent; and thus, most unwillingly, we are brought in contact with the passions the case aroused.

With these passions we have nothing legitimately to do. As to acting in the cause we have no option; but the only question for our determination is, whether such error exists in the record as demands a remanding of the cause for a new trial. If error exist therein which may have prejudiced the result with the jury, the judgment should be reversed. If instructions were given to the jury substantially and materially incorrect; if such instructions were not merely abstract and immaterial, but stated the rules of law erroneously, and applied them in a manner calculated to mislead the jury, a new trial should be granted.

Judge Jones reminded his colleagues the role of an appellate court is not to weigh the testimony and affirm or reverse according to “our opinion.” Instead, an appellate court must ensure the correctness of law and yield to jury discretion:

The jury are the triers of the facts at issue in a cause, made so by the law itself. No higher regard for substantial justice can be shown than by justly conceiving and stating and applying fully and fairly the rules of law applicable to the determination of issues of fact contested before juries. The realization of substantial justice in this manner should be the great aim of courts, not the attainment of results believed to be just and right by warping and misstating the law from sympathy with this or that side according to the supposed right and justice of the case. Nothing but entanglement and scandal can result from pursuing the latter course. It is especially the duty of Appellate Courts to see to it that no violence is done to the law; that the rules of law laid down authoritatively to juries to guide them in deciding contested issues, should be substantially correct and fairly applied, and to correct aberrations from a normal standard of judicial propriety.

Judge Jones lamented the form in which mining claims had been located and conveyed in the territory, but noted:

However much we may lament that so much uncertainty and doubt attend the location of mining claims in the earlier states of development of a mining region, and however clearly we may see that by pursuing different methods the litigations that seems to follow regularly upon the mines becoming productive, might be avoided, our duty is plain. We cannot build up on an ideal basis, but must adjust our rulings to the situation as it is made for us, and must act in view of the whole situation. The argument ‘*ab inconvenienti*,’ may, properly conceived, weigh heavily with us. The indeterminateness of mining notices have, however, but a slight influence in producing the uncertainty and doubt alluded to. They are not to be construed like deeds, but are rather evidence of the intent of the parties claiming under them, and constitute only a portion of the evidence upon which an appropriation of mining ground can be built up.

Judge Jones later noted that “one of the causes, probably the most potent cause, of so much litigation about productive mining claims is the failure on the part of the miners themselves to act conformably to their own customs and rules.” Judge Jones devoted considerable effort to the legal issues surrounding claims, locations, abandonment, and conveyances. He then turned to Judge Mott’s general charge to the jury:

To charge juries properly, in cases of any complication, is the most difficult of all tasks imposed upon a judge. To state the issues correctly and fairly, to collate and group with perfect impartiality the evidence adduced on both sides to support those issues, if he should attempt it all, to enunciate and apply fully and justly the rules of law bearing upon the decision of those issues, to go as far as the law allows and requires, and no further, in setting forth the rules of legal presumption and of evidence, in short, to say everything that the law has to say on the case as it stands before the Court; and to let, the matter rest, there, paying a proper respect to the rights of the jury as the exclusive Judges of all questions of fact, require a wisdom rarely found. A reasonable approximation to such a result is all that can be required and enforced. A fruitful source of [ . . . ] between judges and lawyers arises out of invasions, by the former of the province of juries. The true theory of a trial is that the jurors being the exclusive judges of all questions of fact, the judge has no right to obtrude his “advice” upon them, or to charge them touching such questions. He stands as the embodiment, for the purposes of the trial, of the law alone, and so far as it has any rules to announce he should give expression to them fully and impartially. He should know no

parties,—sympathize with none. It is with a profound meaning that justice is symbolized as sitting with bandaged eyes.

. . . .

I shall say very little concerning ◇◇◇ consideration of it in its general aspects. It is certainly not characterized by that justness of view and impartiality so imperatively demanded. The opinion of the Judge on the merits is shown throughout. It is palpable on the face of the charge that, at the time of giving it, he, either consciously or unconsciously, regarded the defense of what seemed to him so plain a case preposterous. Certainly the jury must have received that impression. The most striking characteristic of it is its thorough one-sidedness. So far as it could produce any impression at all—and it must have been all powerful in this regard—it must have thrust upon the jury the belief that, legally considered, there was only one side to the case. . . . All this is wrong, radically wrong. A Judge has no right to have biases, no right, in the trial of causes to give [voice] to his sympathies, no matter how spontaneous nor how honest they may be.

Judge Jones ended his dissent by reminding readers how important the issues were to the new territory. He wrote: “I have discussed thus extensively this case, and the questions of law involved in it, because of its immense importance, not only to the parties to the suit, but because it is, so to speak a test case. By our course in it is to be determined, in a very great degree, the mode of building up a jurisprudence in this Territory; whether [], or an intelligent regard for the law. The views I have announced represent my present convictions as to the law on some of the questions broached in our mining controversies. Whether they are sound future discussions will determine. The annunciation of them will at least serve as points of departure.”

The Potosi filed a petition for rehearing in which it argued the court made errors of law as to the opinion published in the *Virginia Daily Union*, but more importantly, the opinion does not appear to be signed by the justices or “filed among the records of the Supreme Court.” The NTSC denied rehearing on August 18, 1863.

**Legal Concepts:** *Abandonment; Estoppel; Warranty; Covenants; Recordation; Jury Instructions; Hearsay; Judicial Influence; Appellate Jurisdiction*

22. PEREGRENE V. ALLEN

- *Civil. Third Judicial District (Lyon County) (Jones, District Judge)*

- *Complaint filed on unknown date but service of process accepted February 5, 1862*
- *Judgment entered August 9, 1862*
- *Opinion (Turner & Mott, Justices)*
- *Judgment affirmed*

An action to enforce a promissory note secured by a mortgage. The 90-day contract in dispute called for interest to accrue at 6% per month. The disputed issue was the amount of interest chargeable after the contract term expired. The matter was referred to a referee to conduct trial. The referee stated the “District courts of this Territory have unanimously decided that a note due . . . drawing a specified rate of interest monthly and not stipulating that the interest shall run ‘until paid,’ [draws] interest expressed in the note until its maturity.” In affirming the judgment, the NTSC acknowledged an important principle of appellate practice, which remains applicable to this day: “This judgment is right; but the reason given is, perhaps, somewhat questionable.”

**Legal Concepts:** *Contract; Debt; Promissory Note; Mortgage; Usury; Notice*

23. SPARROW V. STRONG

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*
- *Complaint filed February 12, 1862*
- *Verdict entered May 21, 1862*
- *Notice of appeal filed November 15, 1862*
- *No opinion ever published but portions of record exist*
- *Judgment affirmed (Turner & Mott, Justices) (January 7, 1863)*
- *This appeal was the subject of actions in the U.S. and Nevada Supreme Courts. See Sparrow v. Strong, 2 Nev. 362 (1865); Sparrow v. Strong, 4 Nev. 87 (1866); Sparrow v. Strong, 70 U.S. 97 (1866), and Sparrow v. Strong, 71 U.S. 584 (1867)*

This was a property action to recover an undivided interest in a mining claim, which was “a sort of interest very common in the argentiferous [Nevada] territory.” The jury returned a verdict for the defendants. One of the issues on appeal may have been Judge Mott’s decision to exclude J.J. Musser from testifying because Musser was “interested in the event of this action and for that reason incompetent as a witness.” The petition for rehearing reveals the challenges of litigating in the Nevada Territory. Again, litigants expressed frustration with the NTSC’s



procedures such as providing supporting analyses for its decisions. Because no opinion was ever published,

it is impossible for us to know authentically upon what grounds the decision was based so as to be able to address ourselves to those grounds alone in our application for a rehearing. We suppose that one, and perhaps the principal, object of the statute requiring the court to file an opinion in every case was that the defeated party might know how he was beaten; and be able to adopt understandingly the only remedy left him and show the errors or mistakes if there be any through which the result was arrived at.

In the absence, then, of the guide which the Legislature in its wise beneficence has provided for such unfortunate parties as the appellants in this case, nothing is left us but this inartistic mode of petitioning for a rehearing of the case.

The petition for rehearing was denied and the aggrieved litigants sought review in the newly-created NSC after being dismissed from the U.S. Supreme Court. The NSC noted,

the record on appeal in the above-entitled cause is lost, it is now here ordered that the clerk of the district court of the First Judicial District in and for Storey County, NT., certify and send up to this Supreme Court a full, true and correct transcript of all the papers, pleadings and proceedings filed and had in the said district court in said entitled cause. And it is further ordered that said transcript when filed in said Supreme Court shall be considered for all purposes as the original record.

The clerk of the NTSC indicated he could not recollect specifically but thought the record was filed in the office of the clerk sometime in the latter part of 1862, that in January 1863 the cause was argued, and the record was ultimately delivered to Judge Turner. After the decision was rendered, the clerk attempted to get the record from the judges. Judge Turner told the clerk he had the record, but later told the clerk he could not find it. Judges Mott and Jones denied ever possessing the record.

**Legal Concepts:** *Jurisdiction; Appealable Decisions; Record on Appeal; Witnesses; Real Property*

24. JENKINS V. MILLS

- *Civil. First Judicial District Court (Washoe) (Mott, District Judge)*
- *Complaint filed September 8, 1862*

- *December 5, 1862*
- *No opinion but portions of record exist*
- *The appeal was voluntarily dismissed before a decision was announced (September 5, 1863)*

An action for ejectment. The complaint alleges that “defendants confederated together and with force and arms forcibly entered premises and ousted and ejected plaintiffs to the great damage of the plaintiffs of \$3,900.” The answer claims defendants owned the property. The jury returned a verdict for the defendants. This is another example of an appeal that was dismissed before it was decided on the merits.

**Legal Concepts:** *Real Property; Contract for Sale; Trespass; Oral Contract*

25. PEOPLE V. SOLOMON & STRAUSS

- *Criminal. First Judicial District Court. (Storey County) (Mott, District Judge)*
- *Verdict entered February 6, 1863*
- *Sentence imposed February 10, 1863*
- *Opinion (September 3, 1863)(Turner, Justice)*
- *Judgment affirmed*

Defendants were charged with nuisance for having a slaughter house in Virginia City “near to certain public passage ways and streets.” Defendants willfully caused “great quantities of offal and entrails of beasts, manure and stinking filth, solid and fluid to collect, stagnate, ferment and be mixed together, in and upon their said lands,” which caused “noxious, offensive, deleterious, unwholesome and unhealthy vapors, exhalations and smells to arise” and did “poison, contaminate and destroy the atmosphere . . . .” A jury returned a guilty verdict and defendants were fined \$50.00. The sheriff was then ordered “to procure the removal of the premises condemned to a point beyond the city limits of Virginia City within 90 days from this date.”

The NTSC was required to resolve the appeal without the assistance of an assignment of error, points of error, or briefs. The Court held “it is the duty of the appellant, who wishes to bring before the appellate court, any matter of error which he complains of in the Court below for a review, to prepare a statement . . . which shall exhibit the error and have it made a part of the Record.” Thus, the NTSC again expressed its frustration with lawyers and the primitive

court processes. The NTSC language is descriptive and gives insight into the living conditions in Virginia City. The NTSC ended its decision with an admonition:

We wish it understood that too great laxity has heretofore been exhibited in Counsel, who fail to comply with the established rules of filing points, briefs and other papers, on account of the newness of our judicial machinery, and hereafter we give notice that we will enforce the letter of the law, as we think with Lord Coke “that swift justice is the sweetest.”

Similar admonitions are frequently given by appellate courts today (most recently by the Nevada Supreme Court in Weddell v. Stewart, 127 Nev. \_\_\_, 261 P.3d 1080 (2011)).

**Legal Concepts:** *Appellate Practice; Remedies; Nuisance*

26. HALE & NORCROSS MG. CO. V. NORTH POTOSI MG. CO.

- *Civil. First Judicial District Court (Storey County) (Mott, District Judge)*
- *Complaint filed August 16, 1862*
- *Verdict entered on October 4, 1862*
- *No opinion but portions of record exist*
- *Judgment affirmed (Locke, Turner & North, Justices). January 28, 1864*

An action to quiet title to a mining claim. Plaintiffs alleged defendants “drove [them] from the ground in the spring of 1860.” Defendants responded that plaintiffs “took possession of the premises in controversy and worked croppings that “were plain and marked on the surface” before abandoning their efforts and re-commencing at a different location 2,000 feet away. A jury found plaintiffs were not in exclusive possession when the dispute began but were entitled to possession nonetheless. The central issue in trial was the efficacy, interpretation, and enforcement of the Gold Hill and Virginia Mining District laws and rules, exacerbated by the respective ledge theories. Seven allegations of error were made. The appellants emphasized the importance of the issues when they stated in their brief: “We have argued this case at great length because of the great importance of the principle involved, hoping and believing that this decision in this case will forever settle the practice as to bills to quiet title in this Territory and construe the statute so that it may not be mistaken hereafter.” Though the record is brief, this was one of the larger cases with 115 trial participants.

**Legal Concepts:** *Title; Possession; Mining; Evidence; Recording Claims; Injunction*

27. RUHLING V. O'FARRELL

- *Civil. First Judicial District (Storey County) (Mott, District Judge)*
- *Opinion*
- *Judgment affirmed (Turner & Mott, Justices)*

Four separate debts led to a sheriff's sale of sundry property. This action involved the disbursement of sale proceeds. The specific issue was the efficacy of the sales and the priority of claimants. The court noted it was "asked here to disregard technicalities and distribute this fund according to the equities between the creditors. In that case it is our clear duty to give the partnership property to the partnership creditors before we distribute it among the individual creditors." Plaintiffs subsequently sought to reargue the appeal "based on fact when judgment entered purporting to have been concurred in by Mott, he had ceased to be judge and a member of the court." The court denied the request.

**Legal Concepts:** *Sheriff's Sale; Priority and Distribution of Proceeds; Liens; Nunc Pro Tunc; Partnerships; Equity*

28. TENNANT V. WENTZ

- *Civil. Third Judicial District Court (Lyon County) (Jones, District Judge)*
- *Complaint filed on June 14, 1862*
- *Judgment entered on November 25, 1862*
- *No opinion. Appeal was dismissed for appellant's failure to file assignment of errors*

A claim for wrongful taking and withholding personal property (four 7-foot cast iron amalgamating pans weighing a combined 9,000 pounds). Defendant alleged it was owed money under a contract of freightage. The sheriff seized the pans from defendants and delivered them to plaintiffs. Judgment for defendants in the amount of \$1,440 and costs of \$31.40. The appeal was never heard because it was dismissed due to procedural deficiencies.

**Legal Concepts:** *Carrier's Lien; Appellate Practice*

29. VAN VALKENBURG V. C.H. HUFF

- *Civil. Third Judicial District (Lyon County) (Jones, District Judge)*
- *Complaint filed on June 24, 1862*
- *Trial heard on November 11, 1862*
- *Notice of appeal filed on April 30, 1863*

- *Opinion reported at 1 Nev. 115 (1865)(Beatty, Justice; NSC)*
- *Judgment affirmed*

A property action for ejectment regarding competing mining claims. Defendant sought a change of venue because two consecutive juries failed to reach a verdict: “Because of trials, issues have become notorious throughout the county of Lyon and have been discussed by the citizens thereof to such extent as to render the persons of said county subject to jury duty incompetent to hear [the] action.” A jury ultimately returned a verdict for defendants and the matter was appealed. It appears the court took no action. Through an unknown procedural mechanism, the matter was appealed to the NSC.

The NSC’s opinion reveals the challenges of the territorial court system. Before the court was a trial transcript “made up of a medley of different kinds of paper of various sizes, colors and shapes, written, much of it, in a hand that is almost illegible. Had such a transcript been filed at or just before the present term of the court, we would certainly have required the appellant to file a proper transcript duly certified, or else dismissed the appeal. But as the case came to us from our predecessors in office, and no action was taken by them for correcting the transcript or dismissing the appeal, we have waded through it and examined all the evidence presented therein.” Upon review of the incomplete and often incoherent transcript the NSC concluded: “the preponderance seems . . . in favor of the finding of the jury. . . . Certainly there was nothing in the evidence to justify this Court or the Court below in interfering with the verdict.”

**Legal Concepts:** *Possession; Mining Rights; Burden of Proof; Record on Appeal; Tenancy; Jury Instructions; Ejectment*

30. WATERMAN V. VAN WINKLE

- *Civil. Second Judicial District Court (Ormsby County) (Turner, District Judge)*
- *Complaint filed on December 13, 1862*
- *Demurrer granted on February 14, 1863*
- *No opinion but portions of record exist*
- *Judgment affirmed (Turner, North & Locke, Justices)*

An action to enforce a promissory note secured by a deed of trust. The specific issue was the subordination of subsequent conveyances. Parenthetically, Judge North was a defendant and

the prevailing attorney in the district court, yet he is listed as one of the judges in the majority decision. If true, Judge North's participation shows a troubling insensitivity to judicial ethics. If a similar situation were to occur today, a judge would undoubtedly have to recuse himself/herself to avoid a direct conflict of interest. The NTSC "lost" the transcript on appeal and directed the attorneys to file a replacement copy.

**Legal Concepts:** *Judicial Ethics; Conflict of Interest*

31. PEOPLE V. BATEMAN

- *Criminal. Third Judicial District (Humboldt County) (Jones, District Judge)*
- *Opinion (September 3, 1863) (Turner & Mott, Justices)*
- *Judgment affirmed*

Defendant Bateman was indicted for exhibiting a deadly weapon (pistol) in a "rude, angry, and threatening manner, not in necessary of self defence [sic]." Bateman challenged the indictment on several grounds. The district judge denied the demurrer but Bateman "was never tried, found guilty or acquitted, and of course was never punished. Upon the overruling of the demurrer, counsel for the prisoner very shrewdly gave notice of appeal and there the whole matter stopped."

The court began its opinion by focusing on appellate practice: "We wish to make some remarks *in limine* however, before considering the legal questions involved, and it is proper to state in advance that this cause comes from the Court of the Honorable Horatio M. Jones, and the Record was prepared by the Clerk of the Court. The whole Record as well as the proceedings in the Cause are *sui generis*. Indeed the whole matter is so thoroughly confused and illegal that we thought for a time of dismissing it entirely. Some of the questions however, having been frequently raised in other cases, we thought the public good required that we settle them now & here." (The record transmitted was not written on suitable paper, not chronologically arranged, not indexed, and did not have marginal notes.)

The Court then examined the procedural anomaly of allowing a defendant to appeal and avoid prosecution. "Justice would be *hors du combat* and the defendant without imprisonment or bonds would range the Earth at will 'with none to molest or make him afraid.'" The Court next

analyzed the criminal code in detail. It stated: “We had thought of adding to this opinion, a blank form which should have the approval of this Court, and which would answer as a guide for the various District Attorneys through-out the Territory, in charging this fearfully common and equally revolting offence, as it is the determination of the Courts to suppress it; but the opinions here expressed will dispense with that necessity.” The NTSC noted no appeal could be taken from a denial of a demur, but the denial was affirmed and the matter remanded for further proceedings. This case is interesting because it highlights the growing need for established procedural rules in filing appeals. Naturally, the need for order and rules would continue to increase as more appeals were filed. The opinion also reveals the judges’ discontent with strategic litigation practices.

**Legal Concepts:** *Appealable Action; Criminal Procedure*

32. CONNOLLY V. EDGAR

- *Civil. First Judicial District Court (Storey County) (Mott, District Judge)*
- *Complaint filed on April 26, 1862*
- *Judgment date unknown but notice of appeal filed May 25, 1863*
- *No opinion but portions of record exist*
- *Judgment affirmed (Turner & Mott, Justices) (September 5, 1863)*
- *Rehearing denied (Turner, Locke & North, Justices)*

This was an action for ejectment for the unlawful withholding of a lot and cabin in Virginia City. Plaintiff claimed ownership by tracing occupancy, whereas defendant claimed ownership from an estate administrator. The trial facts illuminate the challenges of frontier living. The original occupant began possessing the land in March, 1860, under the following circumstances described by one witness: “I first saw [the first occupant] live on the lot here described in 1860 in a cloth tent and a stone chimney. He lived there till sometime in the fall. I cooked my vittles in his tent during the summer of 1860. [He] lived there till the storm blew down his tent in the fall of 1860.” Another witness testified that he rented the house from the plaintiff. He said, “I took possession, cleaned it out and went after my things and when I came back the defendant Edgar was in possession of the house and I then went back and gave up my lease to plaintiff. He sent Lawyer Sankey down with me again. Sankey told the defendant that if

he could show better title than Connolly had, he could stay there, but Edgar would not do it, and had some hard words and shut the door and would not let Sankey in.”

The NTSC affirmed the judgment in favor of defendant and appellant sought rehearing because the opinion was “wholly invalid in that a majority of the supreme court shall constitute a quorum and Mott Justice did not sit and hear the argument of the cause, hence he could not concur in the decision of Turner, Justice. Neither was Mott, Justice, on the bench at the time it was rendered, hence he could not concur in the decision.” Justices Turner, Locke, and North denied the petition for rehearing.

**Legal Concepts:** *Quiet Title; Trespass*

33. A. BATEMAN V. J.C. BATEMAN

- *Civil. First Judicial District Court (Storey County) (Mott, District Judge)*
- *Complaint filed on July 29, 1862*
- *Opinion (Turner & Mott, Justices) (November 13, 1863)*
- *Judgment reversed*
- *Rehearing denied on January 28, 1864*

This action was a bill in equity dissolving a partnership and requesting an accounting. The parties had been partners in Butte and Plumas Counties in California. In 1859, the defendant agreed to relocate to Nevada to construct and operate the International Hotel in Virginia City. The plaintiff then came to Nevada and sought an accounting and dissolution. The defendant alleged the parties concluded their business in California with “full settlement of all accounts and dealings.” The primary issue was the existence of a partnership. An appointed referee recommended judgment for the plaintiff, which was granted by the court. The allegations of error were 1) the court erred by referring the cause to a referee over the defendant’s objections, 2) the court erred in denying a motion to modify the “order of reference to permit the issue of fact as to a copartnership to be tried by a jury of the court,” 3) the referee erred in permitting plaintiff to present parole evidence of a copartnership existing in land, and 4) the court erred in finding that by mutual agreement the partnership continued in the hotel business in the territory. The court relied upon New York law and concluded the referral to a referee for an accounting



was error because the court should have first determined the existence and scope of the partnership.

Again, Judge Mott's resignation became an issue. The respondent's petition for rehearing alleges the appellant was given leave of court to file a supplemental rehearing brief, but before the brief was filed the opinion was entered. "Of the order of reversal the respondent had no notice until the filing of the opinion of the court. The opinion was delivered by His Honor the Chief Justice and was concurred in by his Honor Associate Justice Mott after the resignation of the concurring Justice. It is submitted that if the order of reversal dates from the day of its filing it works an injustice to respondent as he would have no opportunity to file his petition for rehearing. If it dates from the time of filing the opinion, it is void as his Honor the Associate Justice had ceased to exercise the functions of a justice." The NTSC denied rehearing.

**Legal Concepts:** *Partnership; Accounting; Referee Referral; Judicial Duties*

34. MEYER V. BIRDSALL CO.

- *Civil. Third Judicial District Court (Lyon County) (Jones, District Judge)*
- *Complaint filed on May 19, 1862*
- *Judgment entered on March 11, 1863*
- *Opinion (Turner & Mott, Justices)*
- *Judgment affirmed*

This was an action to enforce a debt, which had been assigned to the plaintiff. "The chief issue seems to be the legality of the assignment, and the *bona fide* character of plaintiff's alleged condition as an assignee." One of the issues was whether a power of attorney limited to the "territory of Utah and to no other state or territory," was effective in the Nevada Territory. Judge Mott transferred venue to the Third Judicial District for "the convenience of witnesses." No assignment of errors, points of errors, or briefs were filed. "Upon looking casually over the record, we see no error, but on the contrary, are satisfied that justice has been done." Again, this case serves as an example of the NTSC declining to entertain the merits of an issue because of procedural deficiencies. Appellate courts today often follow similar principles. Unless manifest injustice would occur, courts will leave the burden of research and argument to the litigating parties.

**Legal Concepts:** *Change of Venue; Assignment; Appellate Practice; Power of Attorney*

35. PEOPLE V. ST. MARIE

- *Criminal. Third Judicial District (Lyon County) (Jones, District Judge)*
- *Verdict returned on April 10, 1863*
- *Sentence imposed on April 13, 1863*
- *No opinion but portion of record exists*
- *No record of Territorial Supreme Court disposition*

St. Marie was convicted of manslaughter for shooting and killing his brother-in-law. The event was grounded in a drunken disagreement about a horse. St. Marie was sentenced to two years in the territorial prison at Carson City. He filed a motion to arrest the judgment and for a new trial, which were denied. St. Marie was released on bail pending appeal. There are no records showing the ultimate disposition of this appeal.

**Legal Concepts:** *Crime and Punishment; Indictment*

36. WARFIELD V. MCLANE

- *Civil. Second Judicial District Court (Ormsby County)*
- *District Court Complaint September 27, 1862*
- *Verdict entered on April, 22, 1863*
- *Opinion (Turner & Mott, Justices) (September 5, 1863)*
- *Judgment affirmed*
- *Appeal to U.S. Supreme Court*

This appeal was one of the few tort actions brought before the NTSC. It involved the loss of cattle. Plaintiff alleged that while he and others were driving 518 head of cattle from “Hope Valley by Placerville Route and whilst ascending the grade of the Western Summit of Sierra Nevada Mountains,” they “met a stage coming down, which drove violently into and among these cattle injuring quite a number of them, knocking one hundred and sixty six of them off the grade, one hundred and ten of which were afterward recovered, more or less injured, and fifty six fully lost.” Plaintiffs alleged defendants operated their stage coach “wantonly, negligently, feloniously, wrongfully, and unlawfully.” Defendants disputed the rendition of facts. One of the questions presented was whether plaintiff exercised reasonable care in choosing the route to drive the cattle. (Another road was purportedly available and better for driving cattle up grade.)

One of plaintiffs' witnesses testified, "I asked the driver to wait a few minutes until the stock came up; he said he could not stop if the cattle went to hell. The stock were coming up very nice, and I tried to get him to stop—he would not, but cracked up and ran among the stock, when they broke down the road—stampeded." Plaintiffs spent three weeks trying to round up the surviving and scattered cattle. After 30 minutes of deliberation, the jury returned a verdict for plaintiff and awarded damages in the amount of \$3,100. Defendant moved for a new trial because he was "not notified of time of trial and didn't secure witnesses."

The Court analyzed tort principles in great detail, relying upon substantial authorities from other jurisdictions. Many of the legal standards discussed are still used in contemporary negligence cases. It also noted the timeless role of an appellate court: "The jury thus having this contradictory evidence to settle, which is their peculiar province. Now, as to this verdict being contrary to law, if the law was properly given to the jury, and the evidence was conflicting, it was the duty of the jury to settle the case and appellate tribunal could give no relief." The Court then concluded that "upon a careful inspection of this record we are satisfied that another jury would render a verdict for the plaintiff in as large or a larger sum than that found at their trial which we are reviewing."

**Legal Concepts:** *Negligence; Damages; Intentional Tort; Respondent Superior; Vicarious Liability; Contributory Negligence; New Trial; Newly-Discovered Evidence*

37. WOOD V. SANBORN

- *Civil. First Judicial District Court (Storey County) (Jones, District Judge)*
- *District Court complaint filed on May 9, 1863*
- *Default judgment entered on May 20, 1863*
- *Opinion (Turner & Mott, Justices) (September 5, 1863)*
- *Judgment reversed*

An action to cancel and void a deed conveying land and mineral rights. The allegations included fraudulent conveyance to defraud creditors. Default judgment was entered against defendant and the deed was adjudged fraudulent and void. The issue on appeal was the nexus between the content of the complaint and default judgment because the claim for fraud was pled

in generalized terms. The NTSC made several references to the specificity requirement for pleading fraud.

**Legal Concepts:** *Fraud; Fraudulent Conveyance; Form of Pleading; Recordation and Notice; Default Judgment*

38. COWAN V. FARGO

- *Civil. Second Judicial District Court (Ormsby County) (Mott, District Judge)*
- *Complaint filed on March 1, 1862*
- *Judgment entered on May 30, 1863.*
- *Opinion (Turner & Mott, Justices)*
- *Judgment reversed*

This was a breach of contract claim to recover \$352 owed for board, lodging, lumber, and miscellaneous items. The defendant admitted the amount asserted, but claimed an offset that exceeded the value of plaintiff's debt. The case was referred to a referee, who recommended that defendant owed \$82. The referee also recommended defendant pay costs in the amount of \$200. The district court denied the costs recommendation and actually ordered plaintiff to pay costs. A territorial statute provided that costs would not be allowed in an action for the recovery of money or damages where the plaintiff recovered less than \$100. On appeal, "the whole question in this case is, when a plaintiff in District Court recovers a sum less than \$100, but extinguishes an offset, and the sum recovered and the amount applied to extinguish the offset make an aggregated sum of more than \$100, is the plaintiff entitled to his costs." The NTSC cited authority indicating where the sum recovered plus the offset is greater than \$100, costs should be awarded. Though the opinion is short, it serves as an example of the NTSC relying on statutory authority to resolve the dispute.

**Legal Concepts:** *Costs; Referee; Jurisdictional Limits*

39. ADAMS V. BROBART

- *Civil*
- *No other information is available*

40. PHILLIPS V. CONNOR

- *Civil*

- *No other information is available*

41. PAXTON & THORNBURGH V. O'FARRELL

- *Civil*
- *No opinion but scant portions of record exist*
- *Disposition of appeal unknown*

Records indicate the dispute involved a mining interest and sheriff's sale. This is the same defendant as in RUHLING V. O'FARRELL (No. 27).

42. MISSING IN ITS ENTIRETY

- *No information available*

43. SMITH V. FREEBORN

- *Civil. First Judicial District Court (Storey County) (Mott, District Judge)*
- *Complaint filed on January 17, 1862*
- *Verdict entered on May 9, 1862*
- *Opinion (Turner & Mott, Justices)*
- *Judgment affirmed*

An action to enforce debt related to the purchase of lumber and building materials to construct a quartz mill. Defendants became partners with the plaintiff after the debt was incurred. The district court refused to admit into evidence certain letters and telegrams relating to the partnership and the jury returned a verdict for the plaintiff and awarded damages of \$3,785.24, with interest to accrue at 10% per annum. Costs were awarded in the amount of \$193.65.

Regarding the decision to exclude evidence purportedly showing no partnership existed, the court found no error. "They [the telegraphic dispatch and letters passed between defendants] were obnoxious to several fatal objections; . . . they were *ex-parte*; they consisted of declarations, conversations and correspondence between the defendants themselves; they were matters of which the plaintiffs had no knowledge and could have none. Where letters are offered in evidence, those to which they reply should also be exhibited . . . and finally it was irrelevant because the case was put to the jury with the concept the defendants were not liable as partners in fact, but as partners *quoad alios*, if at all."

The opinion highlights a difference still recognized today between issues of fact and issues of law. “The determination of issues of fact is the peculiar province of the jury and the following principle is the one which should govern all appellate Courts.” Appellate courts give little to no deference to a trial court’s interpretation of law, but will give considerable weight to a jury’s determination of factual issues.

**Legal Concepts:** *Contract; Debt; Promissory Note; Deed of Trust; Partnership; Evidence; Co-Defendant Liability*

44. HICKOCK V. HUDSON

- *Civil. Second Judicial District Court (Ormsby County) (Turner, District Judge)*
- *Complaint filed on August 27, 1863*
- *Judgment entered on November 19, 1863*
- *No opinion but portions of record exist*
- *Judgment affirmed (Turner, Locke & North, Justices)*

A contract action to enforce debt to mercantile partners. The defendants memorialized the debt by signing two promissory notes. The district court denied a motion to dismiss and entered judgment for plaintiffs. Damages were awarded in the amount of \$797.50 with interest to accrue at 3% per month. Costs were calculated at \$67.10. The record reveals that plaintiffs’ attorney appeared at the NTSC and argued the appeal was “devoid of merit” and the justices concluded the judgment should be affirmed. Little else is known about this case.

**Legal Concepts:** *Contracts*

45. HASKELL V. POTOSI MG. CO.

- *Civil. First Judicial District Court (Washoe County) (Mott, District Judge)*
- *Complaint Filed: November 21, 1863*
- *District court verdict/judgment/order*
- *Opinion: January 28, 1864 (Turner, North & Locke, Justices)*
- *Opinion unavailable but portions of record exist*
- *Judgment affirmed*

46. HASKELL V. ATCHISON

- *Civil. First Judicial District Court. (Washoe County) (Turner, District Judge)*
- *Complaint. December 2, 1862*
- *Complaint dismissed on March 16, 1863 (Mott, Justice)*
- *Judgment entered on March 16, 1863 (Turner, Justice by assignment)*

- *Order denying motion to vacate judgment entered on November 23, 1863 (North, Justice)*
- *Opinion: January 28, 1864 (Turner, North & Locke, Justices)*

These consolidated appeals were the subject of a newspaper article in the *Gold Hill Daily News* dated August 4, 1864, entitled *Attorney and Judge*. Judge North was accused of impropriety because he advised trial participants as an attorney and then sat in judgment of the proceeding as a judge.

The legal issues involve probate and title to a mining claim. The facts are both interesting and instructive to the time. On March 14, 1860, Joseph Blodgett was one of three miners who purportedly located 1,400 feet of ledge in the Virginia Mining District, later owned by the Potosi Gold and Silver Mining Co. Blodgett died on May 20, 1860. On July 30, 1861, Edward Haskell sent a letter to the court:

Hon. County Judge: Dear Sir: My step brother, Joseph Blodgett, was killed by the Indians in your territory some 14 or 15 months since. He died possessed of a claim in the Potosi Co. near Virginia City. A number of parties are trying to defraud the estate of their just rights. Among other operations for this purpose, I hear that there is a lady there who is representing herself as the mother of the said Joseph Blodgett and will very likely apply for letters of administration. She is an imposter. His mother died more than 30 years ago. I have written to the Heirs in Wisconsin and Vermont to come out and attend to the matter. Shall hear from them very soon. Meanwhile, I have applied in Sierra County, where he lived, for letters, and shall apply in your territory as soon as I can ascertain whether I must commence de novo in your territory or whether if I bring letters from the probate court of Sierra County, California, properly authenticated, I can file them in your office and act upon that authority. None of the lawyers here can tell me what your practice is in such cases, and thus far I have been unable to get any information from those of your territory. . . . It is almost impossible for me to come out until after the fruit season is over, say the first of October. Meanwhile, I shall be very much obliged if you inform me if anyone is applying for letters of administration and inform me [what] your practice is in regard to the matter referred to above. I am aware, sir, that I am taking a considerable liberty in addressing you instead of a lawyer in this matter, and should not have done so but I feared something might be done in your court before I could get word from any lawyer. For this reason I trust you will excuse and believe [me].

Edward Haskell was appointed administrator of Blodgett's estate on May 17, 1862. He sought to quiet title in light of facts that must have been routine at the time. A gentleman named Robert Fowlkes testified that he and Blodgett lived together in California and agreed that Fowlkes would locate ground for Blodgett in the Nevada Territory. Fowlkes located the ground in controversy and inserted Blodgett's name. He testified:

I saw Mr. Blodgett about April 29, 1860, it being after the making of the location spoken of. We neither of us had any money. Before I saw him I traded off the ground to Peter Rice and others. When I saw him at the time and place above stated I told him all of the particulars of the trade. He was at first dissatisfied. He finally offered to give me a deed for the ground for a mule and \$100. He had before that time offered me \$400 for the mule. We made the bargain. I made him a bill of sale of the mule and delivered them to him in the presence of [others]. I was to pay the \$100 as soon as I got pay for the claim from the parties to whom I sold. He then looked for paper upon which to write the deed for the ground, but we could not find any. I then took out my memorandum book and wrote on one of the leaves an obligation for a deed from him to me for the ground in controversy. He signed it and Cook and Stephens signed it as witnesses. I then came back and conveyed the ground spoke of to Rice and others. The memorandum book is lost. I paid the assessments on the interest of Blodgett until I sold to Rice and others.

The amount in controversy must have been substantial because trial evidence was extensive and there was even a deposition in Butte County, California. The California deponent testified, "there was not to his knowledge or belief paper or writing materials enough in camp to make a deed or conveyance had the parties wished to do so." Another witness testified he was well acquainted with Blodgett and his "camp equipage. He had books and papers in his trunk and plenty of writing paper." Yet another witness testified he knew Blodgett for six years and was with him in May and April, 1860. He provided similar testimony about Blodgett's camp gear and access to paper. Blodgett's "habits of business were very strict and he kept books and most always kept copies of his letters." Haskell was aggrieved in the district court so he sought review in the NTSC.

**Legal Concepts:** *Necessary Parties; Recording; Estate Administration; Bonafide Purchaser*



47. HAWES V. MASON & SMITH

- *Civil. Second Judicial District Court (Ormsby County) (Mott, District Judge)*
- *Complaint filed on September 15, 1863*
- *Judgment entered on November 20, 1863*
- *No opinion but portions of record exist*
- *Judgment affirmed*

This was an action on an injunction bond derived from a prior action to enjoin plaintiff from cutting timber on defendant's property. An injunction was granted and dissolved following trial. Plaintiff then filed this suit seeking damages from the time the injunction was in place. The district court excluded evidence of title held by defendant, found for plaintiff, and awarded damages and costs. The procedural history within the NTSC reveals how quickly the court acted and explains why so few opinions may be available. The parties' briefs were filed on January 26, 1864. Just two days later, on January 28, 1864, Justice Turner with "full bench concurring" affirmed the district court judgment.

**Legal Concepts:** *Security Bond*

48. MORGAN V. CALDWELL

- *Civil. First Judicial District Court (Storey County) (Locke, District Judge)*
- *Complaint filed on April 22, 1863*
- *Judgment entered on June 19, 1863*
- *Opinion (February 4, 1864) (Locke, Turner & North, Justices)*
- *Judgment reversed*

The action began in probate court to recover in ejectment a parcel of ground in Virginia City. Plaintiff prevailed and was awarded restitution. The defendant and two "co-tenants" located a tract of ground and built a home. At some point the two "co-tenants" abandoned the premises. The district court affirmed, and the matter was appealed to the NTSC, which referred to the "custom prevailing at the time" that a person was only entitled to hold one lot of specified spatial dimensions. The land claimed by the appellant "would embrace three entire lots of the size above stated." The NTSC cited general tenancy concepts, reversed the district court, and remanded to the probate court with directions to hear additional evidence.

**Legal Concepts:** *Ejectment; Probate; Real Property; Prevailing Custom*

49. PEOPLE V. DONNERY

- *Criminal. First Judicial District Court (Storey County) (North, District Judge)*
- *Trial began October 22, 1863*
- *Defendant sentenced on November 10, 1863*
- *Opinion: February 4, 1864 (Locke, Turner & North, Justices)*
- *Judgment affirmed*

Defendant Donnery was indicted for robbery. He was charged with taking from his victim at the Gold Hill highway five \$20 gold pieces, one \$10 gold piece, five \$5 gold pieces, seven \$2.50 gold pieces, one cloth coat, and a stock certificate for 15 feet in the Fuller Gold and Silver Mining Company. He was convicted by a jury and sentenced to 10 years in the territorial prison. The question on appeal was the sufficiency of the indictment. The NTSC affirmed, stating: “After looking through the record in the case we are unable to find anything that would authorize the Court to reverse the Judgment, the testimony was certainly very strong against the defendant the Law presented the case fully to the Jury giving the defendant the benefit of the reasonable doubt, and we cannot see that the Jury could have done less than to find the defendant guilty.” Many criminal appeals today are based on similar arguments that challenge the “sufficiency of the evidence.”

**Legal Concepts:** *Evidence of Guilt; Reasonable Doubt; Sufficiency of Pleadings*

50. DRAKE V. DELANEY

- *Civil. First Judicial District Court (Storey County) (Locke, Judge)*
- *Complaint filed on July 29, 1863.*
- *Judgment entered on October 17, 1863*
- *Opinion: January 28, 1864 (Turner, Locke & North, Justices)*
- *Judgment affirmed*

An action to recover in ejectment a town lot in Virginia City. The issue was whether defendant’s “fenced garden” encroached upon plaintiff’s land. The matter was referred to a referee. The district judge considered objections to the referee’s recommendation and affirmed it. There are NTSC records but no NTSC analysis underlying the affirmance.

**Legal Concepts:** *Real Property; Restitution; Ejectment*

51. WALLACE V. STEINHART<sup>260</sup>

- *Civil. First Judicial District Court (Washoe County) (Mott, Judge)*
- *Complaint filed on July 29, 1863*
- *Judgment entered on January 16, 1864*
- *No opinion but portions of record exist*
- *Judgment affirmed (Turner, North & Locke, Justices) (May 3, 1864)*

An action for injunction related to the diversion of water. This appeal is interesting because it reveals recurring water rights disputes and problems with appellate procedure. Plaintiff alleged he owned agricultural lands and a mill near the Steam Boat Creek since 1857. He operated a large, valuable quartz mill on the site. He further alleged the defendant diverted water, which rendered his mill inoperable. The district court entered a temporary injunction and a jury subsequently entered a verdict for plaintiff. The respondent's brief includes challenges to the jury's findings and argues:

The doctrine of Riparian rights as the same has obtained under the common law has no application whatever in this country. The necessities of the people forbid it. We could neither mine, nor cultivate under that rule unless the mine or the ranch was on the borders of a stream. Our common law on this subject, we inherit from California and Utah, I shall not attempt to cite any of the numerous cases from California in which the right to divert water from its natural channel has been admitted, nor shall I cite the decisions of this court while a Territory upon the same subject. They are too notorious for question. If this court proposes to destroy all the valuable rights now held in Nevada, let it decide that water cannot be diverted, and it will effectually do so.

The petition for rehearing filed on May 12, 1864, reveals frustration with the appellate procedures: "There was no oral argument of the case at bar, and the Judges of the Supreme Court could not possibly have arrived at a thorough understanding of the questions involved in the case by the very cursory inspection of the papers possible in the brief time devoted to the examination of the case; only a little more than half a day being devoted to the decision of all the cases argued

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<sup>260</sup> The Russell McDonald files indicate another case, which is not on record at the Nevada State Archives. The case is Joseph Angell v. Michael McDermott. It was a contractual dispute regarding a promissory note. Judgment was entered in favor of plaintiff for \$273.93, with costs in the amount of \$45.65. Defendant's property was sold at a Sheriff's sale in April 1863. Defendant contended there was no jurisdiction for such action. He filed a notice of appeal on April 9, 1863. There is no indication if the appeal was ever perfected, which may explain its absence in other records.

at the late term of said court, a large portion of which had not been argued orally & must in consequence have been new to at least two of the judges in each case.” The supporting affidavit from George A. Nourse is similar: “[T]hat the said judges, as this deponent is reliably informed devoted but half a day to the examination of said case and ten other cases submitted to them, several of which had not been argued orally; that said case is one involving important principles and the examination of numerous authorities, and that in so brief a time it was physically impossible for said judges to examine such authorities & investigate the principles involved with the care that the importance of said principles required.”

**Legal Concepts:** *Riparian Rights; Judicial Duties*

52. HOLKER V. UPTON

- *Civil*
- *No information*

53. SINCLAIR AND BLACK V. ANDERSON

- *Civil. Second Judicial District Court (Ormsby County) (Turner, District Judge)*
- *Compliant filed on April 6, 1863*
- *Judgment entered on April 13, 1863*
- *No opinion but portions of record exists*
- *Judgment affirmed (January 28, 1864) (Turner, North & Locke, Justices)*

This was a dispute over a parcel of land and the timber located thereon. Plaintiffs claimed they were ejected and defendants were illegally cutting timber on the property, thus causing ongoing damages. The facts reveal the difficulty of land claims, which made up a large number of appeals to the NTSC. The plaintiff claimed he marked ownership of land by cutting and stacking 1/2 cord of wood at each corner and laying limbs, dead saplings, brush, and twigs along the boundary lines. The growing and preferred custom in the territory was to claim land by survey. Judgment was entered for plaintiffs, but no damages were ordered.

**Legal Concepts:** *Real Property; Ejectment; Prevailing Customs*

54. NEILY V. BLANCHETT

- *Civil*
- *No other information available*

55. WINTERS V. APPLE

- *Civil. First Judicial District Court (Storey County) (Mott, District Judge)*
- *Complaint filed April 3, 1863*
- *Judgment entered on March 11, 1863*
- *No opinion but portions of record exist*
- *Last Supreme Court note indicates the matter is taken under advisement. (January 30, 1864)*

This action involved ownership of a disputed mining claim. Like so many other disputes, it presented irreconcilable facts that were inspired by the great amounts at issue. The defendant claimed that in 1861 he owned 100 feet of mining ground in the Gold Hill District. He authorized its sale by an agent but the purchaser was the foreman of the mining company who fraudulently concealed discovery of a valuable ledge. The defendant claimed he received \$100 when the actual value was \$2,000, which amount was “utterly disproportionate to the true value.” The matter was referred to a referee and the complete referee’s recommendation is available in the Russell McDonald papers at the Nevada Historical Society. The referee found that an agency to sell a mining ground may be created by parol directions and title was passed. The district court affirmed the referee’s report. The transcript was not forwarded to the NTSC because the court fees were not paid. The appeal was dismissed for failure to pay fees and then re-instated after the fees were paid. The last available information is that the appeal was taken under advisement.

**Legal Concepts:** *Referee; Judicial Notice; Mining; Real Property; Parol Sale; Contract; Common Law; Implied License; Agency; Costs; Fraud*

56. TRAVIS, D.C. V. EPSTEIN & ROBINSON

- *Civil.*
- *No other information is available*

57. REAL DEL MONTE MINING CO. V. PORTER

- *Civil. Second Judicial District Court (Esmeralda County) (Turner, District Judge)*
- *Complaint filed on August 4, 1862*
- *Verdict entered on July 25, 1863*
- *Notice of appeal filed with Second Judicial District Court, Esmeralda County, on December 7, 1863*

- *No opinion but portions of record exist*
- *Judgment reversed*

This procedurally curious case was tried in Mono County, California, yet the transcript was certified to the Second Judicial District Court in Esmeralda County. The action for ejectment related to a mining claim located in September 1860. Notice of the claim was filed in the office of the District Recorder of the Esmeralda Mining District. On January 25, 1861, a corporation was formed to work the claim. Plaintiffs alleged that in July 1862, the defendants “with force and arms took and entered upon plaintiff’s said quartz [claim] and took and with shovels, spikes, picks and other iron instruments sunk and excavated a shaft of great worth . . . They worked on a spur of the claim.” Plaintiffs claimed the land belonged to them and sought an injunction from further trespass.

The initial injunction was filed in Calaveras County. In Mono County, a jury returned a verdict for defendants. Notice of appeal was filed in the Second Judicial District of Esmeralda County and the transcript certified thereto. The Second Judicial District Court denied the motion for new trial. The parties then filed a stipulation in the NTSC stating the “order overriding the motion for a new trial by the district court of said Esmeralda County, be and the same is hereby reversed, and that the judgment heretofore entered in said court against appellants be set aside, and that said case be, and it is hereby remanded to said district court in and for Esmeralda County for a new trial.” (The court record contains the mining laws of the Esmeralda Mining District.)

**Legal Concepts:** *Recording Claims*

58. HOOLE, S.F., ET AL. V. F.M THAYER, ET AL.

- *Civil. (First Judicial District Court) (Storey County) (North, District Judge)*
- *Complaint filed on July 7, 1863*
- *Order dissolving an injunction entered on January 9, 1864*
- *Notice of appeal filed on January 12, 1864*
- *No opinion but portions of record exist*
- *Appeal dismissed*

An action for accounting and dissolution of a partnership involved in “housebuilding, manufacturing sash, blinds, and doors.” The district initially granted an injunction, but dissolved

it five days after the answer was filed. Plaintiff appealed the order dissolving the injunction. State archival records list this case as being dismissed, which likely explains why there is no opinion recorded.

**Legal Concepts:** *Partnership; Injunction*

59. PEASLEY, THOMAS V. MAX WALTER

- *Civil. First Judicial District (Jones, District Judge)*
- *Complaint filed on September 10, 1862*
- *Judgment entered on April 21, 1863*
- *No opinion but portions of record exist.*
- *No indication of what happened at NTSC*

Plaintiff owned 70 feet in the Eldorado Company. Plaintiff borrowed money and promised to re-pay with 10% interest per month. The note was secured in writing with “a Power of Sale,” intended as a mortgage. Plaintiff attempted to repay, but defendant purporting to act as the creditor’s agent, conveyed plaintiff’s interest to another person. Plaintiff tendered the money to the court with his complaint. A referee was appointed and judgment for plaintiff was rendered. Judge North denied a motion for new trial on October 8, 1863. Unfortunately, no information about what happened in the NTSC is available.

**Legal Concepts:** *Mortgage; Agency; Contracts*

60. PEOPLE V. FLEISHHACKER & MEYER

- *Civil. Second Judicial District Court (Ormsby County) (Mott, District Judge)*
- *Complaint filed on April 16, 1863*
- *Judgment entered on January 12, 1864*
- *Opinion (oral arguments waived and opinion entered on May 5, 1864)*
- *Judgment affirmed (Turner, Locke & North, Justices). Appealed to the U.S. Supreme Court and reported at Mandelbaum v. People, 75 U.S. 310 (1868)*

This action challenged judgments approving assessed taxes. There was a claim of “fraud in the assessment.” The answer was “stricken as frivolous and immaterial and judgment ordered for plaintiff (plus costs).” “As to appellants’ second point, that the levy was excessive, no answer setting up the fact was filed, and in a cause like this we cannot grope through the record and the statutes in search of error not exhibited in the pleadings.” A corollary issue was appellants’ claim the judgment was rendered “for coin.” The NTSC found a “ready answer” to

this objection: “[S]uch is the precise letter of the law. We think the provision is proper and wise.” The United States Supreme Court reversed, noting the district court had no authority to strike a defense from an answer.

**Legal Concepts:** *Taxes; Fraud; Assessment; Judicial Ethics; Judicial Authority*

61. PEOPLE V. MANDLEBAUM

- *Civil. Second Judicial District Court (Ormsby County) (Turner, District Judge)*
- *Complaint filed April 16, 1863*
- *Judgment entered on January 20, 1864*
- *Appeal consolidated with No. 60 on April 30, 1864*

Action to recover taxes due on realty and personal property, including hay, lumber, timber, and goods. Judgment was entered in favor of plaintiffs in the amount of \$1,522, with costs and attorney’s fees of \$228.30. Clerk’s and sheriff’s fees were also assessed at \$26. The NTSC opinion affirming the judgment was consolidated with PEOPLE V. FLEISCHHAKER & MEYER (No.60).

**Legal Concepts:** *Taxes; Assessment*

62. REED V. JOHNSON

- *Civil*
- *No information*

63. GELLER, SOLOMON ET AL. V. G.W. HUFFAKER

- *Civil. First Judicial District Court (Washoe County) (North, District Judge)*
- *Complaint filed on May 23, 1863*
- *Judgment entered on January 5, 1864*
- *Notice of appeal filed on January 5, 1864*
- *Opinion (Lewis, Beatty, & Bronsan, Justices)*
- *Judgment remanded. Reported at 1 Nev. 22 (1865)*

An action brought to recover the sum of \$5,000 in damages, alleged to have been sustained by the diversion of water from plaintiffs’ land by the defendant. Plaintiffs’ rights were based on a predecessor claim. Defendant objected to the plaintiffs’ witness as an interested party. The NTSC disagreed and determined the witness was not an interested party because the



action was for a money damages. It then remanded the case back to the trial court for further proceedings. The case was finally resolved by the NSC after statehood.

**Legal Concepts:** *Riparian Rights; Witness Eligibility/Interest*

64. MISSING

65. SANKEY V. JESS, ET AL.

- *Civil. First Judicial District Court (Washoe County) (North, District Judge)*
- *Complaint filed: September 29, 1862*
- *District court appealable verdict/order/judgment: January 4, 1864*
- *Opinion: May 3, 1864 (Turner, Locke & North, Justices)*
- *Judgment affirmed*

This was an action for ejectment to recover possession of a tract of land. Defendants alleged they purchased the land for valuable consideration from grantors who “had for a long time been sole owners and holders.” Defendants moved to dismiss because “the issues were previously fully adjudicated by the supreme court of the territory” in its November 1862, term in the case of *JENKINS V. MILLS* (No. 24). (The decision was against the plaintiffs and the judgment was appealed and affirmed.) The motion to dismiss was denied and the jury returned a verdict for the defendants. Plaintiffs sought a new trial because the case was set for trial on December 30, 1863, and he “at great expense prepared for the trial of the cause on that day. He had John F. Stone and Jabez N. Bryant subpoenaed as witnesses, who lived at a great distance. The witnesses showed up but the court of its own motion continued the cause to January 4, 1864. They were not present.”

The petition for rehearing illustrates the bar’s frustration with the bench: “Judges have not examined the record and points made by appellant. Appellant further demands a rehearing upon the ground that he has a right to know by a written opinion of the supreme court how and by what process of legal reasoning he is to be ruled out of his property. Appellant denies the power of this court to deprive him of his property without giving him a reason for averring so.” The petition continued: “The judge who rendered the opinion has neglected to examine the record in the cause as is evident from the opinion. Land is not located in Steamboat Valley.”

The opinion is indeed short. However, the judgment was based on a well-established principle of property law that protects innocent purchasers. In this case, land was sold by an executory contract that was in writing but not recorded. The NTSC made the following statement: “Where there is no record of title, or of existing claims to land, other than in him who is in possession holding adversely to all the world, a bona fide sale, and actual delivery of possession, to an innocent purchaser, must be regarded as a complete transfer of title.”

**Legal Concepts:** *Real Property; Res Judicata; Judicial Duties; Bonafide Purchaser*

66. CHOLLAR S. MINING CO. V. POTOSI G. & S. MINING CO.

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*
- *Complaint filed on March 4, 1864*
- *District Court refused to grant injunction on April 4, 1864*
- *Statement on appeal filed April 12, 1864*
- *Opinion (May 3, 1864) (North & Locke, Justices)*
- *Addendum to opinion (May 5, 1864)*
- *Order striking addendum (May 13, 1864)*
- *Judgment affirmed*

This action for preliminary injunction was a continuation of the dispute addressed by CHOLLAR S. MINING CO. V. POTOSI G. & S. MINING CO. (No. 21) and consolidated with POTOSI G & S V. CHOLLAR S. MINING CO. (No. 67). Judge Turner’s dissent deserves some mention. He described the majority opinion as “fatally erred.” Potosi sought ejectment and Chollar responded with trespass. “The decision in any aspect I regard as totally unfounded, contrary to the law of all the books then entirely erroneous, for the following reasons.” He further writes:

The decision in my judgment is erroneous, flagrantly so, and works a fatal wrong unless redress is offered by a court and jury hereafter. The doctrine applied prevents a fair trial, strikes out material testimony and perverts the administration of justice in this case. In all doubtful cases, the doubt should be resolved in favor of a party being heard, at least once in the trial of his case. It was my fortune to be one of the Supreme Judges who tried the former case and I know as they do that there is no estoppel, that decision has no such effect and as their survivor and in their name I protest against our decisions being passed and conjugated to mean precisely the reverse of what they do mean, as explained even by their very letter, as well as the judges who rendered them.

The historical significance of this decision cannot be overstated. As set forth in Chapter 11, its procedural irregularities marked the beginning of the end for the NTSC. Of note is Judge Mott's shifting analyses and changing opinions. All three judges resigned a few months after this opinion was entered. The public no longer viewed the court as an independent body capable of rendering fair and impartial decisions that were based upon facts and controlling law.

**Legal Concepts:** *Estoppel; Res Judicata; Title; Judicial Ethics*

67. POTOSI G & S v. CHOLLAR S. MINING CO.

- *Same as No. 66*

68. YELLOW JACKET MINING CO. v. UNION MINING CO.

- *Civil. First Judicial District Court (Storey County (North, District Judge)*
- *Complaint filed on January 6, 1863*
- *Verdict entered on October 23, 1863*
- *No opinions but portion of record exist*
- *Judgment affirmed (Locke & North, Justices) (May 4, 1864)*

An action for ejectment where plaintiff alleged possession of a mining claim. Defendant contended there were two separate and distinct ledges. A verdict was rendered for plaintiff and defendant moved for a new trial based upon jury misconduct. Defendant alleged: "In that said jury improperly and directly contrary to the directions of the Court . . . at the instance and request of plaintiff's agent and officers went to the office of plaintiff in Gold Hill and then and there partook of costly wines and other refreshments at the cost and expense of plaintiff and at the request of the officers and agents of plaintiff, the furnishing of which said wines and refreshments to said jury as aforesaid materially influenced said jury to render a verdict in favor of said plaintiff." "In that a certain one of said jurors to wit: Wm. B. McCoy on or about the 22 day of Oct. A.D. 1863 and after the testimony on both sides had closed and the case in part had been argued to said jury by counsel for plaintiff and defendant, again partook of liquor and segars [sic] furnished by a certain stockholder and officer of plaintiff to wit on A.B. Perkins and at the cost and expense of plaintiff or said Perkins." The motion was denied on February 13, 1864.

Judge North's charge to the jury was then challenged on appeal. He had stated:

This is a very important case submitted for your decision yet I apprehend it is one you will not find great difficulty in determining upon. . . . The evidence introduced is somewhat conflicting . . . Witnesses upon both sides have been commented upon by counsel in this trial. Permit me to say as I have said before, that the character of a witness goes to his credibility, and I do say that drunkenness does not elevate the character of a witness but does lower it . . . that habitual drunkenness, or habitual gambling does not elevate a witness or entitle him to credit on the stand, and I must always protest against anything that shall tend to the contrary of that statement.

There are a number of significant principles that can be gleaned from this appeal. First, the motion for retrial was based on alleged jury misconduct. Although the motion was denied, the allegations against the plaintiff are serious. Today such contact is strictly forbidden, and if true, would have undoubtedly resulted in a new trial. Second, the judge's instruction to the jury is important. The NTSC apparently found no harm in the given instruction, but Judge North's comments are interesting. Witness credibility is an issue left to the trier of fact. This case demonstrates an awareness and concern about improper influences invading the province of the jury. Finally, this case is yet another example where lawyers complain about the lack of an appellate record. In fact, the petition for rehearing indicates a written opinion may never have been issued: "As the Court has not favored us with the grounds of its decision, we are compelled to prepare our petition somewhat in the dark."

**Legal Concepts:** *Jury Instructions; Juror Misconduct; Record on Appeal*

69. SACRAMENTO QUARTZ MILL CO. V. DANNEY MINING CO.

- *Civil. Third Judicial District Court (Lyon County) (Locke, District Judge)*
- *Complaint filed on August 6, 1862*
- *Judgment entered on December 21, 1863*
- *No opinions but portion of record exist*
- *Judgment affirmed (Turner, Locke & North, Justices) (May 4, 1864)*

A collection action for a debt allegedly owed to plaintiff for crushing quartz rock for defendants. Plaintiff obtained a default judgment by stipulating to a continuance until the next term, and then without notice, obtaining judgment in defendants' absence. Defendants moved to vacate and set aside the judgment because "by 'legal strategy' plaintiff got a judgment by

default, having by stipulation continued the case for the term, and afterward without notice, got such judgment in absence of defendants. Defendants now make motion to vacate and set aside judgment.” Judge Locke denied the motion because the Defendants waited until after execution to stay the judgment and move to set aside the default. This appeal demonstrates the time-honored doctrine of *laches*, which dissuades litigants from delaying the enforcement of their known legal rights.

**Legal Concepts:** *Default Judgment; Civil Procedure*

70. ALFORD, ET AL. V. DEWING, ET AL.

- *Civil. First Judicial District Court (Washoe County) (Turner, District Judge)*
- *Complaint filed on February 25, 1863*
- *Judgment entered on February 11, 1864*
- *Opinion never published. (Turner & Locke, Justices) (May 6, 1864)*
- *Judgment affirmed*
- *Reported at 1 Nev. 207 (1865)*

This was a property action to recover land. Plaintiffs claimed ownership of land and that they were wrongfully ejected. Judgment was rendered for plaintiffs and a motion for new trial was denied. Points of error were taken as to jury instructions refused and the general instruction given to the jury. “Plaintiffs claim possession of certain tract of timber land and claim that they appropriated the same from the public domain. Supreme court of territory held in previous action concerning same tract of land between these and other parties not now in court that without a fence other acts so valuable, prominent, and notorious may be done as amount to an appropriation.” The reference is to ALFORD V. DEWING (No. 6).

The NTSC wrote: “It appears that plaintiffs at a very early day had said land surveyed under the Utah possessory act, he also had it surveyed under the Nevada act, he marked boundaries blazed trees, built mills & made other improvements worth over twenty thousand dollars upon the land & that they were of such character as were held sufficient by a jury of the vicinage, a District Court & also the Supreme Court hence his possessory right is not an open question.” The NTSC affirmed and addressed “the other points made that the verdict is against law, the possession was not proven sufficiently, the [n]otice was insufficient, the [s]urvey was

not complete, the plaintiffs holding a tenancy in common could not sue by reference to its previous decision.”

An application for rehearing was filed in January 1865, with the newly-organized NSC. As alleged elsewhere, the petitioner for rehearing complained about the NTSC processes:

[T]he above case was submitted on briefs at the April session 1864 of the Supreme Court of the Territory of Nevada; that the said case, as this deponent is informed and believes, and has good reason to believe, were first examined by those of the judges of the said court who were competent to sit therein, to-wit, Ch. J. Turner and Locke, J. . . .; that the said judges as this deponent is reliably informed and verily believes, devoted but half a day to the examination of said case and ten other cases submitted to them, several of which had not been argued orally; that said case is one involving important principles, and the examination of numerous authorities, and that in so brief a time it was physically impossible for said judges to examine such authorities and investigate the principles involved, with the care that the importance of said principles required.

The NSC reviewed the appeal *de novo*: “That our views of the case may be made more intelligible (the original opinion not being published), we will treat it rather as one coming before us for decision than as a mere application for rehearing.” After reviewing and legally analyzing the facts available, the NSC denied rehearing.

**Legal Concepts:** *Tenants in Common-Ejectment; Abatement; Survey; Abandonment; Title*

71. PEOPLE V. JOHNSON

- *Criminal. First Judicial District (Storey County) (North, Judge)*
- *Trial began on March 29, 1864*
- *Verdict returned on March 30, 1864*
- *Sentenced on April 2, 1864*
- *Opinion May 5, 1865 (Turner, North & Locke, Justices)*
- *Judgment affirmed*

The opinion is very brief but the underlying facts are interesting. On October 28, 1863, F. Johnson shot Horace Smith with a “leaden bullet,” which “did strike, penetrate and wound him.” Smith died of his injuries on December 3, 1863, and Johnson was indicted for murder in the second degree on March 10, 1864. Trial began on March 29, and the jury returned a guilty

verdict the next day. Johnson was sentenced to “imprisonment in the territorial prison at hard labor” for a term of five years. Defendant’s attorney withdrew eight days before trial and defendant was represented by successor counsel.

The decedent Horace Smith was a prominent lawyer in Virginia City. He had previously served as mayor of Sacramento, California. Defendant Johnson was his client. The men argued about the payment of money and trial strategy for a case involving the Yellow Jacket Mining Company. Smith reportedly told Johnson “you can get some other attorney to represent your damned rascality—tomorrow morning we will withdraw from the case.” The issue was whether Johnson should purchase a favorable witness for \$3,000. Smith contended money was due to him from the sale of some mining stock. After the argument, Smith went to a friend to borrow a pistol, indicating he may have some problems in the future. The next day the men argued again and Smith knocked Johnson down with his cane. While on the ground, Johnson fired the shot that later killed Smith. He was reported to shout at the time: “Gentleman, I stand in my self-defense!”

The allegation of error on appeal was that Judge North admitted irrelevant testimony for purpose of proving malice. Because malice is not an element of manslaughter, the evidence was not harmful. The NTSC stated the evidence “did the appellant no harm, and was disregarded by the jury, it affords no ground for reversal of the judgment.” This case presents another example of an appeal being governed by the “harmless error” doctrine.

**Legal Concepts:** *Evidence; Harmless Error*

72. MCCALL V. BELCHER MINING CO.

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*
- *Complaint filed on October 3, 1863*
- *Order confirming referee’s report filed on March 19, 1864*

An action for unlawful entry and ejectment over a 44 foot mining claim. The trial court appointed a referee, who issued a report in favor of the plaintiff. The district court entered judgment for the plaintiff and later denied a motion for a new trial. The parties stipulated that proceedings upon the judgment would be stayed without a bond “providing the same is heard at

the next term of the supreme court. This stipulation is not to extend beyond next term.” There is no record of what the NTSC did with the appeal.

73. MAYNARD, H.D. v. C.W. NEWMAN

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*
- *Complaint filed on May 1, 1862*
- *Judgment entered on November 14, 1863*

An action to enforce a \$10,000 promissory note. The matter was referred to a referee. The plaintiff obtained a judgment and the defendant attempted to pay in U.S. legal tender notes. The defense was to deny the debt, assert plaintiff’s holder-in-due-course status, claim the payments were previously made, and allege the note was obtained through fraud and without consideration. The appellate issue in the NTSC was the specificity of pleadings for fraud. On May 23, 1864, the parties filed a stipulation “that case is submitted and that court may decide and render a judgment herein at chambers as though made in open court.” A stipulation to dismiss the appeal and allow the judgment to stand was also filed.

A separate complaint regarding the same dispute was filed on September 10, 1864, and appealed to the NSC on January 10, 1865. The NSC noted the “only point made before this court is that the law of Congress of the 25<sup>th</sup> of February, 1862—in regard to legal tender notes—is unconstitutional and void.” The NSC’s decision is reported at Maynard v. Newman, 1 Nev. 271 (1865).

**Legal Concepts:** *Promissory Note; Assignment; Fraud; Sufficiency of Pleading*

74. PEOPLE V. GOULD & CURRY MINING CO.

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*
- *Complaint filed on March 2, 1864*
- *No opinion but portions of record exist*
- *Judgment affirmed. (Turner, Locke & North, Justices) (Certiorari to U.S. Supreme Court denied in 1867)*

This action challenged the territorial legislature’s act taxing gross proceeds as contrary to the Act of Congress organizing the territory. The parties stipulated to a demurrer to test if the



territorial act was in conflict with the federal act creating the territory. The demurrer was overruled by order dated April 22, 1864.

**Legal Concepts:** *Taxes; Demurrer; Superseding Acts*

75. CALIFORNIA MINING CO. V. CHARLES ANDERSON

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*
- *Complaint filed on August 15, 1862*
- *Verdict entered on September 25, 1863*
- *Notice of appeal filed on October 27, 1863*
- *No opinion but portions of record exist*
- *Decision unknown*

Plaintiff was ejected from its mining claim and sued defendants for restitution and unlawful detention. A jury returned a verdict for plaintiff and on December 12, 1863, a writ of restitution was entered, directing and commanding the Storey County Sheriff to, “taking with you the force of the county, if necessary, [] cause the said defendants and all claiming by, through, or under any of them to be immediately removed from the said premises above described, and the California Silver Mining Company and its agents and officers to be put and placed in the quiet possession thereof.” Nothing indicates what the NTSC did, but the writ being issued after the date of appeal indicates the judgment for plaintiff was affirmed.

**Legal Concepts:** *Ejectment; Writ of Restitution*

76. SAVAGE MINING CO. V. NORTH POTOSI MINING CO.

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*
- *Complaint filed on February 6, 1864*
- *Order filed on March 15, 1864*
- *Notice of appeal filed on March 22, 1864*
- *Set for oral arguments for October 9, 1865*
- *No opinion but portions of record exist*

An action to quiet title to a mining claim. Plaintiff alleged Defendant was extracting rich ore from its claim. This case turned on the single- or multi-ledge question and what composed a claim and delivery. The district court entered a temporary injunction and ordered plaintiff to post a \$20,000 bond. Judge North, as trial judge, stated: “It is not yet demonstrated that they are not both upon the same lode. That each location has been commonly understood to be upon the

Comstock Lode is apparently proven. But should it finally be shown that they are on separate and distinct lodes, I can see no reason why the setting of a first stake at one end of a claim should outweigh the equally important stake at the other end added to four years of actual occupancy and many thousands in expenditure.” “[T]he number of affidavits are arrayed on either side and scientific and experienced miners differ widely upon the subject. But there is no doubt that the plaintiff had covered this ground by its first and subsequent square location and prior peaceable possession of the particular locality now in controversy.” After noting that the defendant was clearly mining on the plaintiff’s land, Judge North granted the injunction. The order was then appealed.

A stipulation filed April 27, 1864, continued the appeal: “The parties above-named, consenting this cause by order of the court is continued until the next ensuing session of this court; respondents waiving no right to make preliminary motions by giving notice therefore, five days before the meeting of said court.” There are no records indicating NTSC action after this time.

**Legal Concepts:** *Ledge Theories; Claim Boundaries; Injunction*

77. DAVIS V. THOMPSON

- *Civil. Third Judicial District Court (Lander County) (Locke, District Judge)*
- *Complaint filed on November 3, 1863*
- *Judgment entered on April 18, 1864*
- *NSC opinion reported at Davis v. Thompson 1 Nev. 17 (1865)*

Thompson was the Lander County Recorder. Allegedly during his tenure he received fees of \$2.50 per-deed for recording 496 deeds and \$4.00 per-paper for recording 25 miscellaneous papers. Thompson’s successor determined he never recorded the deeds or papers. The successor recorder then recorded the documents and sought reimbursement of \$1,340. Judge Locke initially granted a writ of attachment on defendant’s home, but subsequently dismissed the action because there was no privity of contract between the parties. There is no indication of NTSC action. There is no record of how this appeal arrived at the NSC, which reversed the judgment and remanded for a new trial.

**Legal Concepts:** *Privity of Contract; Writ of Attachment; Implied Assumpsit*

78. PEOPLE V. BONDS

- *Criminal. Third Judicial District Court (Lander County) (Locke, District Judge)*
- *Verdict entered on March 23, 1864*
- *Judgment March 25, 1864*
- *Defendant sentenced on March 25, 1864*
- *NSC opinion reported at 1 Nev. 31 (1865)*

This NTSC appeal was ultimately resolved by the NSC. Defendant was convicted of murder in the second degree. He had previously sought to change venue because he had received threats from local residents and there was some attempt to organize a “vigilance committee for the purpose of hanging or strangling him without even a trial and without even investigating the facts connected with the charge of murder proffered against him.” Change of venue was denied and he was convicted.

The crime began with a dispute over \$25.00 taken to settle a liquor debt that defendant demanded be returned. Defendant shot the victim after threatening to do so should he refuse to return the money. Defendant was sentenced to “20 years hard labor in the territorial prison.” Judge Locke stated in the presence of the jury “This idea of an accident which has been urged by the defense amounts to nothing and is not tenable. There is no evidence to show it was an accident. On the contrary, it shows there was a scuffle and that the defendant persisted in holding on to the pistol.”

The issues on appeal were the jury instruction regarding reasonable doubt and Judge Locke’s statement in the presence of the jury. The NSC found Judge Locke erred by refusing the reasonable doubt instruction and compounded the problem by denying the instruction in the jury’s presence, which was “highly prejudicial” to the defendant. The NSC also noted that Judge Locke’s statement about an accident invaded the province of the jury and was entirely improper. Thus, the conviction was reversed and the whole matter was remanded for a new trial. People v. Bonds, 1 Nev. 33 (1865). The decision rendered by the NSC illustrates an important and fundamental principle in criminal law, which is that a person charged with a crime is presumed innocent until proven guilty beyond a reasonable doubt. Instructions as to reasonable doubt are standard in all criminal trials.

**Legal Concepts:** *Jury Instructions; Circumstantial Evidence; Change of Venue; Province of the Jury; Judicial Misconduct*

79. DOAK, SAMUEL V. GEORGE W. BRUBAKER

- *Civil. Second Judicial District Court (Douglas County) (Turner, District Judge)*
- *Complaint filed on August 25, 1862*
- *Notice of appeal filed May 6, 1864.*
- *Judgment for the defendant entered on May 30, 1864*
- *No opinion but reported at 1 Nev. 183 (1865)*
- *Judgment affirmed*

This NTSC appeal was ultimately resolved by the NSC. An action to enforce a promissory note and recover possession of cattle. Debtor signed a promissory note secured by 400 cattle. Defendant took delivery of 215 cattle to secure payment. Defendant prevailed in the district court. “The court finds that it is not satisfactorily proven that the debt was paid by the sale of the cattle.” The single issue on appeal was the sufficiency of facts to show the cattle had been delivered to defendant. The NSC found delivery had not been effected and affirmed judgment for the defendant.

**Legal Concepts:** *Promissory Note; Mortgage; Chattel; Personal Property; Fraudulent Conveyance; Construct and Actual Delivery*

80. HUBBARD E.L. ET AL. V. BURNHAM

- *Civil. Civil Probate Court (Storey County)*
- *Complaint filed on February 16, 1864*
- *Judgment for Plaintiff March 24, 1864*
- *Notice of appeal filed April 18, 1864.*
- *No opinion but portions of record exist*

An action to recover real property by foreclosing on a residential lease for non-payment. Plaintiff also alleged damages were caused when defendant “tore large portion of second story of the premises” by removing “partition walls.” Defendant alleged he had permission to make alteration. A finding for plaintiff entered by a justice of the peace awarded Plaintiff \$1,050, and was appealed to civil probate court. The rent was paid in legal tender notes, not gold coin as contemplated by lease contract. The parties subsequently entered a stipulation: “If Court shall be of opinion that covenant in the lease for payment of rent could not be satisfied by a payment or

tender in the legal tender notes of the U.S. properly issued under the Act of Congress, approved February 25, 1862, then judgment is to be entered for plaintiff. If the court shall be of the opinion that plaintiffs were bound to receive said legal tender notes as payment and satisfaction of the said rent, then judgment is to be entered for the defendant.” There is no record how the court ruled on the question presented.

**Legal Concepts:** *Satisfaction; Specific Performance*

81. Sankey, Samuel v. I.W. Noyes, et al.

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*
- *Complaint filed on February 9, 1864*
- *Judgment entered on June 13, 1864*
- *Motion to dismiss appeal filed December 12, 1864*
- *No Territorial Supreme Court opinion*
- *NSC opinion reported at 1 Nev. 58 (1865)*

This NTSC appeal was ultimately resolved by the NSC. Plaintiff sought and was awarded restitution of premises after he was ejected by the defendant over a \$25 lumber debt. Judge North appointed a referee, who awarded plaintiff damages of \$82 and costs in the amount of \$140. The NSC noted “There having been no settled statement or motion for new trial, we cannot pass upon the sufficiency of the evidence to warrant the findings; neither can we inquire into any errors of law which may have been committed at the trial.” However, after an examination of the pleadings the NSC found defendants had not taken sufficient acts that would constitute possession and therefore affirmed judgment for the plaintiff.

**Legal Concepts:** *Possession; Real Property; Ejectment; Appellate Procedure; Frivolous Pleadings*

82. HAMILTON V. KNEELAND

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*
- *Complaint filed December 24, 1863*
- *Judgment entered on May 9, 1864*
- *Notice of appeal filed on July 12, 1864*
- *No NTSC record*
- *NSC opinion reported at 1 Nev. 37 (1865)*

This NTSC appeal was ultimately resolved by the NSC. A property action for ejectment to recover a mining claim proceeded before a referee on April 25, 1864. Plaintiffs owned property on which defendants built a quartz mill and stored their machinery. Defendants were obliged to pump water from the mine to allow the claim to be worked but failed to do so. The referee determined “by reason of nonperformance of the contract between Burke and Hamilton and McClellan on the part of McClellan and these defendants, said Defendants had before the commencement of this action lost the right of possession of the disputed premises and that Plaintiffs are entitled to the relief prayed for in their complaint.” This report was entered by the district court. The parties stipulated to a new trial but it was denied on July 11, 1864.

Defendants alleged numerous errors on appeal, four of which were considered by the NSC: 1) the referee erred in holding a refusal by defendants to pump out the mine was a violation of the written agreement, 2) holding such violation worked a forfeiture, 3) holding the terms of the contract were conditions not covenants, and 4) holding the assignees could claim a forfeiture of defendants’ rights under the contract. The NSC determined the referee’s ruling was consistent with the “common law of this country” and affirmed it.

**Legal Concepts:** *Conditions vs. Covenants; Forfeiture; Jurisdiction; Common Law*

83. MAYOR & ALDERMEN OF VIRGINIA V. M. GOLDMAN & CO.

- *Civil. First Judicial District Court (Storey County) (North, Judge)*
- *Complaint filed on March 25, 1864*
- *Judgment reversed August 20, 1864*

An action to collect city taxes of \$779. Defendant denied the debt and cross-claimed that he tendered payment in the form of city warrants that were refused. Defendant’s answer was stricken as frivolous and judgment entered for plaintiffs. Defendant filed an appeal alleging he did not receive notice and no memorandum of costs was filed. The respondent confessed error and the judgment was reversed two days before the all three judges of the NTSC resigned.

**Legal Concepts:** *Taxes; Currency Requirements*

84. CHOATE & BROWN V. BULLION MINING CO.

- *Civil. First Judicial District Court (Storey County) (North, District Judge)*

- *Complaint filed on April 6, 1863*
- *Order confirming referee's report entered on November 5, 1863*
- *Motion for new trial denied on April 18, 1864*
- *No NTSC opinion but NSC opinion reported at 1 Nev. 73 (1865)*
- *Judgment reversed*

This NTSC appeal was ultimately resolved by the NSC. An action to recover possession after ejection. Defendant responded that the original claimant abandoned the claim and never paid any assessments. Plaintiff later made a claim for ejection after the claim and mining stock became valuable. The defendant moved for a continuance because its material witness was absent from the state. However, the continuance was denied. A referee rendered a decision for the plaintiff and Judge North affirmed it. The NSC noted that “[a] motion for a continuance is always addressed to the sound discretion of the court, and should not be interfered with except where there has been a manifest abuse of that discretion” but found the continuance should have been granted and reversed the case.

**Legal Concepts:** *Abuse of Discretion; Material Witness; Continuance*

85. PEOPLE V. DANAY G. & G. MINING

- *No information available*

86. LAMMON, GEORGE ET, AL. V. JOHN GRAY

- *Civil. Probate Court of Lander County*
- *Complaint filed on June 4, 1864*
- *Judgment August 8, 1864*
- *Notice of Appeal August 9, 1864*
- *Dismissed January 4, 1865*

This appeal was filed just 13 days before the territorial judges resigned. The plaintiff alleged actual, peaceable possession of a lot in Austin, which was improved with two canvas tents. He agreed defendant could take possession of the property while he went to Virginia City. Upon his return to Austin, however, defendant would not move out. A jury of six returned a verdict for plaintiff and he was awarded restitution. An appeal to the NTSC was dismissed by the NSC on January 4, 1865.

**Legal Concepts:** *Possession*

87. PEOPLE V. EMPIRE MILL & MINING CO.

- *Civil. First Judicial District Court (North, District Judge)*
- *Complaint filed on March 2, 1864*
- *Default judgment entered on May 5, 1864*
- *Notice of appeal filed May 24, 1864*
- *No opinion and appeal held over to statehood*

A suit to collect taxes assessed on the gross proceeds of mines. The complaint was filed on April 21, 1864, and default was entered in May. The notice of appeal was filed on May 24, 1864. Records indicate the appeal was held over until statehood but there is no record of disposition in the NSC.

**Legal Concepts:** *Taxes; Assessment*

88. PEOPLE V. OPHIR SILVER MINING CO.

- *Civil. First Judicial District Court.*
- *Complaint filed on March 2, 1864*
- *Same case as No. 87; held over to statehood*

This is another case involving the collection of taxes on mine proceeds. The complaint was filed in 1863, and a default judgment was entered in May 1864. Records indicate the appeal was held over until statehood but there is no record of disposition in the NSC.

**Legal Concepts:** *Taxes; Assessment*



## Chapter 16

### Nevada Area Decisions in the Utah Reports and Appeals to the United States Supreme Court

#### Utah Territorial Supreme Court

The first published decisions emanating from the Nevada area were issued by the Utah Territorial Supreme Court before the Nevada Territory was created. Several of these decisions invoke appellate principles that are extant in contemporary times. The decisions also reveal how primitive the early courts were. They are published in the *Utah Reports* and summarized as follows:

1. *SAVAGE V. STONE*, 1 Utah 35 (1860). This was an appeal from a deficiency action involving a mining claim, mortgage, and public auction. The court allowed parol evidence and affirmed the right to seek a deficiency.

2. *KENYON V. KENYON*, 3 Utah 431, 24 P. 829 (1861). Mrs. Kenyon filed a divorce petition in Carson City alleging adultery. She sought custody and a property division. The district court decreed a divorce from bed and board (not an absolute decree of divorce), and granted to Mrs. Kenyon the care and guardianship of the children and alimony in the amount of \$2,500. The Utah Territorial Supreme Court reversed and set aside the district court on jurisdictional grounds.

3. *KLIMER V. SCHNORF*, 3 Utah 442, 24 P. 909 (1861). The trial issue was fraud but the appellate issue was the preservation of evidence and a record of the proceedings. The Utah Territorial Supreme Court refused to consider stipulated evidence that was not considered or acted upon by the trial court. "Otherwise the whole character of this court would be changed, and, instead of an appellate, it would become a court of original jurisdiction." The Supreme Court concluded that it must presume the evidence presented to the district court was "sufficient to justify" its decision.

4. REECE V. KNOTT, 3 Utah 436, 24 P. 759 (1861). The Utah Territorial Supreme Court determined a writ of error was provided for by common law and no security bond was required. The Supreme Court stated: “the common law affords a remedy for insufficient legislation . . . prevent[ing] the deprivation . . . of the legal rights of the parties litigant.”

5. REECE V. KNOTT, 3 Utah 451, 24 P. 757 (1861). This is a typical error correction case. The trial issue was the collection of a debt. The Utah Territorial Supreme Court noted five points of error were assigned but only two exceptions taken: 1) “The incompetence of a juror, on the ground of not being a tax-payer, as required by law,” and 2) “The court erred in declining to give the jury the instructions asked for by defendant’s counsel.” The Supreme Court noted “errors must agree with the exceptions taken below, or else be patent on the record; nor is it the duty of this court to inquire into and inspect the records.” The court also concluded the statute requiring jurors to be taxpayers was unconstitutional and the alternative instruction given by the district court was proper. Thus, the court sustained the district court’s rulings as to both exceptions, but found an error “patent on the record” requiring reversal: the judgment was not in accordance with the complaint. This decision is a precursor to the “plain error” doctrine. It also reveals the timeless judicial frustration of being asked to reach decisions without the benefit of adequate points and authorities.

6. WINTERS V. HUGHES, 3 Utah 438, 24 P 907 (1861). This appeal illustrates the challenges of new appellate courts in frontier areas. The Utah Territorial Supreme Court struggled with issues involving joinder, bonds, and service. The court acknowledged the Organic Act provided the right to an appeal and lamented the complete lack of statutes providing procedure for taking an appeal:

There is no provision for praying an appeal giving notice to the adverse party, or filing a *supersedeas* bond in order to entitle the party to the right of appeal; and as all these wholesome statutory provisions are omitted, and as the organic act has constituted this an appellate court, the court will take jurisdiction of the case, providing there is a final judgment against the party in court, and the record is in due form of law.

Accordingly, the court found error in the lower court's decree against a person who was not served. The court also concluded that because a bond is not necessary to take an appeal, a defective bond would not prevent the court from hearing an appeal. The court did note a defective bond would not serve its intended function and stay execution of the judgment.

7. *WINTERS V. HUGHES*, 3 Utah 443, 24 P 759 (1861). This appeal also involved issues of service, the adequacy of summons, and jurisdiction. As to the main question, the Court noted "objection to the jurisdiction must be first raised in the court below, or it cannot be considered in this court" but eagerly concluded the "bill of exceptions in this case fully presents the question."

### **United States Supreme Court**

Five decisions from the NTSC were appealed to the United States Supreme Court. They are identified and summarized as follows:

1. *CLARK V. SHELDON* (1864). The U.S. Supreme Court declined to grant certiorari review.

2. *GOULD & CURRY CO. V. PEOPLE* (1867). The U.S. Supreme Court declined to grant certiorari review.

3. *FREEBORN V. SMITH*, 69 U.S. 160 (1865). The underlying matter involved a partnership dissolution but the Supreme Court focused on its jurisdiction to consider appeals from territorial supreme courts. It concluded in favor of its jurisdiction, and "[h]aving disposed of the jurisdiction question, the case presents no difficulty."

4. *SPARROW V. STRONG*, 70 U.S. 97 (1866), 71 U.S. 584 (1867), 2 Nev. 362 (1867). This series of decisions involved a mining claim, appellate procedure, new trials, ejectment, and clerical errors.

5. *MANDELBAUM V. PEOPLE*, 75 U.S. 310 (1869). This appeal involved merchants who were charged for the same tax assessments in Douglas County where their warehouse was located and Carson City where their store was located. The U.S. Supreme Court appears puzzled by the procedural issues in the Nevada Territorial courts. It noted that "usual and customary principles" should prevail and cited another case "for so obvious a proposition."

## Chapter 17

### Conclusion and Post-Script Regarding Judicial Corruption

**“With the best citizens, as with the best lawyers, Judge North will always stand high in their estimation hereafter, as one who has outlived the calumnies of his bitterest enemies.”<sup>261</sup>**

The territorial judiciary was an important but unrecognized influence to statehood. Indeed, its judges were among the highest profile public figures during territorial times and the subject of deep and divisive public sentiments. These sentiments reached a crescendo during the second constitutional convention and persisted until the judges resigned just weeks before the statehood vote. The first, unsuccessful statehood vote reveals that President Lincoln and Union Party loyalties were subordinate to events occurring in the Nevada Territory. The territorial judiciary was central to these events and shaped the territorial residents’ decision to become a state.

Historians and commentators have not been kind to the territorial judges. It is largely assumed they became corrupted along with other legal participants during the frenetic litigation years between 1861 and 1864. It is impossible to triangulate original sources to either prove or disprove any judge’s acquiescence to the fortunes at issue. But circumstantial evidence, in which a series of indirect events are linked together to reach a conclusion, is admissible in legal work. Circumstantial evidence is also relevant when considering the complex constellation of historical facts to reach a contemporary conclusion.

Any review of the territorial judges must occur within the context of the territorial times. Territorial judges were typically not selected because of their law practice success or keen legal minds. They were the beneficiaries of a patronage system in which political relationships was the predominant feature. This was undoubtedly true in the Nevada Territory. With the possible exception of Harvard-trained Judge Jones, the Nevada Territory judges were outmatched by the lawyers who appeared before them. They were incapable of managing the volume of litigation,

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<sup>261</sup> J.W. North, *Virginia Daily Union*, August 25, 1864.

and there was no judicial infrastructure such as case precedents, procedural rules, or a regulatory bar to provide assistance. In contrast to contemporary times, there was not a code of judicial ethics or other aspirational rules to govern their conduct. They were left to their own in an unfamiliar geographical area in which judicial criticism was inevitable.

Judge North's own words are telling; he wrote: "It is generally conceded . . . that there is no place in the United States where a judge has so difficult and responsible duties as at Virginia. . . . Judges Mott and Jones who preceded me had got the whole community by the ears, and had allowed a large amount of business to accumulate on the calendar. The difficulties they encountered caused them to hesitate and delay until they were overwhelmed."<sup>262</sup>

Contemporary judges are charged with the duty of actual and apparent impartiality. A judge's superlative charge is fidelity to the law and immunity from special interest and non-judicial influences. Every judge must promote the independence and integrity of the judiciary. By this measurement the territorial judges failed. But the distinction between tacit failure and overt corruption is important.

There is no known evidence linking Judge Horatio Jones to financial corruption. Judge Jones becomes best known through the decisions he wrote. He was frustrated by his colleagues' pedestrian approach to the law. He laboriously researched and wrote opinions and dissents because he was committed to the court and the rule of law. His private correspondence confirms this commitment.

Judge Mott appears to have been disengaged and frequently absent, but the evidence that he accepted a \$25,000 bribe was made by proponents of the single-ledge theory in a newspaper forum that was more scandalous than professional. There is insufficient evidence to condemn Judge Mott and it is difficult to reconcile Judge Mott's election as a territorial delegate to Congress with the suggestion that he was corrupted by bribery during his brief service on the bench.

Judge Turner's place in history is uncertain. He was a proponent of the single-ledge theory, which was not grounded in geological certainty. This alone is insufficient to convict him,

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<sup>262</sup> John W. North quoted in Stonehouse, *John Wesley North and the Reform Frontier*, 155.

as many judges reach the wrong result with good intentions. But given his steadfast support for the theory, his unexplained wealth, and Stewart's public declaration of bribery, Judge Turner could have been more engaged in defending himself. This is particularly true because of the specific bribery details alleged against his wife and brother-in-law. Judge Turner did not answer the charges publicly but he did defend himself in private communications. For example, after reading in the *Sacramento Union* that he would be removed from office, Judge Turner wrote to President Lincoln:

Now I have labored hard here, drawn most of the laws, prepared Union Resolutions, attended public meetings & made speeches in defence of the Government & in support of the Administration. Furthermore have held court almost monthly for two years here & (all this for small pay) and I know that no federal officer here is more acceptable to the people, none have been endorsed more fully by the press & Legislature, nor the population generally & while I would not have lost much to have remained in my own good home in Ohio in full practice & prosperously pursuing my profession yet now after leaving there & bringing my wife & family here to discharge the duties of my office, I could not sit lamely by & be decapitated & disgraced without notice or cause. \* \* \* I ask it of you as one who is every way entitled to it that any charges made against me may be treated with the scorn they deserve or notice given me before any action be taken. I hope however this is groundless as I can bring to Washington from this Territory overwhelming proof of my acceptability among this people. Did the labors of the Executive Office allow time for a line or two in reply it would be thankfully received by an old friend, advocate & supporter every way.<sup>263</sup>

The bar appears to have been supportive of Judge Turner. On August 24, 1864, two days after the judges resigned, the *Carson Weekly Independent* reported a "Meeting of the Bar and Citizens of Ormsby County" wherein a committee was authorized to draft "resolutions expressive of the sense of this community, in regard to the resignation of the Judge of this Judicial District." The approved resolutions read:

WHEREAS, The Judges of the Supreme Court of this Territory have seen fit in their own good judgments to resign their places as such Judges, and a new Constitution is soon to be passed upon by this

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<sup>263</sup> George Turner to Abraham Lincoln, May 28, 1863, in General Records of the Department of Justice, Appointment File—Nevada 1861-1865, National Archives.

people, and a short interval will occur between this period and that at which it shall be finally acted upon; and

WHEREAS, We, as citizens and members of the Bar of the Second Judicial District of this Territory, are chiefly interested in the quiet and proper adjustment of our rights, without any sudden suspension or disturbance; and

WHEREAS, The Hon. George Turner has for over three years acceptably served as Judge of this District, and as such, having himself held every term of court provided for by law, having also held sundry courts in other Districts, having disposed of all the business as fast as it matured, and having so fully and satisfactorily transected the same that to-day the public business of this District is completely done, and no causes at issue anywhere are awaiting trial on account of any delay of the court; and our said Judge having himself performed a very large majority of the labors of the Supreme Court, as is well known to all our people; and

WHEREAS, The press, people and Bar of this Judicial District have never complained of our Supreme Judges in any way; therefore, be it

RESOLVED, That we regret the unexpected resignation of the Hon. George Turner, at the time it occurred, although it seemed to be made necessary by the resignation of Judge North, previously made on account of his sickness, and also from the impossibility of doing any further business in the Supreme Court after Judge North's retirement, only two Judges being left.

RESOLVED, That we tender our thanks to Judge Turner for the industrious, impartial and able manner in which he has discharged his judicial labors.<sup>264</sup>

Judge Locke was widely known as a drunkard with a weak capacity for decisiveness. At best he misunderstood the word “judge” is both a descriptive noun and an action verb. Judge Locke failed to act judiciously. At worst, Judge Locke rendered his inconsistent decisions in the Chollar v. Potosi matter because of external influences, which is the hallmark for judicial misconduct. Judge Locke appears worthy of the scorn he received at the time, and the criticisms prevalent through subsequent commentaries.

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<sup>264</sup> Meeting of the Bar and Citizens of Ormsby County, *Virginia Daily Union*, August 27, 1864.

There is a high likelihood that Judge North was a victim of the time and not a perpetrator of shameful personal misconduct. Several facts lead to this conclusion. First, Judge North was demonstrably a man of conscience who cared deeply about slavery, suffrage, and sobriety. He wrote to his wife on December 1, 1864: “I long more and more to escape from a life of strife and conflict, and go where I can indulge my tastes in labors of love. . . . I long to go down [to Tennessee], after the war is over, to help build up good society . . . to heal the wound the war has inflicted.”<sup>265</sup> Judge North did just that for the duration of his life. His primary effort was to colonize areas for newly liberated slaves to enjoy the blessings of freedom. Judge North’s pre- and post-judge conduct was consistent with his social conscience, and it seems unlikely that Judge North suspended his conscience during his 11 months on the bench.

Second, the suggestion that Judge North was placed on the bench by the Potosi and other multi-ledge companies is unsupported by the evidence and belied by Judge North’s judicial decisions. Despite Judge Jones’ suggestion that “intrigue” surrounded the appointment of Judge Mott’s replacement, Judge North received substantial support from broad interests across the ledge-theory divide. He was a known public official and practicing attorney. The local members of the bar, William Stewart included, sought Judge North’s appointment. They wrote to President Lincoln:

The undersigned members . . . understanding that a vacancy will soon occur in the office of Associate Judge of the Supreme Court of this Territory, by the resignation of the Hon. Gordon N. Mott, Delegate-elect to Congress, beg leave most respectfully to suggest to your Excellency, and most earnestly urge the appointment of General J.W. North, one of our own citizens as the successor of Judge Mott. We regard General North as possession in an eminent degree those qualifications and attainment [sic] which befit him for the position and have confidence in believing that such appointment would reflect infinite credit on the appointing power and at the same time give us a Judge who would render satisfaction to the Bar and people generally within the Territory.<sup>266</sup>

Other supporters for North’s judicial appointment compose a “who’s who” of the leading legal and political leaders. Every member of the territorial legislature joined in the nomination.

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<sup>265</sup> Ibid., 178.

<sup>266</sup> Ibid., 153.



Several influential Californians also supported Judge North, such as U.S. Senator Milton S. Latham of California, who wrote to President Lincoln that “[North] is recommended by the entire Bar of the Territory, is a fine Lawyer, a Republican, and in every respect worthy and competent.” Senator Latham likely spoke for San Francisco stockbrokers who were interested in a quick resolution of mining cases.<sup>267</sup>

Judge North did rule in favor of the multi-ledge theory in December of 1863. But he did so after carefully considering the evidence and conducting his own site visit. At the time the mines were still relatively shallow and the geographical source of the quartz veins could not be determined. Judge North included a caveat in his decision that “[a]t the depth where the controversy arises the evidence on both sides shows that there are several and distinct ledges. *If at a greater depth there shall be found conclusive evidence that all these are blended in one, when that depth is reached and that evidence is adduced, then will be the proper time to determine what ledges run out and what continue.*”<sup>268</sup>

Ironically, on the day before he resigned, Judge North affirmed a referee’s decision that the various quartz veins all emanated from a single, geological source. He therefore concluded the single-ledge theory was correct.<sup>269</sup> Judge North’s decision was grounded in empirical evidence that required a “long, anxious, and laborious examination.”<sup>270</sup> This is critical when reconstructing Judge North’s service on the court. Judge North essentially reversed himself. He demonstrated that doing right was more important than being right, which is required of all ethical judges. He issued an order that aggrieved his supporters and emboldened his enemies. In so doing, he manifested a willingness to comply with a current code of judicial conduct provision that he not be “swayed by public clamor or fear of criticism.”<sup>271</sup>

Third, Judge North was supported by countless members of the bar who knew him and the judicial environment well. As previously noted, 34 leading members of the bar publicly supported Judge North against the newspaper hysteria in July and August, 1864. Judge North

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<sup>267</sup> Ibid., 155.

<sup>268</sup> Judge North quoted in Lord, *Comstock Mining and Miners*, 144 (emphasis added).

<sup>269</sup> Lord, *Comstock Mining and Miners*, 165-171; *Virginia Daily Union*, August 24, 1864.

<sup>270</sup> Johnson, *Founding the Far West*, 317.

<sup>271</sup> NEV. CODE OF J. CONDUCT R. 2.4.

was prominent in Minnesota before coming to Nevada. He was selected as president of the first constitutional convention in Nevada. He was a leading candidate for governor of the new state until his candidacy was thwarted by Stewart at the Storey County nominating convention.

The United States Sanitary Commission was a private relief agency founded in 1861. It is the precursor to the contemporary United Way. Its first president was a clergyman from Massachusetts named Henry Bellows. Bellows traveled the country raising money to provide spiritual and temporal aid to wounded Union soldiers. There is no known personal connection between Bellows and Judge North. Bellows visited the Nevada Territory, and wrote to Attorney General Bates in July 1864:

One of the reasons given for changing the Territory into a State is to get rid of certain U.S. judges. . . . The bench consists of Chief Justice Turner, a young man of thirty-five from Ohio, Judge North from Minnesota, and Judge Locke from Missouri. . . . You can see what enormous interests are hanging in suspense (where \$2,000,000 must go with the verdict) and what angry feelings accompany all litigation . . . how liable to suspicion of bribery and corruption judges must be, who have *such* claims and questions to adjudicate; how large and ready the parties must be to fee them, if corruptible, in a new and wild country; how savage the counsel must be, and how personally interested the witnesses—ready to swear—it is said, that white is black, according as one side or the other offers the larger bribe. No decision, therefore, is made that does not create virulent enemies, who use the local press to blacken the character of the judges. Judge Turner is charged very commonly with corruptibility. He is alleged to be worth \$75,000 made in three years without business or resources; and it is said only by direct bribery could he have secured such an amount of property. Judge Turner is a vain man of bright manner, and little seeming weight of character. . . . Judge Locke, I have not met. He seems to be thought honest, but *weak* and easily frightened into opinions which are not candid and just. A man [Stewart] told me he *compelled* him to break up court in one place and open it in another for purposes, not discreditable ones, of his own.

Judge North is spoken well of in proportion usually to the intelligence, moral worth, and standing of the speaker. He seems to me a man of inviolable truth, self-respect and dignity of character—a man of settled principles of conduct from which nothing could drive him. I have met no man on the whole coast who has inspired me with greater respect, and such is his personal

impression, that a dozen witnesses swearing to his hurt, would not move my conviction of his purity and truth. He, however, does not escape the bitter suspicion and serious charges. Every definite charge he scatters to the winds—but what reply can be made to mischievous rumors?<sup>272</sup>

On the day after Judge North resigned *The Daily Union* noted the many supportive comments it received for the embattled judge. It wrote: “With the best citizens, as with the best lawyers, Judge North will always stand high in their estimation hereafter, as one who has outlived the calumnies of his bitterest enemies.”<sup>273</sup>

Fourth, Judge North aggressively defended himself in the court of public opinion. He offered detailed explanations to the charges of bribery and self-dealing, which appeared adequate to the people at the time. He sought to clear his name after he resigned by suing Stewart and the *Territorial Enterprise*. The lawsuit was referred to a three-referee panel who censured North for his “conduct in connection with Judge Locke’s position in the Chollar and Potosi litigation as unworthy the high position he held, and calculated to awaken suspicion, create animosity, impair his influence as a magistrate, and lower his dignity as a man.”<sup>274</sup> Nonetheless, the referees also exonerated him from the more serious corruption charges and ordered Stewart and the *Territorial Enterprise* editors to pay the costs of the proceeding. For these reasons, Judge North’s position in history should not be undermined by the sensational reporting and superficial comments from those with specific litigation interests. The reflection of time reveals Judge North may well have been a man worthy of the judicial office he held.

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<sup>272</sup>Henry Bellows to U.S. Attorney General Edward Bates, Bellows Papers, July 25, 1864, Bellows Papers, Massachusetts Historical Society, Boston.

<sup>273</sup>J.W. North, *Virginia Daily Union*, August 25, 1864.

<sup>274</sup>Lord, *Comstock Mining and Miners*, 163.

## Chapter 18

### Acknowledgements

I wrote many of these pages while sitting in our family cabin in the Sierra Mountain Range. A large placer mining ghost town, which once enjoyed a population of more than 10,000 residents, is a mere two miles away. I regularly paused to reflect upon the countless men and women who passed near our property on their way to find great wealth or make Nevada their permanent home. I occasionally walked to the mountains scarred by mining to consult privately with the ghosts of history. But more than anything, I was ever grateful for a spouse who allowed me to indulge my interests long after my career was set. I am reminded of a passage from the *Scarlet Letter*: “[He] thought of those long-past days . . . when he used to emerge at eventide from the seclusion of his study, and sit down in the firelight of their home, and in the light of her nuptial smile. He needed to bask himself in that smile, he said, in order that the chill of so many lonely hours among his books might be taken off the scholar’s heart.”<sup>275</sup> So too has the lonely chill of this project been warmed by my wife’s steady presence and support.

I occasionally daydream about meeting important personalities from the past. I think of how they would respond when I introduce them to modern technology and other circumstances of my time. But I mostly think about quietly observing great people do extraordinary things. Only a few are capable of leaving a timeless imprint on the historical records of our nation and communities. Russell McDonald was one such person and he is on my short list of people I wish I had the pleasure of knowing.

Russell McDonald was born in Reno in 1917 to a well-settled Nevada family. His first Nevada ancestor was a farmer in Washoe County in 1859. McDonald graduated from Reno High School at the age of 16. He graduated from UNR at age 20 with dual degrees in economics and history. He was then privileged to be Nevada’s first Rhodes Scholar at Oxford University where his roommate was Byron “Whizzer” White, later a Justice on the U.S. Supreme Court. He

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<sup>275</sup> Nathaniel Hawthorne, *The Scarlet Letter* (Bronxville: Cambridge Book Co 1968), Chapter 15.

and Justice White traveled Europe together and returned to the U.S. in 1939 after the rise of Hitler's Germany.

McDonald matriculated at Stanford Law School in 1940 but withdrew after his first year to join the military. He studied Russian and served in military intelligence. He ended his military career as the Flag Secretary to the Admiral of the 8th Naval Fleet. His service record was exemplary.

McDonald returned to Stanford Law School after his military service ended. He was roommates with Gordon Thompson, who would later serve as Chief Justice of the Nevada Supreme Court. Despite what were probably attractive employment opportunities elsewhere, McDonald chose to return to Reno and work in the Reno City Attorney's office. He was charged with revising and codifying the Reno Municipal Code. He was described by Reno City Attorney Virgil Wedge as follows:

His job was very scholarly and of extreme benefit to Reno. But that wasn't surprising. A city attorney was on day and night call back then, and it wasn't unusual for me to be called back to the office at 2:00 a.m. or come in as early as 4:00 a.m. Quite often, when this happened, I would find Russ still in his office, working.

In 1951, McDonald accepted a job at the Nevada Supreme Court revising the Nevada statutes. He was Chairman of the Statute Revision Commission for years. During this time he also accepted responsibility as a bill drafter and editor of the Nevada Revised Statutes for the Nevada Legislature. He was selected to chair the Legislative Counsel Bureau in 1963 and served in that capacity until he became the Washoe County Manager in 1971. Those who knew him best described him in superlative terms. Senator Carl Dodge said of him: "He was the most knowledge man around. You don't come by his kind of ability every day. Nobody had the total comprehension of state laws he had." Senator Cliff Young, who later served as Chief Justice of the Nevada Supreme Court said: "He spoke with authority, and no one questioned his knowledge. He was a towering figure in a class by himself."

After retiring from the Legislative Counsel Bureau, McDonald was the Washoe County Manager between 1971 and 1978. McDonald was the compiler and editor of *Annotations to Nevada Revised Statutes and Nevada Digest from 1963 to 1991*.

In addition to his livelihood efforts, McDonald was a prolific author and skilled researcher. He was Chairman of the Nevada Historical Society. He jointly edited the *Letters from Nevada Territory, 1861-1862*. He wrote numerous articles and the *History of Washoe County*. He loved judicial history and devoted 30 years to two concurrent projects: a history of the Nevada Territorial Legislature and a history of the Nevada bench and bar. He is credited as the author of the Sparks Municipal Code, Winnemucca Municipal Code, Lovelock Municipal Code, and Washoe County Code.

Deep in the bowels of the Nevada Historical Society are the Russell McDonald Papers, which represent McDonald's neatly organized Nevada research materials. The materials bear McDonald's handwritten notes and provide a glimpse into McDonald's passion for early Nevada history. It is from these materials that the idea for this dissertation was born. The materials compose a significant portion of the research underlying this work, which would have been impossible without the antecedent efforts of Russell M. McDonald.

I acknowledge my administrative assistant, Shannon Parke, whose training as a lawyer was extremely helpful. Numerous law clerks assisted with editing this work. Amanda Dick assisted with formatting. I am particularly indebted to my law clerk Christopher Crockett, whose skills as a graduate-degreed historian are indelibly imprinted upon these pages.

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Choate v. The Bullion Mining Company, 1 Nev. 62 (1865) (Case No. 84)

# SUPREME COURT OF NEVADA TERRITORY

JUSTICE HORATIO M. JONES  
Dissenting Opinion

---

THE PEOPLE, on the relation of JOSEPH F. ATWILL, Plaintiff in Error,  
v.  
J.W. NOYES, Defendant in Error.

## ERROR TO FIRST DISTRICT COURT, STOREY COUNTY

This was an action for usurpation of the office of justice of the peace, brought on the relation of Joseph F. Atwill against J.W. Noyes. It was brought under those provisions of the civil practice act (from 264th to 279th sections, inclusive) providing for actions for the usurpation of an office or franchise. The district court sustained a demurrer to the information or complaint. This constitutes the error complained of. This court having affirmed the judgment of the District Court, it remains but for me to justify my dissent from this judgment.

The case as made by the complaint is substantially as follows. That Virginia is a township of Storey county within the meaning of those provisions of the law of this territory touching the election of justices of the peace is sufficiently alleged in the complaint, and, moreover is asserted and claimed, in this court, by counsel for both parties, It is alleged that the defendant Noyes, "without any legal warrant, grant or right" hath assumed and still does assume to hold and still does use and execute the office of justice of the peace in and for the township of Virginia, Storey county, etc., "which said office, liberties and privileges and franchises, he, the said J.W. Noyes, for and during, etc., upon the said people, hath usurped, intruded into and unlawfully held, and he still doth usurp, intrude into and unlawfully hold at the said Virginia township, in said county, in contempt of the people etc."

On the 14th of January, 1862, a special election was held throughout this territory under "An act to provide for a special election," approved November 28, 1861. (Laws, N.T. p. 102.) By the proclamation made by Governor Nye of said special election, which was made a part of the complaint, in this cause, and which was in strict conformity with the law, one justice of the peace was to be elected for each township. The relator Atwill and the defendant Noyes, and other parties, were candidates for the office of justice of the peace for the Virginia township or precinct in Storey county. The ballots regular in form, which were cast at said

election at Virginia for justice of the peace, gave for the relator Atwill three hundred and seventy seven (377) votes, and for Noyes two hundred and twenty two (222) votes, besides six hundred and thirty six (636) votes, divided among six other parties, one of whom Wallard, received three hundred and fifty four (354) votes. Of these ballots, perfectly regular in form, the relator Atwill received the highest number. It is consequently claimed that he was legally elected justice of the peace of Virginia township on the ground that the ballots thus regular in form were the only ones cast that were entitled to be counted.

It appears further that in addition to said regular ballots, amounting in all to eleven hundred and ninety eight (1198) in number, there were cast two hundred and sixty (260) other ballots, of which twenty three (23) were in the following form:—

For Justice of the Peace  
J.F. ATWILL, Virginia,  
S.A. KELLOGG, Gold Hill.

One hundred and ninety six (196) ballots were in the following form:—

For Justice of the Peace  
J.W. NOYES, Virginia,  
S.A. KELLOGG, Gold Hill.

The remaining forty one (41) ballots having two names each thereon for justice of the peace were identical in form with the above. None of them contained the names of either Atwill or Noyes. The judges of the election at Virginia counted all of said ballots containing two names each as above for each of the persons in said ballots respectively named, and so returned the same to the clerk of the board of county commissioners. By counting all of said ballots containing two names each for each of said persons named therein respectively for said office of justice of the peace, in addition to the votes perfectly regular in form as above set forth, it appeared and was so certified by the judges of election and returned to said clerk of the board of county commissioners, that the relator Joseph F. Atwill had received for said office four hundred and one (401) votes; that J.W. Noyes had received four hundred and seventeen (417) votes; that J.W. Wallard had received three hundred and seventy (370) votes; that S.A. Kellogg had received two hundred and seventy nine (279) votes; and other persons a smaller number of votes each making one aggregate number of votes cast for justice of the peace in said township according to said returns of seventeen hundred and eighty eight (1788) votes. The number of electors who voted in said township at said election was fifteen hundred and fifty six (1556) and no more. A discrepancy thus existed between the number of electors voting, as shown by the poll books, and the number of votes certified as above set forth as having been cast for justice of the peace in said township of Virginia of two hundred



and thirty two (232) votes. This discrepancy arose from counting all of said ballots having two names for justice of the peace for each of the persons named therein. It is alleged in the complaint that said were illegally and wrongfully counted as above set forth; that they should have been entirely rejected as null and void.

The clerk of the board of county commissioners of Storey county, acting on the returns so made, issued a certificate of election, as justice of the peace for Virginia township, to defendant J.W. Noyes. If the ballots with two names each for justice of the peace were rejected and not counted, Atwill would appear to have received the greatest number of votes.

The complaint proceeds to set forth proceedings irregularly commenced before the board of county commissioners by the relator to contest said election, the result of which it is unnecessary to state. The prayer of the complaint is that Joseph F. Atwill be declared to have been duly elected to said office and to be entitled to use and exercise said office etc., and that J.W. Noyes be adjudged to have usurped, intruded into and unlawfully used and exercised said office and that he be excluded therefrom.

The only question to be determined by us is whether the ballots containing two names each for justice of the peace, cast under the circumstances set forth in the information in this cause, were void, prima facie, for uncertainty. I think they were. I do not say the uncertainty is necessarily incurable, but that such a prima facie case of voidness for uncertainty is made only (?) as will throw upon the defendant the burden of showing, if he can, that the apparent or patent doubt or ambiguity is only apparent and can be removed.

The grand aim of election laws is to provide a machinery for the ascertainment of the will of the legal voters of the commonwealth. The courts have construed these laws in the light of this great aim, and have consequently been very reluctant to invalidate elections for irregularities in their conduct. Hence such provisions have, in very many instances, been construed to be merely directory or advisory. A departure from them or from the forms required by them will not invalidate an election, unless shown to have substantially and materially affected the expression of the will of the voters.

The question before us, however, is not one of mere irregularity in the conduct of an election. It touches more nearly the legal ascertainment of the will of the voters. The statute prescribes that the voter shall cast "a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office

which he or they may be intended to fill.” In this case persons entitled to vote for but one person for justice of the peace in Virginia township have voted, and their votes have been counted, for two persons. The ballots are in this form:

For justice of the peace. J.F. Atwill, Virginia, S.A. Kellogg, Gold Hill.

For justice of the peace J.W. Noyes, Virginia, S.A. Kellogg, Gold Hill.

These ballots have been counted by the judges of election for all the persons named therein for justice of the peace at Virginia. Having decided to count the ballots at all, it is difficult to see how they could be justified in not counting them for both the parties named therein, unless they were so justified by facts and circumstances of which we can take no notice on this demurrer. How could they discriminate? No justice of the peace other than the one to be elected for the Virginia precinct could be legally voted for there. Prima facie, at least, both the persons whose names were on each ballot were voted for justice of the peace at Virginia. The judges of election were entitled to count votes for and make returns as to such justice only.

The ballots were, consequently, at least prima facie void for uncertainty, and should have been rejected by the judges of election, and should be rejected in this proceeding, unless this patent uncertainty should be removed by legitimate extrinsic evidence. Whether it could be so removed is a matter which we, on this demurrer, cannot determine. The facts set forth stand confessed. The relator has sufficiently alleged the wrongful and illegal counting of the ballots containing two names. He would be entitled on this information, even granting the ballots not to be prima facie void on their face for uncertainty, to adduce extrinsic evidence to support this patent uncertainty, He has made every allegation necessary to compel the defendant to take issue with him as to the alleged wrongful counting of these ballots with two names. The defendant demurs, and, at it strikes me, asks us to make suppositions and indulge in conjectures in his favor as to the actual intent of the voters to rebut the case made by the complaint.

The strongest view of this case that can be taken in behalf of the defendant is, I think, the following. The court, it may be urged, will take judicial notice of all the facts touching the existence of townships or precincts in this territory; that Gold Hill and Virginia are distinct and adjoining in Storey County; that doubts have existed and still exist touching the identity of townships and precincts and consequently the legal existence of townships. It may be urged that we must construe these doubtful ballots in the light of these facts; that doing so we must conclude that it was the intent of the voters to vote for Atwill for justice of the peace at Virginia and for Kellogg for justice at Gold Hill, and so with Noyes and Kellogg; that the votes for Kellogg as justice at Gold Hill should be rejected as mere surplusage which will not vitiate. To this I answer that in

taking this view we are introducing into the case conjectural elements in an unauthorized manner. We are drawing inferences of fact in conflict with substantive allegations of the complaint. Our conjectures might be true; they might also be false in fact.

Bust assuming it to be legitimate, as this case stands before us, to indulge in these conjectures and inferences as to the intent of the voter, let us see how far we shall be advanced by such a procedure. If these ballots with two names were honestly cast, it must, of course, have been only the belief on the part of the voter that he was entitled to vote for both the persons named in the ballot. Involved in this erroneous belief must have been the further belief that the justices of peace were to be elected by the voters of the county for the county at large. It would thus follow that the votes cast for Noyes or Atwill for justice of the peace were not in fact cast for either for justice of Virginia township, but for the county at large, and the use of the designations “Virginia” and “Gold Hill” opposite the name on the ballots would, at most, indicate the wish or expectation of the voter that the persons named, if elected, would do business at the places designated. Looking at the matter from this point of view, there would still be uncertainty touching the designation of the person voted for for justice of the peace at Virginia. If the two persons whose names were on each ballot should properly be regarded as voted for for justice of Virginia township, it would be conceded that the ballots would be void for uncertainty. If, on the other hand, we embrace the only other reasonable supposition – that the voters casting these ballots with two names cast them under the erroneous belief that the justices were to be elected by and for the county at large – we still have an element of uncertainty entering into the act of the voter that must avoid it. There is an element of uncertainty, mistake and illusion so involved in the act itself as to prevent its being regarded as an intelligible and legal annunciation of the will of the voter. The defendant would seem to desire to consider these ballots from contradictory points of view – considering them, first, from the point of view of the separate and distinct existence of the townships or precincts of Virginia and Gold Hill – thus laying a basis for the counting of the ballots for Noyes and Atwill for justice at Virginia, the intent of the voter to vote for these persons for that office being shown by the designation “Virginia” after their names. In rejecting the vote for Kellogg, the defendant would desire that the ballots should be considered from the point of view of the erroneous belief of the voter that he was entitled to vote for Kellogg as well as the others because the justices were to be elected by and for the county at large, although they might do business at different points. It is only by thus regarding the acts of the voters that they can be made to consist with honesty. To these views the response is that both the persons, whose names are on the ballots, are voted for under the mistake alluded to. It affects one as well as the other. They are voted for in the same capacity. There is no difference whatever between the form

and intent <of the act> of the voter as respect one and the form and intent of his acts as regards the other person voted for; both are identical. How then reject the one and not the other? It is difficult to avoid the conclusions that the will of the voter has announced in so uncertain a form as to render it impossible to ascertain legally what that will is. A vague intent discoverable on the faces of the ballots, that Noyes or Atwill should be the justice officiating at Virginia is of no moment. The question is were they the only persons voted for by these ballots for justice of Virginia township, and were they voted for for Virginia alone. As the case stands before us on this demurrer, I say not. The ballots are to be construed and to have their legal effect determined in the light of the fact that Virginia and Gold Hill are distinct townships. The voters must be presumed to have voted with a knowledge of the law. In this case, it seems they have mistaken it and have not acted as required by law. How can we reject a portion of their act as mere surplusage, when the mistake and error enters into the whole act?

For these reason the judgment of the district court should be reversed and the cause remanded.

HORATIO M. JONES

# SUPREME COURT OF NEVADA TERRITORY

## DAILY INDEPENDENT

FRIDAY, SEPTEMBER 11, 1863

Opinion of Chief JUSTICE TURNER,  
JUSTICE MOTT Concurring.

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GEORGE GRIGGSBY

V.

PETER RICE, ET AL.

This cause comes to us on appeal from the First Judicial District – Washoe county.

Plaintiff, in his petition, alleges that he is the owner of a certain tract of land, containing twenty-five acres, (25) more or less; also a certain other tract of land, containing 27 and 33-100 acres, more or less; and that said land is watered by a stream called Steamboat Creek, and that upon said tracts are at least three valuable mill sites, worth at least fifteen thousand dollars. He claims said water for mill purposes, and irrigation, and states that he is erecting a quartz mill upon the same. He then alleges that defendants have diverted the water of said stream, and are building a dam, so as to deprive plaintiff of the use of said water for the purposes of irrigation or for milling.

Plaintiff therefore prays for an injunction. Defendants, in their answer, deny that said plaintiff owns said parcels of land where said water privileges or mill sites are situated; and, in short deny all the material allegations of plaintiff's complaint, and set up title in themselves to the waters so described for milling purposes. A replication was filed to this answer, but we have stated the pleadings with sufficient fullness, to exhibit the issue.

The facts, as they appear of record, may be briefly stated as follows:

The waters of Washoe Lake flow northward, through Pleasant Valley, between two and three miles from the outlet of said lake. A stream called Steamboat Creek flows eastward, from out a canon, into Pleasant Valley, and running in an easterly direction across the sloping ground, empties into the stream flowing from Washoe Lake, about three miles north of the outlet. The defendants have constructed a ditch and a

flume, with a view to divert the waters of said Steamboat Creek, from a point in the stream about a mile and a quarter above the mouth of the canon, and to take the same around the side of the mountain to a point at the outlet of Washoe Lake, to be there used in running a quartz mill, owned by defendants, thence to be permitted to mingle with the waters flowing through the outlet of said lake to and through Pleasant Valley. This attempt to divert the waters of Steamboat Creek constitutes the injury complained of in this action.

It appears that the ditch constructed by the defendants was commenced April 26, 1861, that the survey thereof was made on that day; that the work on the ditch was prosecuted from that time without interruption. Defendants, at the commencement of this action, September 18, 1861, had expended on said ditch about \$6,000. They had also at that time expended more than \$8,000 in the construction of a quartz mill at the outlet of Washoe Lake. The ditch and fluming were about three miles in length. There was some evidence tending to show that at the time of the commencement of the work, with a view to the diversion of the waters of said creek, it was in contemplation of the parties to bring said waters, or an equal or greater amount, back to a point on said stream near the mouth of said canon, and above any land since claimed by the plaintiff in this action. If this purpose existed, it was afterwards abandoned; and one Boyd, claiming to own a water privilege in and at the mouth of said canon, conveyed same, with lumber on the ground which was to be used in the construction of a quartz mill, to the defendants for the consideration of \$8,000.

The plaintiff claims that said action is based upon the following state of facts: One of the above mentioned tracts of land lies immediately east of the land sold by Boyd to defendants. It was conveyed by Lasieur to plaintiff June 11th, 1861. The deed by Lasieur to plaintiff purported on its face to convey the land alone. The deed of Smith purported to convey not only the land but also "all the rights and privileges of the waters in said Pleasant Valley Creek, there through running, with all the appurtenances, &c." The nominal consideration of the deed of Lasieur was \$4,000 00; of this nothing has been paid. The consideration of the deed of Smith was \$2,500 00; of this \$500 have been paid. Lasieur had a house on the tract in 1860 and cultivated a very small patch of ground near the house. The evidence is conflicting as to whether Lasieur ever made any claim to a water privilege. From his own evidence it would seem that he had thought he had a water privilege; yet a Mr. Wilson, one of the plaintiff's witnesses, testifies that Lasieur, a short time before his conveyance to plaintiff, declared to him that he did not claim the water. Wilson also testifies that in June, 1860, that he, Wilson, claimed by putting up notices, for himself and Boyd, the water down to Smith's upper (western) line. This is on the east side of the Lasieur tract. The sale made by Boyd to defendants was of his and Wilson's interest in that land and water privilege. Nothing whatever has been done on the Lasieur tract

either by Lasieur or anyone else, with a view to the appropriation of the stream to mill purposes. The land is unfit for cultivation, and has never been fenced or its boundaries designated by visible signs or monuments. Whether Lasieur previous to his deed to plaintiff claimed a piece of ground with definite boundaries, does not appear. The piece of ground sold by Smith to plaintiff is equally unfit for purposes of cultivation with the Lasieur tract. No use of water has ever been made upon it. The concurrent testimony of all the witnesses is that it is of no value for purposes of cultivation. It has never been fenced or in any way taken possession of. It was embraced in a private survey of three hundred and twenty (320) acres, made in February, 1860, for George Smith and his son. This survey was not made by a County Surveyor.

The Smiths never enclosed it nor in any way appropriated it to any of the uses of husbandry or otherwise. The land cultivated by them lies farther east and north. The evidence shows that no land has been enclosed or in any way cultivated by them west of the road, which was through the valley east of the land claimed by plaintiff. The land lies perfectly open and unoccupied.

It appears that in 1859 the Smiths – a short distance east of the western line of their claim – and very near the eastern line of what we call the Lasieur tract – cut a short transverse ditch from the channel, in which the waters of Steamboat Creek then ran (which channel is the one that bounds plaintiff's land on the north,) to an old channel thereof, and turned the waters of the stream into this old channel, down which for the most part they have since ran, in a direction almost parallel to the channel in which they ran previous to this diversion.

This transverse ditch is between one and two rods long. The point at which the waters of the stream have been and are used by the Smiths for irrigation lies about a quarter of a mile below this transverse ditch. The cultivated land of the Smiths lies entirely east of the road, which also runs east of the land claimed by plaintiff. At or near the road the stream is divided and comes through the cultivated land in numerous ditches dug by them for the purpose of irrigation. It has been appropriated to no other use.

It did not appear how much of said water was or is needed for purposes of irrigation by the Smiths. Smith testifies that, when all his land should be brought into cultivation he should need all the water of the stream.

The defendants were digging a return ditch, leading from the outlet of Washoe Lake, which would return the water to Steamboat Creek about six or seven hundred feet above the road, and above Smith's house, and so

that it could be used by the Smith's for purposes of irrigation. Smith forbade the digging of this return ditch. It was the understanding between Smith and the plaintiff Griggsby, at the time of the execution of the deed of conveyance to the latter, that the water should be returned to Smith at Griggsby's lower line. Water taken out of the stream at Smith's house would irrigate all his land below the road.

There are other questions presented by the record than those raised upon the above statement of facts. The above, however, presents substantially the facts upon which the court based its decree enjoining the defendants from diverting the waters of Steamboat Creek until they should be prepared to return the same quantity of water as naturally flows in the Creek to the natural channel thereof above the western line of the Lasieur tract.

The condition was also inserted in the decree that the defendants have uninterrupted right of way through plaintiffs land to return the waters to said channel. From this decree the defendants have appealed.

This being a chancery cause, was tried by the Court, and the chief assignment of error was as follows:

The findings of the Court are not supported by the evidence, and the decree is contrary to Law and equity, and contrary to the findings and evidence in the case.

It will not be necessary in the disposition of this case for us to go fully into a discussion of the legal principles involved in the appropriation of water for the various purposes of mining, milling, and irrigation. As we have elaborated these matters very thoroughly in the opinions of this Court, recently published in two important cases, to-wit: Childers vs. Farington, et al and Cover et al vs. Hobart et als, for the correct legal doctrines and the authorities supporting them in this branch of judicial jurisprudence we would refer to those cases, and therefore shall not quote authorities here.

Upon looking at the record in this case we find the facts and law to be as follows:

1st. As to the Lasieur tract; there never was any appropriation of water, either for mining, milling or irrigating purposes. No mill was built or contemplated on this, or any other tract of land claimed by plaintiff. Indeed, it might be questioned whether plaintiff here had appropriated the land itself, except that appurtenant to the house, and there never was any enclosure or cultivation of this land at all.

His rights here seem to have been that of having a cabin on land uncultivated and uncultivable. As to this tract, therefore, the decree is erroneous.



2d. As to the Smith tract. Upon this land there never was any appropriation of water, building of fences, erection of houses, cultivation or improvement of any kind, except so far as the transverse ditch referred to, was concerned.

3d. As to Smith's lower tract. He had constructed this ditch a rod or so long, turned the waters into an old channel a quarter of a mile long, and by these means had appropriated this water for the purpose of irrigation, to supply his farm below. This was the first appropriation of water, the proof exhibited, and here were the first rights we were called upon to protect.

4th. No question was raised in the argument as to the quantify or quality of water returned. The stream is prolific, and there is enough for all; the only question is, where shall it be returned; and we were asked to consider the rights of Smith, and settle the whole controversy in this suit. This seems proper too, as the deed from Smith to Griggsby expressly conveys some water rights, and the land conveyed abuts upon this artificial ditch.

5th. We find, in conclusion, that the waters of this stream were first appropriated at this transverse ditch, and that it could not be urged consistently with the law, that the return of this water at a more easterly, or lower point would irrigate the lands of Smith as well, as he might desire to bring more land under irrigation, or to have this additional fall, and no court has a right to modify his appropriation; but on the contrary to give him the water at the place, and in the manner chosen by himself.

In this connection it is important to remember that an old channel brought into use by an appropriation of water is as good as an artificial ditch. So say both authority and reason.

It is therefore ordered by this court that the decree heretofore entered in this case be modified, so that the waters of said stream be returned by defendants into the transverse ditch set forth upon the plot of the surveyor, filed in this cause, this this being the first point of the appropriation of water by plaintiff and his grantors, and that this decree be final in the case.

SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

OCTOBER 3, 1863

Opinion of CHIEF JUSTICE TURNER,  
MOTT, J., Concurring.

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G.W. CORD, Plaintiff and Respondent,  
v.  
L. FOSTER, ET AL., Defendants and Respondents.

This cause comes to us on appeal from the First Judicial District, Storey county.

The case is in a nutshell and we will dispose of it in a summary way. The plaintiff in the Court below sued on a note and mortgage. Defendant in answer admitted the execution of the same, but sent up a counter-claim, in which she alleged the note to have been given on a building contract with plaintiff, whereby he agreed to complete her house by a stipulated time. She admits that he completed it, but after the time agreed upon in the contract. For this delay she prayed damages. Plaintiff filed a replication, and denying the failure, delay, and damages in *toto*.

This was the condition of the pleadings. Upon the trial plaintiff produced his note and mortgage. Defendant failed to offer any proof in support of her counter-claim; and thereupon judgment was entered for the plaintiff and an appeal was taken to this Court.

Defendant claims upon appeal that the *onus probandi* as to the issue upon the counter-claim rested upon the plaintiff. This is a mistake. But upon the contrary, the practice pursued by the Court was the proper one.

Let the judgment be affirmed.

SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

OCTOBER 3, 1863

Opinion of CHIEF JUSTICE TURNER,  
JUSTICE MOTT Concurring

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WALLACE, Plaintiff and Respondent,  
v.  
JOHNSON, Defendant and Appellant.

This cause comes to us on appeal from the Second Judicial District, Ormsby county.

In this cause the only ground assigned upon the appeal is this, the return on the summons in this cause was signed by the deputy, Remington, without showing his authority under Wm. U. Marley, Sheriff.

After such return was made and the summons duly filed in the Court, Wm. C. Marley then being no longer Sheriff, his term of office having expired, at the request of plaintiff's attorney, amended said return by inserting his own name before that of his deputy, so that the return showed regularly on its face that the summons was duly served. Judgment was then rendered, and such amendment is assigned as error on this appeal.

Upon the examination of this record we esteem it our duty to affirm the judgment. The Sheriff's return imports verity. It comes to us apparently regular and upon the facts set forth in this statement and in the manner that we find them, it would be improper for us to set aside the judgment.

The original parties are before the Court, no new or innocent persons are here to be prejudiced. No defence is set up to the action. If the judgment were set aside it would have to be re-entered.

This return is amended according to the facts – the Court below, or here, would allow it to be amended now. Why, then, should we reverse the case.

A Sheriff's return is not traversable and a Court will not permit it to be attacked collaterally, even if the service is shown to have been irregularly made, it cannot be disproved. *Sample vs. Coulson*, 9<sup>th</sup> Watts and Serg. 62.

It is correct to allow a Sheriff to amend his return even at a subsequent term, and the amendment will relate to the return day. *Malone vs. Scannel*, 3d Marsh 350. He may amend though several years have elapsed. *Thatcher vs. Miller*, 13th, 413. He may amend by adding his signature to an unsubscribed memorandum after his office has expired. *Adams vs. Robinson*, 1 Peck 461; *Wilson vs. Ray* 109.

The Sheriff's return on a petition and summons may be amended after a writ of error is sued out to reverse the judgment, *Iroiny vs Scober*, Litt 70.

Let this judgment be affirmed.

IN SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

SEPTEMBER 10, 1863

Opinion of CHIEF JUSTICE TURNER

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HARRY J. CHILDERS, Respondent,

v.

LACIEN B. BROOKS, LATHOS DUNN and J.W. FARRINGTON, Appellants.

This cause comes before us on appeal from the District Court of Storey County. In the Court below, suit was brought by Childers (who is respondent here) for a certain water right. A few allegations of the petition, will be quoted here, to afford a better understanding of the case; they are as follow viz.

Plaintiff complains of above named, defendants, for that the plaintiff was in the lawful possession of those certain water privileges and land for mill sites, upon both sides of the canon, and all of the waters running in, what is called 'six mile canon' situated below Virginia City, in said County, and between that place and the Desert, commencing at the junction or where the waters of said canon join from two ravines near the Toll Gate and just above what is called Sugar Loaf Mountain in and along said canon: the said junction being about two miles and a half from Virginia City, and running thence down said canon, for the distance of one mile, embracing all the waters at the same and both banks upon the same, for mill sites, for the distance of one mile from said junction or place of beginning.

Plaintiff claims, that he took up the same according to the customs and law of the locality, as early as the tenth day of June A.D. 1860, by notice posted on the ground and recorded in the milling records &c; plaintiff further claims, that he made some further improvements, by way of a ditch &c., some time in the month of July, A.D. 1860. He further alleges, that on, or about the fifth day of June, A.D. 1861, the defendants dispossessed him.

His prayer is the 1st. That he be paid ten thousand dollars damages. 2d. certain mesne profits. 3d. That he be restored to his premises.

The answers to the various defendants may be briefly stated. They each and all of them deny *in toto* any and all appropriations of said premises by the plaintiff, and *per contra*, set up and claim for themselves "full" and complete appropriation and entire right of possession, in themselves, to the various portions held and claimed by them in severally.

The issue will be plainly seen by this analysis of the proceedings, and will more fully appear from the following extracts from the charge to the jury in the *nisi prius* Court, delivered by the very honorable, worthy and learned Judge who presided therein. In the general charge, which is excepted to, in a manner admitted to be sufficient, the learned and most estimable Judge uses the following language:

This action was brought to recover the possession of the land, situated on both sides of 'Six Mile Canon,' for mill sites; and also to recover and establish his right to the use of the water running in the canon, as incident to the land, and for milling purposes.

He then states the pleadings, but we have given a clear analysis of ◇◇◇ above, we omit this portion of the charge.

The learned Judge then proceeded as follows:

The issues therefore presented for your consideration, are as follows:

1st. Was the plaintiff entitled to the possession of the land described in his complaint on the 5th day of June, A.D. 1861.

2d. Was he then entitled to the use of the water?

He further says:

It was claimed by counsel for defendants, and persistently urged by one of them in your presence, that the right to the use of the water claimed by the plaintiff, was not in issue in this case. But this proposition, although pressed upon the attention of the Court with so much pertinacity as well nigh to exhaust its patience, seemed to the Court so manifestly untenable, that further argument upon it was positively forbidden.

In the opinion of the Court, the plaintiff may well recover the possession of the land described in his complaint, and also establish his right to the use of the water, as incident to the land, and as constituting a most important part of his original claim.

The learned Judge goes on to say:

This Court will not recognize as a principle of law, that a party in a case like this, must first sue and recover judgment for the land, and afterwards when he can show himself ready to use the water, he shall bring another action. But this Court holds, and will continue to hold, until overruled by a higher tribunal, that the plaintiff, in this and like cases, may have his claim fully determined in one action. The Court will not drive a party to the necessity, the trouble and expense of bringing two actions, when his rights may be fairly and fully settled and adjudicated upon in one.

Again the learned Judge says:

In the view which the Court has seen proper to take of this case, there is very little of the law, as read by counsel in your hearing, that can have any legitimate bearing upon the issues involved in this action. In this

Territory a new kind of mining is extensively carried on, unlike the mining done in California.

Our miners seem to have adopted different laws and different usages and rules, in regard to mining, and the location of mining claims; and also in regard to the location of water rights, for milling and other purpose: cases like this, must stand or fall upon their own merits and must be determined by the peculiar circumstances by which they are surrounded.

The learned Judge further says:

I stated in a former trial as I do in this, that very little of the written law, contained in our law books, can be found which is applicable to this case. In disposing of such cases as this, we must resort to the “lex non scripta” the unwritten law, as our guide, while administering justice between these parties.

He further says:

We must appeal then to the immutable principles of natural right, and natural justice, as a guide in determining the merits of this case. Fortunately for us, it requires no extensive knowledge of hum laws, of Reports and Statutes, to enable us to arrive at a just conclusion in regard to the rights of these parties.

In judging of a simple question of natural right, by bringing your own innate sense of justice and your knowledge and experience of the conduct of men in their business relations, to bear upon the testimony in the case, you will be most likely to arrive at a correct conclusion.

Take then the testimony in this case, of which you are the sole judges, examine it carefully, apply to it the rules and principles to which I have alluded, and determine which of the parties to this record had the best right to the possession of the premises in controversy, and the use of the water at the time laid in the complaint in this action.

The learned Judge then proceeds to explain the rules by which oral testimony should be weighed and applied in a “nisi prius” trial in a very clear, logical, and lawyer-like style. This we omit. After the above charge, the jury retired and soon returned into Court with the following verdicts:

No. 1. We, the jurors, do find for the plaintiff, reserving to the defendants, Billett & Dunn, the right of ground on which their mill is situated, and also their mill.

No. 2. We, the jurors, do find for the plaintiff, reserving to the defendants, J.W. Farrington, the right of ground on which their mill is situated.

The following judgment was rendered by the Court:

It is therefore ordered and adjudged, in said cause, that the plaintiff is entitled to the possession of the premises set forth in plaintiff’s complaint, commencing at the junction of the two ravines, in “Six Mile Canon,” and running thence down said Canon, for the distance of one mile, including both banks of the stream in said Canon, with the

exception of the land upon which the mills of the defendants, Lathrop Dunn and R.W. Billett, and J.W. Farrington may be situated and that a writ of restitution issue therefor, &c., &c.

Now let us discuss the case, as presented to us by the pleadings, the charge, the verdict, the judgment and the whole record as before described.

Verbal criticism is seldom useful in judicial discussion, the effort of the Judge in an appellant Court, should rather be to settle principles of law, than to enter into a wordy warfare with his colleagues or the bar. We might, perhaps, with propriety argue that the “*lex non scripta*,” is as much settled law in this period of judicial history, as the “*lex scripta*,” the former is generally admitted to consist of the written law of nations, the mass of judicial decisions, and the common law, and is distinguished chiefly from the latter in this, that the written law is composed of the Constitution of the United States, the Constitutions of the several States, the acts of the different Legislatures, and the various enactments of a binding character. In short, the one is statutory and binding: the other is precedent and not absolutely governing.

Of course it cannot be fairly said that the “*lex non scripta*” is a rule which is very little of it written law, contained in our books.” We cannot properly in this or any other case” appeal to the immutable principles of natural right, and natural justice as a guide in determining the same.” We cannot properly charge a jury that any legal question like this can be judged “by bringing their innate sense of justice, and their knowledge and experience of the conduct of men in their business relations, to enable them to arrive at a correct conclusion.” Were authority needed for the above definitions, we would refer to Bouveirs Law Dictionary, Kents Commentaries, Blackstones Commentaries, and Legal Philologists “*passim*.”

Nor is it safe to say to a jury in an action of ejectment, which this assimilates more nearly than any other, that they must “determine which of the parties to this record had the best right to the possession of the premises in controversy, and the use of the water at the time laid in the complaint;” as it is a principle as old as the common law, and so familiar, that it would be hardly respectful to a profession, so learned as that which practices in the Forums of Nevada to quote law, to prove that a plaintiff in any possessory action, must recover on the strength of his own title, and not upon the weakness of his adversary’s title, as the case being “*in equilibrio*,” the mere fact of possession being in defendant, until a better title is presented, the parties are left “*in statu quo*,” and defendant recovers.



We are aware, however, that language too general often occurs in the hurry of a “nisi prius” charge, and in this may we account for the above inaccuracies.

It is urged by Counsel for the respondent, that defendants did not demur, and hence his petition is to be taken as good; this is not correct. He further says, “that in California, this would be called an action to determine the right of possession to water;” this is more ingenious than ingenuous, for in California it would have no name, as it everywhere else would be nameless, for no such action exists in any Christian country.

Again he says, “this is a mixed property, an action in the nature of ejectment is all that will lie if that does not lie, we have a right without a remedy.” He would be more accurate were he to say, we have three rights, which sound in ejectment, trespass and case, and concluded to mix them and protect some very old rights by a very new remedy—a sort of judicial hotch-potch, a juridical “omnium gatherum,” which is “sui generis, and had its origin in Six Mile Canon, in Nevada Territory.

He argues with that ingenuity as follows: “Ours is neither  $\diamond\diamond$  for water nor land, but for both; without land we cannot use the water, and without water the land is valueless.” Many a subtle mind would be misled by this dexterous reasoning, worthy the golden age of the Scholiasts.

We think this judgment should be reversed. Chiefly, as already intimated, because the whole action consists of a blinding and confounding of the clear principles of the law, in a manner that it would be fatal to tolerate. The inauguration of a new code, has brought about many valuable improvements. It has changed forms of action, abolished fictions and altered much of nomenclature in the law; but it does not sweep away the learning of the ages, and it is well it does not.

Ejectment trespass and case are as distinct to-day, as they were when Blackstone wrote and Mansfield judged, and though all actions are called “civil actions,” yet these distinctions still endure. Our views of this case may be summed up as follows:

1st. In appropriating unclaimed water on public lands, such acts are necessary, and only such indications of appropriation are required, as the nature of the case and the face of the country may admit of, and surveys, notices, stakes, blazing of trees, followed by work and actual labor, without any abandonment, will in every case where the work is completed give title to water, over subsequent claimants.

2d. If a jury believe that a plaintiff, with the intention to appropriate water, used reasonable diligence, in following one step by another, till his ditch is completed, his title to the water, though it was not perfected, until the ditch was so far completed, as to carry the water, will yet on completion, date from the beginning of the work.

3d. In determining the question of the plaintiff diligence in the construction of their ditch, the jury have a right to take into consideration the circumstances surrounding them; at the date of their alleged appropriation, such as the nature and distance of the county traversed said ditch together with all the difficulties in procuring labor and materials necessary in such cases.

4th. The mere act of commencing a ditch with the intention of appropriating the water of a stream, is not sufficient, of itself, to give a party any exclusive right to the water of such stream, (this principle is all-important in connection with the case before us.)

5th. The doctrine of relation in the appropriation of water, can only apply when the first acts, from which the party appropriating seeks to date his right, indicate the intention of appropriating such water.

6th. If a jury believe from the evidence that the plaintiff, at the time he commenced, had not the pecuniary means requisite to complete the same in a reasonable time, and projected the work and claimed the water with a full knowledge of said inability to complete the same within a reasonable time, then he cannot urge such want of pecuniary means as an excuse for not prosecuting said work, with reasonable diligence, and completing it within a reasonable time.

7th. Ditch property may be sub-divided into two distinct kinds or species of property—one of which is dependent upon the other.

They are:

1st. The ditch, canal or flume, and

2d. The water-right, easement or privileges.

8th. Either of these may be injured, and the owner may have a remedy for such injury, specially appropriate to the nature of the property and the nature of the injury; if his ditch be cut or filled up, he may bring trespass, founded upon his possession. If his water right be disturbed, he may bring case, founded upon his title or property.

9th. A water right, strictly considered, is an incorporeal hereditament or easement.

10th. A vested estate in the easement exists when actual diversion takes place, and upon the completion of the ditch; while the work is progressing, the law affords abundant means of protection to the appropriator.

11. The title to water does not arise as we have intimated before from a manifestation of a purpose to take, but from the actual completion of that purpose.

12. Purely speculative appropriations of land, water, and mines, in a new country situated like this, are not to be encouraged, but every wholesome and proper aid, and all reasonable protection, should be extended to those persons, who not only give notice to the world that

they seek to appropriate these various elements of wealth, but after such notice go forward with various acts of appropriation, which finally culminate in a deep and thorough dominion over the property.

These being the two leading elements of the doctrine of *possessio pedis* so common in this country, to wit: 1st. Notice; 2d. Dominion.

My judgment is that this cause should be reversed.

In the discussion of this case we have preferred to present the law in a connected and succinct form and therefore have not stopped to refer to isolated cases, nor to discuss separate reported cases. For authority, however, supporting the above views, we would refer generally to the following cases and reports to wit:

6	California,	page	548.
3	“	“	224.
8	“	“	275.
12	“	“	28.
12	“	“	48.
1	“	“	44.
9	“	“	95.
10	“	“	426.
15	“	“	36.
2	“	“	23.
4	“	“	104.
5	“	“	86.
5	“	“	93.
9	“	“	17.
10	“	“	303.
12	“	“	240.
13	“	“	40.
14	“	“	253.
15	“	“	31.
16	“	“	75.
16	“	“	180.
2	“	“	45.
6	“	“	217.
◇	“	“	390.
10	“	“	87.
13	“	“	602.
16	“	“	482.
1	“	“	387.
1◇	“	“	478.
12	“	“	47.

Also outside of California Reports the following authorities:

◇◇◇◇	on Lyttleton	
◇◇◇◇◇◇	page 202	
	Bacon's Abridged, vol.2	316
	1st Hilliard on Real Property	369
	4 Kent, sec. 123, <i>Et Lequiterr</i>	
	Viners' Abridged Title Relation.	
	3d Cowan's Reports	80

3d Caines Cases	262
4th Johnson's Reports	234
Eomat's Civil Law, sect. 10	30
16 Wendell	513
2d Wharton's Reports	128
Domat's Civil Law, sect. 1082,	3, 4, 5,
8th B. Monroe	648
and elementary works generally	Water Rights Law.

SUPREME COURT OF NEVADA  
TERRITORY

VIRGINIA DAILY UNION

1863

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HENRY J. CHILDERS, Defendant in Error,

v.

J.W. FARRINGTON, ET. AL, Plaintiffs in Error.

ERROR TO FIRST DISTRICT COURT, STOREY COUNTY

The complaint in this cause is so peculiar in its form that I will set forth the body of it. “The plaintiff, a resident, etc., complaint of the above named defendants, also residents, etc., for that the plaintiff was in the lawful, quiet and actual peaceable possession of those certain water privileges and the land for mill sites upon both sides of the canon, and all of the waters running in what is called Six Mile Canon, situated below Virginia City, in said County and Territory, and between that place and the Desert, commencing at the junction or where the waters of said canon join from two ravines, near the ‘Toll-Gate’ and just above what is called the ‘Sugar-Loaf Mountain,’ in and along said canon – the said junction being about two miles and a half from Virginia City – and running thence down canon for the distance of one mile; embracing all the waters of the same, and both banks of the same for mill sites, for the distance of one mile from said junction or place of beginning, before the commission of wrongs and grievances by the defendants hereinafter mentioned. Plaintiff further alleges, that he took up and located, according to the rules, customs, laws and regulations in force at said locality, all the said waters of said canon, as early as the 10th day of June, 1860, by notice posted upon the ground, and that a copy of said notice was recorded in the books of the mining records at Virginia City (that portion of said canon being in the Virginia Mining District at that time), on the 11th day of June, 1860. Plaintiff further alleges, that he entered into immediate possession of the portion of said canon above described, claiming the waters of the same, and immediately proceeded to construct a ditch for the conveying of the waters within the said mile of said canon, the same being at and below said junction; and that some time in the month of July, A.D. 1860, he, the said plaintiff, diverted and run all of the waters of said canon into his said ditch, and appropriated the same to his own use for the purpose of mining for the precious metals and for hydraulic power. Plaintiff further alleges, that being lawfully seized of, and remaining in the actual, peaceable, quiet and lawful possession of said premises, and lawfully and of right entitled

to the continued possession of said premises, and lawfully and of right entitled to the continued possession of the same, the defendants, to wit:

On the 5th day of June, 1861, and at divers other days and times between that day and the commencement of this suit, with force and arms, forcibly and unlawfully entered in and upon said premises and, against the consent and in violation of the rights of plaintiff, forcibly and unlawfully dispossessed plaintiff from a portion of said premises, to wit: that portion of the same at an immediately below said junction, and ejected plaintiff therefrom, and have since continued to withhold from plaintiff the possession of said premises, to the damage of the plaintiff of the sum of \$10,000. Plaintiff therefore prays judgment against said defendants for said sum of money as damages and mesne profits, and that the judgment of this Court be that plaintiff be restored to the possession of said premises, and that he have judgment for the costs of this suit; and he will ever pray, &c.

The defendants served in their defenses, Farrington, after denying the allegations of the complaint touching plaintiff's right, set up a claim in himself to the canon and water privileges from the junction to a point several hundred feet down the canon to a dam built by plaintiff Childers across the stream. Two other defendants, Dunn and Billett, set up a claim to the canon from Farrington down to the "Toll-House." These defendants named are the only defendants who appeal from the judgment of the District Court.

To support the issues of his side, plaintiff introduced George Brickett as a witness. He testified that in June, 1860, he was Deputy Recorder of the Virginia Mining District; that he afterwards succeeded in office the Recorder; "that in June, 1860, there was a local custom or usage prevailing and in force in the Virginia Mining District for the taking up of water rights and sites for mill purposes, and that the first step required in taking up such property was to post notices defining the claim upon the ground, and then recording a copy of the same in the Recorder's Office of the Virginia Mining District, in the Book of Records for that District: and that by the usage in force the record of the notice was intended to impart notice to the public of the claim made."

The plaintiff offered to prove by this witness, by the Mining Records, the record of a notice of plaintiff. The defendants objected both to the admission of the testimony adduced to show the custom, and also to the proof of the record of the notice. The Court overruled both objections. Brickett testified that on June 11, 1860, he recorded a notice of plaintiff, the record of which is as follows:

Notice:—I have this day located and taken up the water privilege to its source in each ravine, a gulch from the junction about two hundred feet below what is known as the Monte Cristo Exchange on the new road running from Virginia City to the Desert, for the purpose of putting up machinery to work quartz. Said location extends one mile down said

ravine from junction; also all the timber and wood on the south side of said ravine one mile down and one mile back.

VIRGINIA CITY, JUNE 10, 1860.

[Signed] H.J. CHILDERS.

It appeared also from the testimony of Mr. Brickett, that not more than one location of a water claim had been recorded before this one; that water rights for mill purposes had not been much sought after before that time in that district. Robert Paxton also testified as to the existence of the local custom spoken of by Mr. Brickett. He said "that all claims were taken up in that way, and all property in the mining district was acquired in the same way." This was all the testimony touching the custom.

The plaintiff introduced evidence showing that in July, 1860, he constructed a dam across the stream a short distance below the junction; that he commenced digging a ditch on and along the right bank of the stream. This ditch was several rods in length. In July, 1860, he turned the waters of the canon through it. At this time, and during 1860, no person was there disputing the claim of plaintiff throughout the mile below the junction. It was testified that the dam and ditch were in a good state of preservation in February, 1861. In March, 1861, the ditch was cleaned out, and the waters of the canon were running through it. On the 2d of April, 1861, a civil engineer, Ellsworth, in the employ of plaintiff, made a survey of a ditch for plaintiff, running a level and grade for the ditch, from plaintiff's old dam down the canon, connecting with the old ditch, and going down to the end of plaintiff's mill claim. This surveyor testified that it would take the whole mile of fall with so small a stream to make power enough for one good large mill; that he assisted in cleaning out the old ditch in March, 1861; that he also assisted in grading another portion further down the canon; that this grading was done with a view to connect with the old ditch. At this time no other person had attempted by work to appropriate the stream from the junction down for a mile. Plaintiff had a cabin, and resided on the claim from the spring of 1861 to late in the summer. He had fenced in a portion of the land on the banks of the canon stream below the works and claims of defendants. Dunn and Billett had constructed a dam across the stream above plaintiff's dam and dug a ditch leading therefrom on the left bank of the stream. Farrington was in possession of no portion of the stream or its banks except above the dam of plaintiff. Dunn and Billett claimed from their dam above plaintiff's dam down the canon to the toll-house, below which plaintiff's cabin was. Plaintiff has never been ready to use the water in his ditch, and has never been deprived of its use for any beneficial purpose by the defendants.

The Court, at the instance of the defendants, gave the following instructions:

1. This is an action of ejectment, and the plaintiff must recover upon the strength of his own title, and not upon the weakness of the defendants. 6. If the Jury believe from the evidence that the plaintiff after rendering his notice, failed to follow up his claim to the premises in dispute with reasonable diligence and in good faith, and that during such failure the defendants located their mill sites in good faith, and have since followed such location with reasonable diligence and in good faith, they must find for defendants. 9. If the Jury believe from the evidence that the defendants have not dispossessed plaintiff from any of the ground possessed by him, or injured him by the diversion of water, which belonged to plaintiff and which plaintiff was prepared to use, they must find for defendants.

The defendants also asked the following instructions, which were refused:

7. If the Jury believe from the evidence that the premises in dispute were separated by the toll-house lot from the premises upon which plaintiff's cabin and fences are situated, no acts of oppression upon such segregated and separate premises can have any tendency to show possession of plaintiff in the premises. 8. Possession of part is not possession of the whole, unless the same is held under a claim of title, or unless the premises are actually inclosed [sic]. 10. Plaintiff cannot recover for the diversion of water in this case, unless he was prepared to use the same for some beneficial purpose at the time of such diversion. 11. Prior possession, to entitle the plaintiff to recover, must be actual not constructive.

The District Court, of its own motion, gave a long written charge to the Jury, of so remarkable a character, that I deem it fit to set it forth at large. It was excepted to by defendants. It is as follows:

This action was brought to recover the possession of the land situated on both sides of Six Mile Canon for mill sites, and also to recover and establish his right to the use of the water running in the canon as incident to the land and for milling purposes. The complaint alleges that on the 5th day of June, 1861, that plaintiff was in the peaceable and actual possession of the premises described in his complaint, and of his right to the use of the water running in the ravine; that on the 5th day of June, 1861, the defendants forcibly and unlawfully entered upon the premises and disposed the plaintiff of a portion of the premises, and ejected the plaintiff therefrom. The complaint also sets up a claim for \$10,000 damages, but as no evidence was offered in support of such claim, it was abandoned by counsel for plaintiff.

The issues therefore presented for your consideration are as follows: First. Was the plaintiff entitled to possession of the land in his complaint on the 5th day of June, 1861? Secondly. Was he then entitled to the use of the water as claimed in his complaint? These questions, and these only, deserve your attention in the investigation of this case.

It was claimed by counsel for the defendants, and persistently urged by one of them in your presence, that the right to the use of the water claimed by the plaintiff, was not in issue to the case. But this proposition, although pressed upon the attention of the Court with so



much pertinacity as well nigh to exhaust its patience, seemed to the Court so manifestly untenable that further argument upon it was positively forbidden. In the opinion of this Court, the plaintiff may well recover the possession of the land described in his complaint, and also establish his right to the use of the water as incident to the land, and as constituting a most important part of his original claim. It is alleged that plaintiff claims the land for mill sites. Now, what would a mill site, or any number of mill sites, be worth without the use of the water? Or, what would the use of the water be worth for milling purposes without the use of ground on which to erect his mills? The truth is, the right of the use of the land and the water are inseparable in this case. Neither the one nor the other alone would be of any value to the plaintiff for the purposes for which he alleges that he located both. This Court will not recognize as a principle of law that a party, in a case like this, must first sue and recover judgment for the land, and afterwards, when he can show himself ready to use the water, he shall bring another action. But this Court holds, and will continue to hold until overruled by a higher tribunal, that the plaintiff in this and like cases may have his claim fully determined in one action. The Court will not drive a party to the necessity, the trouble and expense of bringing two actions, when his rights may be fairly and fully settled and adjudicated upon in one.

If then, gentlemen of the jury, you believe from the testimony that the plaintiff determined in good faith to appropriate the premises and the use of the water described in his complaint for mill sites and mill purposes; that he gave notice of such determination in accordance with the peculiar usages and customs of miners and others who located what are called 'water rights' in his district; that he gave notice of his intention by recording a notice of his claim in the Recorder's Office of his district, and by the actual commencement and continuance of work upon the ground, indicating his design to improve and occupy the premises with a reasonable time, for the purposes before stated; and that he prosecuted his work with reasonable diligence up to the time of the alleged interference with his rights by the defendants; and that defendants entered upon the premises as alleged in the complaint, you will find for the plaintiff. If, however, in considering the defense set up by the defendant Farrington, you should arrive at the conclusion that the plaintiff relinquished any claim which he may have had above the 'Point of Rocks,' it will be proper for you, in that event, to find specially in favor of this defendant.

In the view which the Court has seen proper to take of this case, there is very little of the law, as read by counsel in your bearing, that can have any legitimate bearing upon the issues involved in this action.

In this Territory a new kind of mining is extensively carried on, unlike the mining done in California. Our miners seem to have adopted different laws and different usages and rules in regard to mining and the location of mining claims, and also in regard to the location of 'water rights' for milling and other purposes. Cases like this must stand or fall on their own merits, and must be determined by the peculiar circumstances by which they are surrounded. It will not be disputed that our people have the same right to make laws or rules to regulate the possession and ownership of mining claims and water

rights as had the citizens of California; and where our citizens have adopted different laws and customs in relation to these matters, the decisions of the Supreme Court of California can have little bearing. But if a case should arise similar in all its features to one adjudicated in California, I should regard a decision of the Supreme Court of California in such a case as not only very high authority, but with me at least it would probably be regarded as conclusive.

As I stated in a former trial in this case, very little of the written law contained in our law books can be found which is applicable to this case. In disposing of such cases as this we must resort to the *lex non scripta*—the unwritten law—as our guide in administering justice between the parties. It is true, as counsel for defendant has stated, no man has a title in fee simple to any land in this Territory. The fee is in the Government of the United States. All rights of property in the mines, in the use of water, or in the soil, for milling, agricultural, or other purposes, rest upon the right of discovery, prior possession, occupancy and improvement. Mining claims worth \$5,000 per foot are held by no other tenure than this. But these acts – discovery, prior possession and improvement – constitute the original foundation of all rights of property. Rights of property based upon these acts alone were recognized and acknowledged in the earliest period of our history; and upon this point I will read a little authority from Vol. 1st of Blackstone’s Commentaries. [The Judge here read a passage from Blackstone.] We must appeal, then, to the immutable principles of natural right and natural justice, as a guide in determining the merits of this case.

Fortunately for us it requires no extensive knowledge of human laws, of reports and statutes, to enable us to arrive at a just conclusion in regard to the rights of these parties. In judging of a simple question of natural right, by brining your own innate sense of justice, and your knowledge and experience of the conduct of men in their business relations to bear upon the testimony in this case, you will be most likely to arrive at a correct conclusion. Take, then, the testimony in this case, of which you are the sole judges, examine it carefully, apply to it the rules and principles to which I have alluded, and determine which of the parties to this record had the best right to the premises in controversy, and the use of the water at the time laid in the complaint in this action. But you are to receive the law as given to you by the Court, and if the Court errs in declaring the law, such error can only be corrected in a higher Court. If you should conclude that the plaintiff attempted by his notice to locate more ground and water than he could rightfully hold, still, if he claims no more in this action than he is entitled to hold, he may recover in this action, if he has established his right by the testimony.

The Court proceeded further to lay down some rules to guide the jury in weighing the evidence, reconciling conflicts therein, etc. It is unnecessary to set forth this portion of the charge.

The jury find separate verdicts for the plaintiff against Farrington, reserving to him the ground on which his mill is situated and also the mill; also against the defendants, Dunn and Billett, reserving to them the ground

on which their mill is situated and the mill. These defendants bring the cause to this Court by writ of error.

The true legal character of this action, as I conceive, is that of an action in the nature of an action of ejectment. The Judge who tried the cause, in one of his instructions, tells the jury that it is an action of ejectment; yet he seems practically to have treated it throughout as a mixed form of action – as an ejectment suit in so far as the plaintiff is seeking to recover land – and as an action in the nature of an action on the case in so far as the plaintiff seeks the indication of an alleged water right. This confused blending of different forms of actions which is exhibited on the face of the complaint, also characterizes the charge given by the Court of its own motion. In this charge the Judge tells the jury that “this action was brought to recover possession of the land situated on etc. for mill sites, and also to recover (?) and establish his right to the use of the water running in the canon as incident to the land, and for milling purposes.” He further states the issues to be as follows:

First, was the plaintiff entitled to the possession of the land described in his complaint on the 5th day of June, 1861? Secondly, was he entitled to the use of the water as claimed in his complaint? These questions, and these only, deserve your attention in the investigation of this case.

The Judge then proceeds in an argument addressed to the jury, to vindicate himself as against the counsel for the defendants, in treating the action from this double point of view, as an action to recover land, and also to vindicate a water right. If they thought the argument sound, and it is to be presumed they did, they must have conceived it highly meritorious to thus make one action serve the purpose of two.

The view taken has so much truth in it as this: If the action is properly regarded as one to recover land through which a water course runs, a recovery of the land would give to the plaintiff necessarily such a right to the water flowing there through as is incident to the possessory right in the land recovered, subject, of course, to such adverse rights in the water, if any, as may have been secured by prior appropriations. So far, and so far only – if this is an action in the nature of ejectment to recover possession of the “premises” described in the complaint – can a water right of the plaintiff be vindicated in this action. The verdicts and judgment actually rendered conform to this view. The judgment is in ejectment alone; the only mode of executing it is by a writ of restitution.

Considering the action as one to recover land, acts done thereon with a view to the appropriation of a water right might be admissible in evidence as bearing upon the question of the appropriation and possession of the land, but in no other light could they be regarded as entitled to the least weight. The acts done by Mr. Childers in this case with intent to appropriate the waters of the canon are not considered by the Court from

this legitimate point of view. The charge of the Court is characterized by a singular confusing of these rules, which govern in the appropriation of land as such, and those which govern in the acquisition of a right to water. There seems to be no way of disentangling and dissipating this confusion except by taking up and considering the case and the charge of the Court, which is its most remarkable feature, from both points of view, and by bringing the rulings upon both aspects of the case to the test of those sound legal conceptions which are applicable.

Considering the case from the point of view of its being, as the Judge who tried it insists, an action to establish a right to the use of water – I mean a right to the use of the flow of the water for some beneficial purpose based upon an appropriation of it as such, and not such a right to it as is incidental merely to the ownership of the land through which it naturally flows – it maybe fit to call attention to certain features of the case as it stands before us. It is to be remarked that the evidence bears almost exclusively upon this aspect of the case. In June, 1860, plaintiff put up and recorded his notice of claim of a water privilege. In July, 1860, he constructed his dam and commenced his ditch. This ditch was only a few rods in length. In April, 1861, he made a survey for a ditch connecting with the short ditch of 1860. It is not pretended that he ever made any other specific location of a ditch. The land claimed by defendant Farrington, and on which his mill stands, lies entirely above this dam and ditch. It is not even asserted that he ever diverted the water from plaintiff's ditch. Dunn and Billett claim land below the dam. It may be that their claim includes the dam. I will assume that it does. They have diverted the water from a point above the dam on the side opposite the ditch of plaintiff. They have, however, in no way interfered with plaintiff in the prosecution of this ditch enterprise. Plaintiff has never been in a condition to beneficially use the water for any purpose; indeed we are authorized to assume the location to be a merely speculative location, for the plaintiff insists most earnestly before us upon his right to recover land for mill sites above his dam and ditch as actually located by him.

Now until a party projecting and constructing a ditch for the purpose of appropriating the water of a stream is prepared to make a beneficial use thereof, he cannot complain of a diversion of the water or an obstruction of its flow even by a subsequent locator; for, based as his right is upon acts of appropriation alone, he cannot be said to be *injured* by a diversion unless it interferes with some beneficial use of the water. When the projected scheme of appropriation is completed, and the appropriator is prepared to beneficially use the water in his flume or ditch, then the Courts apply the doctrine of relation, and, if reasonable diligence has been used in the prosecution of the Enterprise, they will consider the title by appropriation to have had its inception at the commencement of the work. No action can be maintained by such party for a diversion of the water,

even as against a subsequent locator, until he is prepared to make use thereof beneficially. For any wrongful interference with the prosecution to completion of the projected enterprise, an appropriate form of relief would be afforded.

These rules are well settled in California and form part of that admirable system of water right law, which has been elaborated with so much care and thought. They are perfectly accordant with sound principle, and are justly and fitly applicable to the situation of things in this Territory. Yet, the Judge of the District Court in his charge, in a manner peculiarly well calculated to mislead the jury, sweeps aside that whole system, telling the jury that very little of the law read in their hearing could have any legitimate bearing upon the issues involved in the action. This was done upon the view announced to the jury, that our miners have adopted rules and customs different from those prevailing in California in regard to the location of water rights. No evidence of any custom was adduced except of a custom to record notices of claims to water in the Mining Records of the District. Of this custom and its bearing on the case I shall speak further on. The Judge deepens the impression thus produced in the minds of the jurors by energetically vindicating the right of our miners to adopt rules different from those prevailing in California. He then reaches forth for a rule of right applicable to the case, into the region of the vague unknown, where rules in all its purity the "*lex non scripta*," as he defines it; that is, law not written anywhere, existing only ideally, hitherto unconceived and unapplied, and now for the first time brought into play for the settlement of disputed questions of right among men. This "*lex non scripta*" seems as yet to have attained no greater degree of completeness of enunciation than that embodied in vague general appeals to "the immutable principles of natural right and natural justice," "innate sense of justice," etc. The Judge may have comprehended the application of these principles; the Jury may have not.

If then this action can properly be treated as one to establish a right to water based upon acts of appropriation of the water to a beneficial use, there is error in the record; for the plaintiff, by his own showing, has suffered no injury; he has not been interfered with in the prosecution of his ditch enterprise; the water has not been diverted to his damages. The tenth instruction asked by defendants, in this aspect of the case, should have been given. Besides the charge given was misleading in its entire scope and effect.

We now come to treat of this case in its character of a suit to recover possession of land. It is in this light that it is properly to be regarded, for although, in the complaint and in the charge of the Court, the action seems to be and to be treated as of a mixed character, yet in the

final judgment its true form appears. By it is adjudged that the plaintiff “is entitled to the possession of the premises set forth in plaintiff’s complaint, commencing at the junction of the two ravines in Six Mile Canon, and running thence down said canon for the distance of one mile, including both banks of the stream in said canon, with the exception of the land upon which the mills of the defendants,” Farrington, Dunn and Billett, “may be situated: and that a writ of restitution issue therefor.”

Now it must be noted that the facts in evidence, so far as they had any legitimate bearing, tended to make out a cause of appropriation of water alone. Giving to the complaint in the cause the most liberal construction possible, it claims land for ditches and mill sites also from the junction down, including both banks of the stream. The plaintiff, as we have seen, has acted on his notice by actually locating his ditch and his dam – the intended point of diversion of the stream – below the land now sought to be recovered of the defendant, Farrington. No scheme to appropriate the water at and from any point above the dam, or any other particular point whatever, appears ever to have been even projected, unless this suit can be regarded as such a scheme. Of course, there could be no need of mill sites above the dam, and there was no evidence so far as appears tending to show that plaintiff could have located advantageously a mill site, in connection with his dam and ditch, on any land claimed even by Dunn and Billett. Yet plaintiff has by the judgment in this case recovered land above said dam for mill sites. His right to the upward flow of the water might thus be regarded as “established” by the judgment, inconsistent, though it may appear, with the law of gravitation. There must be an extremely “anomalous state of things existing in this Territory” to justify such an assault upon the stability of nature.

The only work done by plaintiff that had any tendency to show an appropriation of land claimed by defendants Dunn and Billett was that done on the dam and short ditch. This work was done, and must necessarily be so considered, solely with a view to the appropriation of the water of the stream at the point where the dam was constructed. It is not claimed that they ever actually interfered with plaintiff’s prosecution of this ditch enterprise, though they diverted the water from a point above the dam. Of this diversion as such he had, under the circumstances, as we have seen, no right to complain; he was not injured thereby. This suit is not brought or prosecuted to recover possession of this ditch; it was not so considered below, and has not been so treated before us. Its aim seems to be to establish the right of the plaintiff, under his original claim of a water privilege, to floating, unlocated [sic] mill sites and ditches, to be held *unterrorem* over every one that might attempt to build or settle in the canon. Upon the basis of this mere *claim* of water privilege as embraced in his notice alone – for he refuses to be bound by the location of his dam and ditch as actually made by him, and the court has upheld him in his

refusal – upon the basis of this *mere claim alone* he has succeeded recovering all the land of the canon from the junction down for roving mill sites and ditches existing as yet in imagination only. To crown the absurdity the jury should not have excepted the ground on which the mill stood.

I dismiss, as entitled to no consideration in this connection, the evidence touching the cabin of plaintiff and the inclosure [sic] near it. It was some distance below the claim of Dunn & Billett. There is nothing whatever in the testimony warranting the reference of the possession of the cabin and small inclosure [sic] to a claim of the whole canon from the junction down one mile. The claim by the written notice in evidence – and no other claim is pretended to have existed – extending throughout the mile is of a water privilege only, not of the whole canon. The occupancy of the cabin may, possibly, have sustained a relation to the water privilege and the appropriation of water of the stream, but not to the possession the whole canon for a mile, for there was no claim of the canon for a mile below the junction district from the claim of the water privilege, and that in no sense could be regarded or treated as a claim of the whole canon for that distance.

One of the very remarkable features of this case, is the manner in which the Court has regarded the alleged custom concerning the location of claims to waters. The subject is suggestive, but I will now say only a few words concerning it. It is difficult to see how the Court was justified, on the proof adduced to show this custom, in admitting the record of it in the mining records as original evidence; but, waiving any consideration of this question, it is clear that, when admitted, it should have been treated, in accordance with common law principles as evidence merely of the “claim” of the party making claim by it. It is evidence showing his intent; and as the two elements of intent and act enter into appropriation and possession, it is necessarily competent evidence on any issue as to the appropriation of the thing claimed; though alone it is insufficient to establish possession. The notice in this case claims a water privilege alone, and yet, in a very confused way, it has been treated by the Court as a claim of land as well as of water, indeed of the whole canon within certain longitudinal limits; and, although the plaintiff has definitely located his dam and ditch, and has never attempted even, so far as appears, to give a particular location to any mill site, and although there is nothing warranting the inference that he could locate such mill site advantageously, in connection with his present ditch, on the land of either of defendants, the Jury, in a state of bewilderment produced in part by the very curious charge given by the Judge on the customary law applicable to the case, have given to the plaintiff the land for mill sites above the intended and specially selected point of diversion.

I scarcely know what to say touching this charge of the Court. I conceive it to be my duty to protect most earnestly and solemnly against it in its entire bearing, scope, purpose and effect. It is characterized by a bewildering vagueness and uncertainty, by confusion of thought and misconception of the law. Its only tendency was to confuse and mislead. No jury listening to it, and impressed as the jury in this case probably were by it, could have had other than mistaken notions as to the nature of the issues in the cause and the rules of law applicable to their determination. The mistaken statement of the legal character of the action and of the issues as made by the pleadings and the facts adduced in evidence; the vindication, in an argument to the jury, of the double-headed character of the suit as conceived by the Judge; the singularly partial enunciation and confused intermingling of the rules which govern in determining disputed issues as to the appropriation of land as such, and of water as such; the placing of the defense of the defendant Farrington upon a supposed relinquishment by plaintiff of a portion of his claim; the criticism of the action of counsel in attempting to enlighten the Court and jury by reading the decisions of the Supreme Court of California on water-right law; the sweeping setting aside of all those decisions, and the invoking of the aid of a customary law, hinted to exist generally in this Territory, but known only to the Judge giving the charge; the vague appeals to *the lex non scripta* —“the immutable principles of natural right and natural justice”—“innate sense of justice;” all these things in the charge must have left the jury all adrift, confused, bewildered, without any certain guide in coming to a conclusion of the matters submitted to them, except the very evident drift and leaning of the Judge on the merits of the case. Yet the Judge tells the jury in his charge that “the Court is forbidden by the laws of the Territory, and perhaps wisely, from commenting upon the weight or preponderance of the testimony in favor of one side or the other in any case.”

What can be thought of instructing the jury as follows:

If the plaintiff attempted by his notice to locate more ground and water than he could rightfully hold, still, if he claims no more in the action than he is entitled to hold, he may recover in this action if he has established his right by the testimony.

What test or right could the jury apply to determine whether plaintiff had claimed more than he could rightfully hold? Here, if anywhere, we suppose, the *lex non scripta* would come into efficient play and application. A ditch a mile long does not look very extravagant; but then everything is “anomalous” in this territory.

The judgment of the Court below should, in my opinion, be reversed and the cause remanded.



The judgment in this case was reversed and the cause remanded in June last, Judge Turner and myself concurring; Judge Mott dissenting. The above opinion expresses my own views of the law of the case.

H.M. JONES

SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

OCTOBER 4, 1863

Opinion of CHIEF JUSTICE TURNER,  
JUSTICE MOTT Concurring.

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MARK SHELDON, ET AL., Plaintiffs and Respondents,  
v.  
SMITH CLARK, ET AL., Defendants and Appellants.

This cause comes to us on appeal from the District Court of the First Judicial District, Storey county.

Plaintiff in the Court below filed his complaint against the said defendant for the sum of \$3,795.23, for crushing certain gold and silver-bearing quartz rock from the Sacramento mine, owned by the defendants. In answer to this complaint, defendant alleges that the crushing of said rock was imperfectly done, and deny any indebtedness to the plaintiff for the same, and set up a counter claim upon which they pray damages. The new matter in the answer was replied to by the plaintiff; a demurrer to this replication was filed and overruled.

The cause was regularly tried by a jury, verdict was rendered for the plaintiff, and judgment was thereupon entered for the full amount claimed in his petition. A motion for a new trial was made and overruled, and cause appealed in this Court. The errors assigned were as follows, and we will dispose of them in the order in which they are stated:

1st. The verdict of the jury and judgment thereon were contrary to law. Upon looking over this record we see no violation of the law supporting this assignment.

2d. The verdict was against the evidence. It is sufficient to say the evidence was conflicting upon matters of fact fairly submitted upon both sides; no fraud or misconduct occurred, and no rule of law was violated; hence it is our duty to leave the verdict undisturbed. For authorities and agreement upon this proposition, we refer to Warfield et al. vs. McLean et al., decided at this term of this Court.

3d. The Court below erred in overruling the demurrer to the replication of plaintiff.

We think this demurrer was properly overruled.

4th. It is claimed that defendants proved the payment of the sum of seven hundred dollars, which was not accounted for.

This was a part of the evidence before the jury and was no doubt properly disposed of by them.

5th. Error is assigned in consequence of the fact that the Court below overruled the motion for a new trial, supported as it was by the affidavits of Knox and Thompson.

These affidavits did not bring the case within the settled rules by virtue of which it is made the duty of the *nisi prius* Court to set aside the verdict of a jury fairly entered upon a full hearing of the testimony upon both sides.

These are all the errors assigned upon appeal.

Let the judgment be affirmed.

SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

OCTOBER 4, 1862

Opinion of CHIEF JUSTICE TURNER,  
MOTT, J., Concurring.

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ROCKWELL, ET AL., Plaintiffs and Respondents,

v.

TAYLOR, ET AL., Defendants and Appellants.

This cause comes to us on appeal from the First Judicial District, Storey county.

Suit was brought upon a promissory note set out in the complaint, payable to Fall & Co., and endorsed to plaintiff.

In the Court below no defence was set up to said complaint except by way of demurrer, which objected to the sufficiency of the petition, for that it did not state facts sufficient to constitute a cause of action, for the following reasons: First, it does not appear that the plaintiff was the owner and holder of the instrument; second, no consideration appears for the endorsement; third, it objects to the demand in manner, form, &c. The court below overruled the demurrer and gave the plaintiff judgment; whereupon, defendant appealed to this Court. No brief is on file by either party.

We think this judgment should be affirmed. The complaint expressly alleges an assignment by Fall & Co. to the plaintiff and his ownership of the note. No consideration for this assignment need be stated; it is sufficient that it was in writing and upon the back of the note, and that plaintiff is the legal owner thereof. It is further alleged fully that defendant owes this note; that it is wholly due and unpaid in plaintiff's hands, who is the holder thereof, and though often requested, defendant has failed to pay the same. This is all the law requires.

Let this judgment be affirmed, with eight per cent damages – the appeal, in our judgment, having been taken without cause and for delay.

SUPREME COURT OF NEVADA  
TERRITORY

DAILY SILVER AGE

OCTOBER 2, 1862

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STEEL

V.

HUMPHREY, ET AL.

This is an action of ejectment for a Town Lot in Virginia City.

The complaint of the plaintiff, after the usual averments in action of this kind, charges that the monthly rents and profits of the premises were of the value of one hundred dollars, that the defendants had received them from April, A.D. 1860, and asks judgment against them for the same. Some of the defendants answered, denying the allegations of the complaint and setting up title in themselves. The defendant, Humphreys, filed a disclaimer and upon the trial the attorneys for defendants moved for a dismissal of the action as to Humphreys, upon his disclaimer. This the court refused, and afterwards when the testimony on both sides was closed, counsel again applied to the court to have the action dismissed as to him which the court again refused. The cause was submitted to the jury and verdict returned for plaintiffs. The question here is: did the court err in refusing to dismiss the action as to Humphreys? We think not. It will be remembered that this is an action of ejectment and for mesne profits; the defendants are all charged with unlawfully detaining from the plaintiff the possession of the premises demanded and described in the complaint, and of receiving the rents and profits. We do not understand that upon the mere disclaimer of a defendant, in trespass, he is to be discharged as of course. If there were so, then B, who enters unlawfully upon the close of A, remains in the possession twelve months, receiving the rents and profits, refuses to quit, forces A to bring his action for the recovery of the land and for mesne profits, can come into court with a disclaimer of all title, interest, &c, and defeats A's action as to damages, costs and every thing. In actions to quite title where the plaintiff is in possession, and the only cause of complaint which the plaintiff has, is that the defendant claims to have some title, interest, &c in the premises adverse to plaintiff, then of course the defendant's disclaimer satisfies the plaintiff's demand, as the object of the action was to have the judgment of the court against defendant's claim of title or interest. In such case his disclaimer is conclusive and forever estops him from setting up or asserting title or interest in the premises. But this being trespass, neither the rule nor the

reason of the rule can apply, the plaintiff has a right to proceed against all, and this we think disposes of the motion made to dismiss Humphreys upon his disclaimer. As to the second motion, we think there are several good reasons why it should not have been granted, tho [sic] the bill of exception states that it was shown by the testimony of the witness, Anderson that Humphreys had parted with his interest in the premises by a transfer before suit, now constat [sic] that he was not in possession receiving the rents and profits: whether he claimed to be the owner or not, can make no difference if he detained the premises from plaintiff and was liable for the damages. The record does not contain the evidence produced at the trial, and this court will presume every thing [sic] in favor of the regularity of the proceedings of the court below. We will assume that the evidence sufficiently connected Humphreys with the trespass and wrongs complained of, to justify the court in refusing to discharge him; but if it should be admitted that there was no evidence to charge him, and that his codefendants had a right to have him released in order that they might have the benefit of his testimony, yet it seems that the defendants, instead of moving after plaintiff had closed his case, waited until “after the evidence was closed on both sides,” and the proofs were all in, it was too late then to offer him as a witness even had the motion been granted, so that no harm seems to have been done. And so far as Humphreys is concerned he cannot complain: he had no claim to the land, the judgment does him no injury, neither costs or damages having been assessed against him. Let the judgment of the court below be affirmed with costs.

MOTT, J.

I concur:

TURNER, C.J.

SUPREME COURT OF NEVADA  
TERRITORY

THE DAILY UNION  
VIRIGNIA, N.T.  
WEDNESDAY MORNING, SEPTEMBER 16

IN SUPREME COURT, NEVADA TERRITORY

Opinion of CHIEF JUSTICE TURNER  
MOTT, JUSTICE, Concurring.

CHARLES S. COOVER, ET AL.,  
V.  
JOHN A. HOBART, ET AL.

This cause comes to us on appeal from Story [sic] county.

The complaint of plaintiff is as follows:

Charles S. Coover, Elias B. Harris and Edward Stockton, the plaintiffs, herein bring this their action and complain of defendants, John A. Hobart,–Lansing, and others, the owners and proprietors of the so called Hobart’s Steam Quartz Mill, at or near the town of Gold Hill, whose names are to the plaintiff unknown, but when discovered they ask may be inserted herein, of an action of trespass on the case, for that whereas the said plaintiffs before and at the time of the committing of the said grievances by the said defendant, were and from thence hitherto hath been and still are, lawfully possessed of a certain ◇◇◇◇◇◇ the town of Gold Hill, in the county and Territory aforesaid and known as the Coover & Harris Stead Quartz Mill; and by reason thereof, before and ◇◇ the time of the committing of the grievances hereinafter mentioned, of right ought to have ◇◇ and enjoyed, and still of right ought to have and enjoy the benefit and advantages of said quartz mill and machinery, appurtenances, waters, rights, privileges and franchises, to-wit: the waters flowing in the Crown Point Havine and Gold Canon, ◇◇◇ along, down and into the mill aforesaid, and the waters of and from the springs in said ravine and canon and which flowed and were collected in the wells, reservoirs, tanks, troughs, sluices and ditches of the plaintiffs, constructed at or near the mill aforesaid, which, during all the time, of right ought to ◇◇◇ collected, run and flowed, and up til the diversion thereof hereinafter mentioned of right had collected, run and flowed, and still of right ought to collect, run and flow into the said works of the said plaintiffs, in a pure and unadulterated state and condition, for the supplying the same with water for the working thereof, to wit: for the supply of water to the steam boiler and the amalgamating and other machinery and works therein and of the mill of plaintiffs for the running and proper necessary and profitable working

of the same aforesaid, at or near the town of Gold Hill, county aforesaid. Yet the said defendants, well knowing the premises, but contriving and wrongfully and unjustly intending to injure and prejudice the said plaintiffs in this respect, and to deprive them of the use, benefit and advantage of the water of said stream, springs and wells, reservoirs, tanks, troughs, sluices and ditches aforesaid, and to hinder and prevent the said plaintiffs, from using and working their said quartz mill and machinery, in so ample, and beneficial, and profitable a manner as they had therefore done, and of right ought to have done, and to injure them in the way of their business in the working and reducing of gold and silver ores and auriferous earth, which they, during all the time aforesaid, exercised and carried on, and still doth exercise and carry on, at the said quartz mill and premises, and to put them to great charge, expense, trouble and inconvenience, whilst the said plaintiffs were so possessed of their said work, premises, rights and franchise, with the appurtenances as aforesaid, and so exercised and carried on their said business therein, to wit: On the first day of May, A.D. 1861, and on divers and other days and times, between that time and the commencement of this suit, to wit, in the county aforesaid, wrongfully and injuriously ◇◇◇, dug, and made in and out of the bed and sides of the said stream or water courses above the said works and premises, to wit, wells, sluices, trenches, channels and cuts of great depth and width, of the depth of \_\_\_\_\_ feet, and the width of \_\_\_\_\_ feet, and kept and continued, and caused to be kept and continued, the said wells, trenches, sluices, channels and cuts, in the bed and on the side of the said stream or water course, for a long space of time, to wit, from thence hitherto, and excavating, dug away and cast down the banks of said stream of the said Crown Point Ravine and therein and ◇◇◇◇◇ therefrom, and built and erected, or caused to be built and erected, about two hundred feet up said ravine from plaintiffs steam quartz mill, a steam quartz mill, steam engine, amalgamators, machinery, ◇◇◇ and appurtenances and laid down pipes and conductors into the said stream.

Said declaration also goes on to allege in short, that said defendants thereby obstructed and appropriated said stream, and that the tadings, ashes, &c., and the amalgamators, machinery, &c., muddled and adulterated said waters, &c., so as to be unfit for plaintiffs use, and prevented the flow of said water, down its accustomed channel, to the mill of plaintiff, for the want of which said water, and the deterioration of which greatly injured and damaged the machinery of plaintiff, and injured and decreased the business of plaintiffs, and otherwise greatly damaged plaintiffs in their said business, in the town of Gold Hill, &c.

The prayer of said petition is as follows:

Wherefore the said plaintiffs say they are injured and have sustained damage to the amount of four thousand dollars, and therefore they bring this suit and ask judgment for said amount of four thousand dollars and costs of this action.

An answer to this petition was filed by John A. Hobart and others, defendants, which is in substance as follows: They admit that on the first day of May, A.D. 1861, and for some time previous, the plaintiffs were possessed of said quartz mill, and to the water in the well, and ditches or cuts on the premises of the plaintiffs; but deny that they were entitled to



the waters flowing in “Crown Point Ravine” and “Gold Canon,” in a pure and unadulterated state, as claimed in said complaint; they then deny specifically all the knowledge, wrong, injustice and connivance alleged, and all improper use of said waters; they admit, however, that they build a steam quartz mill in “Crown Point Ravine,” as alleged, but deny that it obstructed any waters belonging to plaintiffs, or that the ashes, cinders, dirt, &c., adulterated it.

They deny that they diverted or interfered with any waters of plaintiff’s, or injured his business. They deny that they used the same so as to prevent the working of plaintiff’s mill.

In short, they deny all wrongs and injuries as alleged, or that they have damaged the plaintiffs in the sum of four thousand dollars, or any part thereof. And, in conclusion, defendants say, “that they are the lawful owners, and in the possession of the mill and mill site known as ‘Hobart’s Mill,’ together with the wells and springs thereon situated, on said Crown Point Ravine; and entitled to the prior use of the waters therein contained. Wherefore the defendants pray that they may be hence dismissed with their costs.”

Now, let us consider the case as presented by the pleadings before stated, first premising, however, that this cause was submitted to a jury upon evidence and charges of the Court, as to each of which sundry exceptions were filed by counsel for the defendant, as the record shows. The jury returned a verdict in favor of the plaintiffs, and assessed his damages at the sum of eighteen hundred and sixteen dollars and twenty-five cents; for which sum judgment was rendered in due and proper form.

We think this judgment should be reversed. In considering the case we shall depart somewhat from the order which is followed in the assignment of errors. It is objected by appellant that the Court erred in giving the last part of the general charge excepted to, which is as follows:

If you find for the plaintiff on the evidence in this case, you will give the damages they have sustained up to the time of the trial of this cause.

In this charge the Court was clearly in error, and as thus is the most important question involved in the cause, we consider it first. The question of damage is one which has for centuries embarrassed the Courts and profession.

In no department of the law have severer contests raged or greater uncertainty existed, unless we should except the controversies as to the dividing line, between law and chancery in the, in the ♦♦♦♦ of English Jurisprudence and no ♦♦♦♦♦♦ of the ♦♦♦♦ ♦♦♦ will tell to be interested in the ♦♦♦ about direct and consequential, compensatory ♦♦dictive, punitive and special damage; and particularly the quarrels between Sodwick,

Greenleaf, Kent and other distinguished law writers, as to the difference between punitive [sic] and compensatory damages; one school of authors claiming that they are identical when properly construed, the other that they are different.

The strength of the argument being clearly with the former.

But let us leave this discussion, interesting though it be, and come directly to the case to hand. It will be remembered that this is an action sounding *in tort* for an injury to a water right, as this has much to do with the principle involved.

Now, in an action of this kind, it is proper to allow damages to the time at which suit is brought, and no later. This is all the complaint declares for,—all the summons specifies and all the defendant is no◊◊◊◊ed to answer.

If other wrongs occur subsequent to the ◊◊◊◊ of the suit, another action may be brought ◊◊◊◊ other and further wrong, and the previous ◊◊◊◊◊ will not bar the plaintiff. In this respect this ◊◊◊◊ differs from those in which full damages are ◊◊◊◊ in the outset barring all further recovery, ◊◊◊◊ stance, covenant for the breach of an agree◊◊◊◊ to obstruct ancient lights; here the whole ◊◊◊◊ complete upon the breach of a general covenant of this kind and full remedy is given in the first suit, or a covenant to repair◊. Or, take the case spoken of in the English books of a plaintiff suing for damages for a personal trespass by a stroke upon the head; his damages were recovered and subsequently, ◊◊◊◊ exuding from the skull, he sued again, but was nonsuited, as the first action gave him all the relief the law allowed.

The rule is perfectly clear and imperative that where the act complained of, which is the origin of the damage, took place after the suit is brought it cannot be given in evidence. So hold Chief Justice Tyndall, in the celebrated case against the Marshal of Marshals. This also is the rule in slander, well established, and it is the same in libel. Where the act complained of was comp◊◊◊◊◊ before suit brought, and a good cause of action e◊◊◊◊◊ it often becomes a question whether any allowance can be made for prospective damages, or damages which accrue after action brought.

Chief Baron Comyn states the rule thus, the general rule in personal actions, is, that damages are allowed only to the time of the action commenced. The same was the rule laid down in P◊◊◊◊◊◊. The Constitutional Court of South Carolina uses the following language:

Judgments generally ◊◊◊◊ to the situation of the parties at the commencement of the suit.

If at that time, the plaintiff had no cause of action he must suffer a nonsuit. It is then that the defendant is informed of the wrong with which he is charged, and the redress which is demanded. The declaration, which is but an amplification of the writ must set forth the form and manner of injury, to enable the defendant to file the pleas necessary to his defense, and the judgment must correspond with the pleadings. If new matter be introduced subsequent to the pleadings, the defendant may be surprised, and the judgment of the Court may not confirm the pleadings.”

There is a case in Sandford’s reports where a plaintiff sued for procuring his apprentice to depart, and for the loss of his service for the residue of the term of his apprenticeship, and the jury assessed damages generally, judgment was arrested because it appeared that the term was not expired at the commencement of the suit.

There are two cases in Massachusetts, one in the 8th and the other in 6th Pickering’s Reports, which lay down the rule substantially as follows:

The cases are decisive, that by the common law the plaintiff can recover damages only to the time of bringing the action, and that in this respect, there is no distinction between covenant and *tort*.

But no lawyer familiar with the cases which daily occur in our courts of justice, will fail to observe that although this is clearly the law, yet the applicability of the principle is often attended with serious embarrassment. Take, for instance, the cases which we have before alluded to, covenant and *tort*. The former, where the judgment covers a long space in time, and the latter, where the wrongful act is followed by injurious consequences. The question is, in the former case, whether the agreement is to be treated as a continuing one and a fresh action brought for every breach, or whether, on the first breach, final damages must be assessed.

In regard to the latter, the question is often presented, whether but one action can be brought, or whether a new suit must be had for the consequences after they have appeared. This difficulty often occurs, also in a very embarrassing form, in what are called continuing agreements.

In the case heretofore referred to, of the *Wagoner* whose skull was injured, Lord Holt uses the following language:

If this matter had been given in evidence as that which in probability might have been the consequence of the battering, the plaintiff would have recovered damages for it. The injury which is the foundation of the action, is the battering, and the greatness or consequence of that is only an aggravation of damages.

Vice-Chancellor Wigram and Judge Holroy both recognized this doctrine in cases which we have not room to further quote.

Several cases illustrating this rule have occurred in the United States Supreme Court, and in the Courts of several of the States, which bear out the doctrine that we have shown above to be the accepted rule in the Courts of England. Two cases in Kentucky refer directly to it. One of them expresses it in this way: Loss accruing subsequent to the suit may be recovered when the subsequent damages are mere incident or accessory of the principal thing demanded and no action can be maintained for them. (*Wigg vs. Northcut.*) The other case is reported in 2d 100, page 215, which is precisely analogous to this case. It was an action for diverting the water of a stream, and it was held by the Court of Appeals that the plaintiff could legally recover only for damages he had sustained up to the commencement of the suit.

A case in North Carolina, 2d Jones, page 300, sustains the above doctrine.

In Harper's Reports, page 276, a South Carolina case, in an action for damages by a nuisance, the damages sustained after action brought, were held not to be recoverable.

The case which we, in an early part of this opinion alluded to, by way of illustration as to obstructing lights, occurred in New York.

In 3d Denio, page 283, the Court used the following language:

Suppose the lease (the action was tenant vs. landlord,) to have contained a covenant not to obstruct the light, the covenant being a single cause of action, one recovery would be a bar.

In 35 Maine Reports, page 161, the Court holds this doctrine: that in actions for obstruction right of way or light from windows, etc., the damages are not to the jury or trial, but to the Court.

We above citations also some of the Supreme Court of the State.

In *Thayer vs. Brook*, 459, the Court said "In an action for nuisance a mill, for interference with the water there precisely this (it) it allow damages to the commencement of the and no fault in cases of this kind accruing prospective damages it is impossible to consider" the same effect substantially is *Cooper vs. Hall* Ohio, 321, and *McCord*, 387.

This doctrine was so universal, that up to the time of *Field*, even in actions of assumpsit, the courts only allowed the plaintiff to compute his damages up to the date of this writ. But the great sense of that Nestor of the English Judiciary, taught him the propriety of computing the interest up to the time of recovery and including it in the judgment. This practice has been approved and followed in England and America, ever since; but he always held that in trespass and tort, now injuries afforded new remedies, and hence the damages must be assessed only up to the date of the writ.

To avoid this rule in the State of Indiana a special statute was passed and is included in their code of procedure, allowing damages in the action or disseizin up to the trial. We may say as a general rule in trespass and tort, that where there is a repetition of the wrongs complained of, or even a continuation of the trespass or other wrong, then a fresh action will lie. This is partly the result of that maxim that injury and damage must concur.

So tenacious are the Courts, of the true logic or pleading, that they have extended this principle to matters of defense, and many matter of this kind are excluded by the rules of pleading from the evidence, unless they existed at the time of filing the plea, and are strictly pertinent to it. Hence it has been held by Courts of the highest respectability, that payment after action brought could not be given in evidence under the general issue. (21 Denio, 321.) Repayment after action brought for goods tortiously taken, has been excluded under the general issue. (6 Q.B.R., 174) Hence a plea has been adopted to spread upon the record matters of this character, which is called a plea *pius darrei* continuance.

We think the above authorities and arguments clearly demonstrate that the Court below committed a grave error which entitles the respondent to a prompt reversal of this cause, and to those who may wish to pursue this investigation farther, we would refer the following citations: (2d Bibb, 215; 2d Gollman, Ills., 688, 3d Denio, 283; 1st Harper, S.C., 200 4th Pickering, 106; 6th Pickering, 206; 24 Burr 100 Denio, 346; 10th Coke, 117, 6th Hill, 618; and other works on damages *passim*.)

We will now consider a further exception which appears on this record, although the one above would be amply sufficient to justify and even require the reversal of this case. The exception referred to is to a special instruction, asked and refused, being number one upon the brief of counsel for appellant, and is as follows:

That the prior locator and possessor of a mill site is, against all the world except the General Government, the legal owner, and as such owner is entitled to all the water he may discover or obtain below the surface of his premises, not drawn from any running stream, and has undoubted right to use the same for all lawful purpose.

In conjunction with this instruction we will also consider the third (asked and refused), which is analogous to it:

That if the jury find from the evidence that the water claimed by the plaintiff came from springs in defendant's premises under the surface, not drawn from a stream on the surface, and that the plaintiffs have been deprived of said water by means of a well or shafts, with drifts or ad○s rank and excavated by defendants upon and into their own premises, and that said well or shafts with ad○○ were sunk in good faith by defendants for the purpose of obtaining water for the working of their mill, then the plaintiffs cannot recover for water so taken from under the surface, provided they find that the surface water was not collected in said well or shaft.

The appropriation of water has given rise to much embarrassment to the Courts of this country and of England; even under the old order of things, although there they had the fee in land and did not depend upon an implied license from the General Government, as we do here and in California, and although the uses of water were much more limited, and the doctrine of riparian proprietorship ○○○○○○○○○ an almost infallible guide in every case.

An easement in water which authorized the owner of this *incorporeal hereditament* as it is in this country in most instances, to appropriate this element independently of the soil, to carry it off by long ditches or lofty flumes to distant points, to use it for artificial purposes, and to adulterate it by placer washings or amalgamating mills, is a legal right which was unknown at common law, and presents a state of case which is entirely novel in the history of jurisprudence, and which might well embarrass, as it did, the learned judges of our neighbor State of California.

It was in the view of this state of the case that Judge Bennett used the following language:

The business of gold mining was not only new to our people, and the cases arising from it new to our Courts, and without judicial or legislative precedent, either in our own country or in that from which he have borrowed our jurisprudence, but there are intrinsic difficulties in the subject itself that it is almost impossible to settle satisfactorily, even by the application to them of the abstract principles of justice. Yet we are compelled to decide these cases because they must be settled in some way, whether we can say after it is done that we have made a just decision or not.

Two maxims of the common law very nearly settled all the questions which arise under that system. The first is this: *Cajus est solum ejus est usque ad callum*, which inculcates that land, in its legal signification, has an indefinite extent upwards, and therefore it is that a grant of it conveys to the grantee not only the "field" but also the "water."

The second is this: *Aqua currit et debet currere ut currere solebat*; that is, the water runs naturally, and should be permitted thus to run, so that all through whole land it runs may enjoy the privilege of using it.

But these doctrines are insufficient alone to settle the disputes in a mining country.

The uses of water may be divided into two grand generic classes. 1st Natural. 2d. Artificial. Natural uses are always preferred. They embrace the use of water for domestic and household purposes and for the watering of stock. They stand first in dignity because essential to sustain life; other uses must be subordinate to these. In such cases the element is entirely consumed. Next to those may also be placed some of the artificial uses, arranged in order of dignity; as for instance, the use of water for irrigation in dry and arid countries. In the element the element is entirely consumed. As to the preferred natural uses as we have called them—superior had the right to consume what was necessary for himself; and after doing this he was bound to let the remaining portion flow on without material disruption or deterioration in the natural channel of the stream, to others below him. If the volume of water was not sufficient for all, then those highest up the stream were supplied in preference to those below.

So far as the preferred uses were concerned, no one was allowed to deteriorate the *quality* of the water, and for the purposes of a motive power (this being artificial use) there was no use of the element that could impair its quality. In the mining regions of the Pacific slope, and particularly in California and Nevada we have a novel use of water which was not at common law, and differs materially from the uses which we have described above. It may be classed with the preferred because it is for a motive power; but still it is a use which deteriorates the *quality* of the element itself when wanted the second time for the same purposes.

In cases heretofore referred to as existing at common law either the element was consumed as in the natural uses, or was unimpaired as in the artificial. Here is an artificial use which impairs, deteriorates, adulterates and often consumes the water. This is a third classification, unknown at common law peculiar to this coast, undiscussed, to a great extent, in the authorities, ancient and modern, and forming a kind of *terra incognita* to the lawyer and the judge.

In the working of our mines water is an essential element, therefore that system which will make the most of its use, without violating the rights of individuals will be most in harmony with the end contemplated by the superior proprietor.

In view of the above facts some new principles have been enunciated by the Courts in this country which were unknown or different at common law; some of which are these:

1st. The appropriator of water is entitled to have it flow, without material interruption, in its natural channel. This right would seem to be compatible, in general with the fair use of the water above.

2d. He is entitled to the water so undiminished in quantity as to leave sufficient to fill his ditch as it existed at the time the locations were made above. This right is essential to the protection of the ditch owner. If we lay down the rule that the subsequent locators above may so use the water as to diminish the quantity, it would be difficult to set any practical limits to such diminution, and the ditch property might be rendered entirely worthless. As the water cannot be absorbed or evaporated but once, the ditch owners should be entitled to its exclusive use in such a case.

3d. As to the deterioration in quality, the injury should be considered as an injury without consequent damage (*damnum absque injuria.*)

This of course is to be taken within reasonable limits.

4th. When the water of a stream leaves the possession of a party, all his right to and interest in it, is gone.

5th. If the water of stream A, be diverted from its natural channel by C, and used by him and then  $\diamond\diamond$  from his works into stream B by a natural channels, it is lost to the first possessor, and he cannot reclaim it on the ground that the water of stream B was increased by his means.

6th. If the water of stream B, be in the possession of another party D, the addition made to it, flowing from the works of C, by natural channels, becomes a part of the body of water, and D, has the right to its possession and use, and C has no right to withdraw it.

7th. Where water from an artificial ditch is turned into a natural water course, and mingled with natural waters of the stream *for the purpose* of conducting it to another point, to be there used, it is not thereby abandoned, but may be taken and used by the party thus conducting it, so that he do not, in so doing, diminish the quantity of the natural waters of the stream, to the injury of those who have previously appropriated such natural waters.

8. The burden of proof devolves on the party thus mingling the water belonging to him with that appropriated by others. He can only claim such quantity to which he established his right by decisive proof. The enforcement of his right must leave the opposite party in the use of the full quantity to which he was originally entitled.

9. The first appropriator of the water of a stream passing through the public lands in the State, has the right to insist that the water shall be subject to his use and enjoyment to the extent of his original appropriation, and that its quality shall not be impaired so as to defeat the purposes of its appropriation. To this extent his rights go, and no



further. In subordination to those rights subsequent appropriators may make such use of the channel of the stream as they think proper, and they may mingle its waters with other waters and divert an equal quantity as often as they choose.

10. In the absence of all rights acquired by grant or adverse user, the owner of land may dig a well on any part thereof, notwithstanding he thereby diminishes the waters in his neighbor's well, unless in so doing he is actuated by mere malicious intent to deprive his neighbor of water, or thereby diverts surface water which a prior appropriator lower upon the stream has a better claim to.

This last proposition, if true, would alone require us to reverse this case, as both the propositions which we have grouped together for more logical arrangement, and numbered 1st and 3d in appellant's brief were good law and ought to have been given, if this doctrine is correct.

It sometimes happens that in a *nisi prius* judge is justified in refusing an instruction which is good law, but having no application to the case at bar. This is correct practice but will not excuse the omission here for the record and bill of exceptions particularly show that there were springs in this ground, and, further, that both parties had to resort to wells for the purpose of securing an increment to the surface water by the addition of water from subterranean springs and internal sources.

In that state of the case the defendant had a right to this charge.

In *Greenleaf vs. Francis*, in the Supreme Court of Massachusetts, (18th Pickering, 117), it was held; that in the absence of all rights acquired by grant or adverse user for twenty years (prescription) the owner of land may dig a well on any part of it, notwithstanding he thereby diminishes the water in his neighbor's well, unless in so doing he is actuated by a mere malicious intent.

It appeared that the plaintiff's cellar was dug fourteen years before and water was then found, and about two years afterwards an excavation was made. In the earth, in the place where it was made, as it before did. Putnam J., with the assent of the majority of the Court, after stating the facts, it is to be considered whether the plaintiff proved any such easement as she claims over the soil of the defendant. She does not prove that there has been any written grant from the defendant.

She relies upon the use as evidence from which a jury should presume a grant; and there is no circumstance to be relied upon. But by our decision of the plaintiff to control the operations of the defendant on his own soil must, in the absence of a written agreement, be made out by and adverse possession continued peaceably under a claim of right twenty years at least. In the present case such possession is wanting. There is

not evidence of any adverse or possession at all. For the defendant had no means of knowing that the plaintiff's well was supplied by springs in the defendant's soil until the defendant dug for water there for his own use. He sustained no injury by the use which the plaintiff made of the water she found in her own well, and the use, if it had adverse, has not been continued for twenty years indeed there is nothing in the case at bar which restrains the owners of these estates, severally, from having the absolute dominion of the soil extending upwards and below the surface so far as each pleads: each, however, by the law, being held so to operate below the surface as not to cause the soil to fall in from the adjoining estate. These rights should not be exercised from mere malice; and so the Judge ruled at the trial. But the proprietor, in the absence of any agreement subjecting his estate to another, may consult his own convenience in his operations above or below the surface of his ground. He may obstruct the light and air above, and cut off the springs of water below the surface.

The proprietor must, at his peril, so place his house and make his excavations below it, as to obtain water, air and light, even if this neighbor should exercise his full rights of dominion upon his adjoining estate. Now the case finds that the defendant dug his well in that part of his own ground where it would be most convenient for him. It was a lawful act, and though it may have been prejudicial to the plaintiff it is *dominus in*

The civil law being the foundation of the jurisprudence of a large portion of the globe, including the most of Europe, is well worthy of our attention in discussing elementary principles.

The doctrine under that learned system was as follows:

It considered running water not as *dominus* in which any one might acquire a property, but as public and common *in this sense only*, that all might drink it or apply it to the necessary purpose of supporting life, and that no one had any property in the water itself, except in that particular portion which he might have abstracted from the stream, and of which he had the possession, and during the time of such possession only.

Much embarrassment is given us in the consideration of this subject, from the fact that there are no new authorities in California or anywhere else, bearing directly upon the point, and the learning of England and America has turned so much upon the doctrines of riparian proprietorship, and the right of prescription that it requires the utmost care in applying the ancient decisions to our novel circumstances, lest in preserving the philosophy of the first we forget the philosophy of the second.

The leading cases are *Dexter vs. The Providence Aqueduct*, decided by Judge Storey; *Balston vs. Beðsted*, by Lord Ellenborough; *Smith vs. Adams*, NY. Chancery Reports; *Greenleaf vs. Francis*, quoted above; *Acton vs. Bell*, in English Exchequer Chamber, in which the Court uses the following language:

We feel ourselves warranted in holding upon principle that the case now under discussion does not fall within the rule which obtains as to the surface streams, nor is it to be governed by analogy therewith.

In a celebrated case in Pennsylvania, 6 Barr 32, the Court were compelled to admit that in cases of this kind, so much of fact is mingled with the law that an arbitrary rule that shall be just in all cases cannot be laid down.

In speaking of the detention of water by one owner so as to embarrass an adjoining proprietor, he says:

The reasonableness of the detention, depending, as it must, on the nature and size of the stream, as well as the business to which it is subservient, and on the ever varying circumstances of each particular case, must necessarily be determined by the jury, and not by the Court.

It is not many years since the reasonableness of notice of the dishonor of a bill or note, through reducible to rule, was determinable in the same way. "But," says the Judge, "it is impossible to make even a general rule for cases like the present, and the matter was fairly submitted to the jury."

We have said before, and ððððest, that in a case like this, as the proof ðððððð to ðððð, where water was added by the appellant to the ððððððððððprinted by the plaintiff below in ðððððððððð be ðept forward to that plaintiff ðððð ðððððð no-less in quantity than that ðððððððððððð the same ðððððððððððð adulterated by his use of the ðððððððððððð had a right to ask the Court to ðððððððððððð these charges, ðð that the jury ðððððððððððððð the law in the peculiar case upon which ðððððððð in judgment. It will be observed that no ðððððð guarded his first instructions, so that "the ððð stream" should not be reduced or injured. And in the third, also, carefully provided in his hypothesis, "that plaintiff, used water from springs on defendant's land, and that appellant dug wells and used his own springs alone, and none of the running, or surface water."

In approving these instructions we wish it understood that we do not pretend to refer to a case of surface or subterranean waters, running in full flow in a regular stream previously appropriated.

The remaining exceptions taken in this case we will dispose of summarily.

The first exception is well taken. In this the charge is too general and sweeping.

The second special instruction seems to us to have been proper, although it was probably refused for the reason that the learned judge supposed the evidence did not call for it.

The first and third special instructions we have already fully considered.

The fourth special instruction it will not be necessary to attend to.

The fifth special instruction was not urged in argument, and we will not stop to discuss it.

Only one further matter is left undisposed of in this record, to-wit: the evidence of Taylor and Overman and the deeds offered before the jury. As to these it occurs to us that portions of the testimony might properly have been admitted. A part of it was properly refused.

In conclusion, we will say that the question of damages and the appropriation of water seem to us the great questions in this case. They are fundamental and elementary. They are matters, not only of peculiar importance in this suit, but also are of vast moment to the people of this Territory, and must be of frequent occurrence in the immense mining suits already brought and bringing in this new country. They are also interesting to all using hydraulic power.

For the public good, therefore, we have disposed of this case with reference to the general, rather than the specially important issues.

Let this judgment be reversed.

We would express our obligations in the above opinion to the following authorities: 11 Cal., 163; 8 Cal., 330; 1 Cal., 251; Angel on Water Courses, *passim*; 5 B & Adol., 4 English, L. & E.R., 470; 17 Johnson, 306; 15 Johnson, 213; 2 Bibb, 215; 2 Gillman, 638; 3 Denio, 283; 4 Harper, 276; 4 Pickering, 106; 1 Pickering, 206; 2 Burr 77; 10 Coke, 117; 10 Coke, 518; 18 Pickering, 117; 12 M. & W., Page, 169; 5 Cal. 259 & 587.

SUPREME COURT OF NEVADA  
TERRITORY

VIRGINIA EVENING BULLETIN

OCTOBER 3, 1863

Opinion of CHIEF JUSTICE TURNER  
MOTT, JUSTICE, Concurring.

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THE PEOPLE, Appellants,

v.

THE OPHIR GOLD AND SILVER MINING COMPANY, Respondent.

This cause comes to us on appeal from the First Judicial District, Storey county. It was a controversy about the liabilities of the respondents to pay taxes upon a certain lot of gold and silver-bearing ores at their mine. The controversy was submitted to the Court below under sections 326, 327, and 328 of the Practice Act, Nevada Laws, p. 371.

The statement of facts is exceedingly brief, and fails to show that severance from the mine, and total separation of these ores from the realty which would bring it within the rules which would tend to characterize it as personal property liable to taxation.

Under the ninth specification of the law, in its enumeration of property exempt from taxation, Nevada Laws, page 146, the following property is declared to be exempt, viz:

Mining claims, provided that all machinery used in mining claims, and all property and improvements appurtenant to or upon mining claims, which have an independent and separate value, shall be subject to taxation.

Under this provision the Court below held these ores to be exempt.

The record fails to show any facts which exhibit an error in this ruling, and the judgment is hereby affirmed.

No briefs are on file on either side, and a new tax law having been passed, a further discussion of this matter would be fruitless.

Let the judgment stand affirmed.

SUPREME COURT OF NEVADA  
TERRITORY

VIRGINIA EVENING BULLETIN

OCTOBER 3, 1863

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE, Concurring

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WM. H. BRUMFIELD, Plaintiff and Respondent,  
V.  
GEORGE ELLISON, ET AL., Defendants and Appellants.

This cause comes to us on appeal from the Third Judicial District,  
Lyon county.

Plaintiff filed his complaint in ejectment for the recovery of a  
certain tract of land situate upon Carson river, which it is unnecessary to  
describe. An amendment to the complaint was subsequently filed by leave.

Part of the defendants demur, a part disclaim, and Ellison and  
Lanter answered, claiming title in themselves. The demurrer being  
disposed of, and the disclaiming defendants discharged, the issues  
presented by the pleadings as to the remaining parties were submitted to a  
jury who rendered a verdict for the plaintiff, and judgment was entered in  
his favor.

A motion for a new trial was made and overruled, and defendants  
appealed. The record of the judgment below is on file in this Court. No  
assignment of error, points of error, or briefs, is presented to us on the part  
of the appellants. The respondent furnishes us a brief.

This case must be disposed of, then, upon the judgment roll and  
record.

Upon carefully looking through the record we find no error  
requiring its reversal. The issues were chiefly matters of fact, fairly  
submitted to a jury upon the evidence offered by the parties and the  
charges of the Court, and a verdict was rendered which seems to be in  
consonance with law and testimony.

Let the judgment be affirmed.

SUPREME COURT OF NEVADA  
TERRITORY

THE DAILY UNION

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE, Concurring.

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J.A. LUCE, Plaintiff and Respondent,  
v.  
J.W. GRIER, ET AL., Defendants and Appellants.

This cause comes to us on appeal from the Third Judicial District, Lyon County.

The suit below as an action of ejectment instituted by Luce, respondent here, against Grier and others. The petition was in the usual form, and claims possession of a certain lot in Silver City, which it is not necessary to describe.

The defendants, Munckton & Roese, entered a disclaimer.

The defendant Grier answered, first denying all the rights on the part of the plaintiff, and all the wrongs on the part of the defendants, and claiming title to the premises under a constable's deed and sale in pursuance of a judgment rendered against said Luce and in favor of one Doyle by a Justice of the Peace in and for Carson County, Utah Territory, on the 30th of March, A.D. 1861, for the sum of one hundred dollars.

Defendant avers that the judgment as well as the levy and sale of this lot was regular, that he became the purchaser, entered into possession, and still holds the possession as the legal owner of said lot. To this answer Luce replies, that such judgment was not entered by a regular officer and denies the validity of the entire proceedings, and further denies all title in the defendant.

The cause was tried by the Court, by agreement of parties, and the Judge found the following facts:

1. In March and April, A.D. 1861, Luce owned and possessed the premises.

2. After April, A.D. 1861, defendant Grier entered upon the same, under a sale, made on the judgment above described; also, that on the 20th day of March suit was brought by Doyle against Luce before Smith, Justice, for one hundred dollars. On the 30th day of March judgment by default was entered, and the record recites that due service of process was had on defendant by his Attorney in fact and acting Counsel, March 25, 1861, in Carson County. Execution issued on this judgment, March 30th, 1861. These premises were levied upon by Constable Reese, a co-defendant here, who sold the lot to Grier.

3. Judgment was rendered after the passage of the Organic Act of Nevada Territory, and before any Justice was appointed by the Governor.

This Justice acted under his election in Utah. Upon the above facts the following findings of law here had. Luce not appearing to have received notice of the suit of Doyle against him, the judgment therein was void and null.

Thereupon judgment was entered for the plaintiff, and defendant appealed.

Appellant filed a brief; respondent none.

The assignment of errors is as follows:

1st. The Court below erred in its conclusions of law upon the facts found in this; that said plaintiff Luce had no notice of the suit of Doyle against him in the Justices' Court.

2d. The Court erred in entering judgment on its conclusions of law.

The Court erred in its conclusions of law  $\diamond\diamond$  this: That the judgment in the case of Doyle vs. Luce was null and void.

There are two important questions of law involved in this case. The first is this: Was Smith authorized to act as Justice in this case, subsequent to the passage of the Organic Act, as he did in this case. And secondly: Had the Justice jurisdiction of that case by due service; etc.

As to the first proposition: The question is, whether upon the passage of an Organic Act, segregating a portion of a territory already organized from its original jurisdiction, and erecting it into a separate organization (as was done in separating Nevada and Utah), annulled all law and swept away all officers, or not—and it was much discussed in the organization of this Territory. Upon the determination of this question we were to decide whether this people, between the periods at which the Organic Act was passed and the time when this territory was fully organized, were with or without law. In the one case we had a civil and criminal code, officers authorized to administer them, and all the app $\diamond\diamond$ nces of civil society.



In the other we had an interregnum of chaos—totally without law, and were resolved into a mob by the passage of the organic act. We chose to adopt the former theory, first from the necessary of the case; second, because this people aided in passing these very laws for their own protection; and thirdly; from the analogies drawn from previous acts of Congress.

The true doctrine is this: The passage of the Organic Act changed the political but not the municipal condition of this people.

The former political laws, officers and rulers were put an end to by the passage of this Act. As to these, therefore, we have an interregnum; but on the contrary the municipal, civil, social, police laws and officers were continued. This is the doctrine of the United States Courts in several of Peter's Reports, including a case from Florida and one from Louisiana, to which we shall hereafter refer; also in 13 Texas, 663. It is in accordance, also, with the analogy of Congressional Acts, as in the Act organized Minnesota, Brightly's Digest, page 629, Sec. 24. It is provided that the laws in force in the Territory of Wisconsin shall continue until superseded.

This clause occurs in several other Organic Acts, although it is omitted in ours.

The law abhors an interregnum. In 8th Peters, page 308, Keene vs. McDonough, the Court holds as follows:

An adjudication made by a Spanish tribunal in Louisiana is not void because it was made after the cession of the county to the United States; for it is historically known that the actual possession of the country was not surrendered until some time after the proceedings and adjudication in the case took place.

It was the judgment, therefore, of a competent Spanish tribunal, having jurisdiction of the case, and rendered whilst the country through ceded was *de facto* in the possession of Spain, and subject to Spanish laws. Such judgments, so far as they affect the private rights of parties thereto, must be deemed valid. Surely this is good doctrine.

These magistrates and civil rulers were certainly officers of this region, in authority *de facto* if not *de jure*, and as such must be respected.

We might cite much more authority on this point, but it is useless, as the proposition is undoubtedly good law.

We now pass to the second proposition in this cause—to wit: the jurisdiction.

It will be observed that the original judgment debtor, complained after he was as condemned in the action, his debt by thereby discharged; after all this, Luce appeared in court and seeks to set aside the conveyance but may not return the money. No great equity lies with him, at least. But let us look at the service, as it is necessary for the record of an inferior tribunal to show the facts of jurisdiction affirmatively, and that being proven the proceedings have every intendment in their favor under the *maxim omnia rite acta*, and jurisdiction being shown, the regularity of the proceedings cannot collaterally be questioned. This service seems to us sufficient. The Utah laws are very liberal as to service, and expressly provide that the magistrate in his own discretion may satisfy himself that fair notice has been given.

In the act of 1836-7, page 14, section 32, they provide that writs, returns, etc., shall not abate, be quashed or reversed for any defeat or want of form, but the Court shall proceed and give judgment according as the right of the cause and matter shall appear to them, without regarding any imperfection, etc. It is fair to presume this care and supervision was exercised by the justice over the service, for the return itself may have been made more full than this record, possibly so far as to contain a copy of the power of attorney to White.

Certainly the service upon White, Luce being absent, as he evidently was, and the Utah laws providing for no special form of service on an absent defendant would have been the best possible service if was not only attorney at law, but fact held a power of attorney to sue and be sued and answer generally for his principal. This judgment is not void then, and cannot be collaterally attacked.

If irregular or voidable, appeal, writ of error, bill in equity would afford all necessary relief. The judgments of a Court would become a nullity if they could be attacked collaterally in this way, The Supreme Court of the United States, 10 Peters, page 472 et. seq. in *Voorhies vs. United States Bank*, is the following language:

We cannot hesitate in giving a distinct and unqualified negative to the proposition, both on principle and authority too well and too long settled to be questioned, that a sale by order of a competent Court may be declared a nullity in a collateral action, if the record does not show affirmatively the evidence of a compliance with the terms prescribed by law is making such sale. Again, if the proceedings are not conducted according to law, let the defendant move to set them aside. They further say it was a good ground for a motion to quash or suspend the proceedings for irregularity, if they had not been done in fact; and as the judgment was by default, perhaps the omission to state them on the record may have been good cause for a reversal on a writ of error. But on an inspection of these proceedings collaterally we can judicially see, only what the Court has done; not whether they have proceeded *incorso*

*ordine* erroneously; according to the proof before them; or what they have omitted or ought to have done. They have adjudged that the order of sale was executed agreeably to law; nothing appears on the record to impugn their judgment; it must therefore, be taken to be true in fact, and valid in law. Other extracts might be made.

The principles which must govern this, and all other sales by judicial process, are general ones adopted for the security of titles, the repose of possession and the enjoyment of property by innocent purchaser is, who are the favorites of the law in every court, and by every code. So say the court in *○○○○* cases. The great rule of law is this: first is the jurisdiction shown, if so, irregular proceedings are not void but voidable, and if voidable, cannot be collaterally impeached, but must be set aside by review in the same action.

In *Borden vs. State*, 6 English 519, similar views are expressed; also in 1st *Smith's* leading cases, page 817. And cases therecited—we find similar doctrines in *Jenks vs. Stebbins* in 11 Johns 220 and also in *Barber vs. Winslow*, 12 Wendell 102. Now, the jurisdiction of this justice extended to the sum of one hundred dollars and the record asserts the defendant to have been duly served. It also shows how this proper service was made.

*Prima facie*, then, this assertion of the representative character of White is to be taken as true. Vide *McLane vs. Huga* *○○In*, 13 Johns 184; *Cowan* 137; 6 *err* 621; 11 Johns 224; 12 Wendell 102.

This being a proceeding *in rem* and the property attached *quoad* this matter, the jurisdiction was completed. 15 Ohio 435; 10 Peters 447. In the case of *Fagg vs. Clement*, 16 Cal. 892, it is held that the return of the officer is sufficient primarily to establish the jurisdiction, and the Court says “the Justice having acted upon it, the judgment cannot be collaterally impeached.” The principle decided in this case is well illustrated by the antithetical character of two cases in California, to wit: *Lowe vs. Alexander* 15 Cal 296, and *Fagg vs. Clements* 16 Cal. 395.

In the former case the officer returned that he had served the defendant out of his township. Effect was given to this return, and it was held bad. In the latter case the officer returned that he had served the defendant in his township, and effect was given to this and it was held good. Here we have a case *○○○* the record does not disclose the return, *○○○○* the judicial integrity of the magistrate is pledged *○○* to the averment, that due service was had on the defendant, by his attorney in fact and acting *○○○○○*. We give effect also to this assertion of the record *○○○* hold that jurisdiction did exist.

Let the judgment be reversed *○○○○* cause remanded for further proceedings in *○○○○○○○○* judgment.

SUPREME COURT OF NEVADA  
TERRITORY

THE DAILY UNION

There is no date listed on the newspaper.  
Petition for rehearing indicate it was published on  
MARCH 22, 1863

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THE CHOLLAR G. AND S.M. CO.  
V.  
THE POTOSI G. AND S.M. CO.

This cause comes before us on appeal from the District Court of Storey county.

The character of the interests involved, as well as the importance of the questions presented, has induced us to give its consideration an amount of time and labor rarely bestowed upon any single cause by an appellate court. It has been argued by the respective counsel with a degree of ability and learning not often equaled and without the aid of which we should have had great difficulties in arriving at a conclusion satisfactory to ourselves. The transcript on appeal is exceedingly voluminous, and necessarily involves a large amount of labor in its examination. Much that can have no real bearing upon the case is embraced within it, answering no other purpose than to increase the costs of appeal and enhance the labor of investigation. Nevertheless we have waded through the huge mass and believe that we now have a proper conception of the numerous points presented for our consideration.

This was an action of ejectment brought by the respondents (plaintiffs in the court below) against the appellants for the recovery of certain mining ground situated in Storey county, near the city of Virginia.

Both plaintiff and defendant are corporations created under the laws of California. It is not at all necessary for us to give a full statement of the testimony given at trial, and we shall therefore confine ourselves to a brief reference to the leading facts upon which the parties base their respective claims. The plaintiff in its complaint claims to be owner and entitled to the possession of a piece of mining ground consisting of seven claims of two hundred feet in length and of the same width, making in the aggregate fourteen hundred feet in length from north to south and two hundred feet in breadth from east to west. After giving the boundaries and

description it alleges an unlawful entry and ouster by the defendant. The answer denies the unlawful entry and ouster and sets up ownership in itself of the *locus in quo*, by virtue of a location alleged to have been made on the 14th day of March, 1860. As shown by the testimony plaintiff claims under a location made by Webb, Kirby and others, in May, and perfected in June, 1859, under the then existing mining laws of Gold Hill District. [the next 14 lines are largely unreadable due to damage to the newspaper] Webb, by a proponent of the shaft, commenced the shaft, near and sunk it feet. Subsequently, 1850, Webb, Kirby and their entered into a contract with C and , to prospect the claims. One-half of the prospecting party continued to work upon the shaft sunk by Brown, and after sinking it to the depth of \_\_\_ feet commenced to run drills in various directions for the purpose of the ledge. Afterward in 18, they commenced a tunnel to strike the ledge, subsequently united with the Grass Valley in making a contract with certain parties to run a tunnel for their joint benefit. More or work has been done on the ground, or in tunnels running to it from the date of the location to the commencement of this suit. Now as we understand the defense, it consists of three grounds: First, it is denied that the Webb and Kirby party made any location. Secondly, that if such location was made at all it did not embrace the mining ground in dispute, but was west of it. Thirdly, that admitting it did include the disputed ground originally, it was subsequently abandoned, and that the owners transferred their claim to the ground lying to the west, so as to embrace what is known in the record as the "Big Croppings." A very large amount of testimony was introduced by defendant, consisting principally of acts and admissions of claimants under the Webb and Kirby location, especially those who acquired their interest by means of the prospecting contract before referred to. With a view to establishing those points, counsel for defendants sought to attach much importance to certain disputes alleged to have occurred relative to the upper ledge or "big croppings," about the time of defendant's location between members of what was then called the Chollar Co. and two other companies, who are known in the record as the "Beach & Chandler Co." and "Co." As we shall have occasion hereafter to refer to this testimony, we think it ary at present to state it with greater clarity. A verdict having been returned plaintiff, the defendant moved for a new the Court below, which motion was . The motion for new trial assigns and upon which it is made in the general of the statute, and a question might be raised is to whether such general statement of the grounds is legally sufficient. We do not choose, however, in this case to determine that point, but will proceed to give our views upon the most important of the several points presented, in the order in which they stand in the opening brief of appellant. It is assigned as error that the Court below permitted the witness White to testify, on the ground that in the

prospecting contract referred to above, he and his associates conveyed a portion of the premises to the prospecting party, with covenants of warranty. It is claimed that if the plaintiff should be evicted or kept out of possession of the ground in dispute by the result of this action, such eviction would constitute a breach of the covenant, and become a charge upon the witness White to the extent of the damage sustained. This position, of course, assumes that the stipulation in the prospecting agreement, is a covenant which runs with the land so as to come to the plaintiff by assignment. But this assumption is not, in our opinion, well founded—the instrument in which it is found not being under seal, is no more than a naked parol agreement, and its stipulations are not in any proper sense “covenants” respecting the realty, or “running with the land.” It is not to be denied that the strict rules respecting conveyances have been in some degree relaxed in this Territory and in our neighboring State of California, especially in their application to mining claims; and it may be admitted that each a verbal conveyance of such claims is valid and binding when accompanied by an actual transfer of possession. But the law of covenants for title has always been deemed highly technical in its character and dependent upon arbitrary and positive rules, and we know of no right or power in this Court to depart from those established rules and give effect to a contract, as a covenant, which all authorities agree in declaring to be no “covenant.” That such is the law, may be seen by reference to any elementary work upon the law conveyancing. All concur in defining a covenant to be an agreement under seal/ (Bacon’s Abridgment, Titles, Covenant, Deed; Burrell’s Law Dictionary, Words, Covenant, Deed; Bonvier’s do. do.) But admitting that we may be wrong in this, and that the stipulation of White to defend the title is a covenant running with the land, we are still of the opinion that the objection to the witness was not well taken. If it be a covenant at all, it is one of warranty—this is evident from the purpose of its insertion, and from the language used. No rule is better settled, by a long and unanimous concurrence of authorities, than that to constitute a breach of such a covenant, there must be an eviction, either actual or constructive. (Rawle on Covenants, p. 257-260, and cases there cited.)

The grounds upon which the exclusion of witnesses on account of interest is sought are usually three: 1st. When the witness offered will be benefitted or injured by the direct result of the suit. 2d. Where the record of the cause may be used as evidence for or against him in some other action. 3d. When the witness will necessarily be exposed to an action by the determination of the cause. There is no pretense, however, for referring the present case to either the first or third class in this enumeration, and hence if incompetent at all, the witness must have been so on the second ground, viz: of interest in the record as evidence. If the so called covenant ran with the land, it came to the plaintiff through the several mesne conveyances introduced in evidence, and the plaintiff could

sustain an action against the covenantors for a breach thereof, and, beyond doubt, if a recovery of judgment by the defendant in this action is a sufficient breach, then the record of such recovery would be evidence against the witness in an action brought by the plaintiff upon the covenant. We are satisfied, however, that a verdict and judgment for defendant would not constitute such a breach. The prospecting contract was made on the \_\_\_ day of August, 1859. The location of defendant was made and its adverse title commenced, as alleged in its answer, on the 14(1?)th day of March, 1860. Had it succeeded in obtaining a verdict, it would have been founded upon that location, and the rights at that time acquired. It is a peculiarity of the covenant of warranty, that not only an eviction is necessary to a breach, but such eviction must be a lawful one upon a paramount title existing before or at the time of making the covenant. It is partly in *presenti*, and partly in *fuluro*, that is, it is intended to be a protection against a *future* eviction under a present title. The covenantor in effect says, "My title to the premises is better than any other now in existence, and if you are ousted or dispossessed, by means of any prior or subsisting title, I will make good for your loss."

It is urged in argument that inasmuch as the plaintiff's title from the covenantors, it must recover it at all upon the strength of their title, and that if it should fail to recover, it must be on account of the defects of their title. In other words, that a recovery by plaintiff affirms, and a judgment for defendant disaffirms the validity of the covenantors' title. This is only true in part, for it is quite obvious, when we reflect upon the nature of mining property, and the tenure by which it is holden—that a purchaser of a mine who gets from his vendor a perfect and undisputed title, may lose it to a subsequent locator by non-observance of the rules and regulations enacted or prescribed for the purpose of preserving possession. One of the principal defences in this very case is the alleged abandonment by the plaintiff of the original location, and if the rule is as claimed to be by defendant's counsel, the witness White is bound to indemnify plaintiff for an injury resulting from its own neglect. The plaintiff, it is true, can only recover upon the hypothesis that a good title passed by the instrument containing the covenant—but the defendant might well recover a verdict without at all impeaching the validity of such title. But, we repeat, the question is not whether the original title of the witness is involved in this action, but whether a verdict and judgment for defendant, would under the circumstances of the case, amount to a breach of the covenant—and upon this point we think there is little room for controversy. Both upon principle and authority it seems clear that nothing but an eviction under a paramount title existing at the time of making the covenant will constitute a breach. The decisions of the English and American courts, as well as the elementary writers, concur in this. Vide Rawale on Covenants, page 351-361. Nokes Case 4 Cokes Reports, page

81. Kirby vs. Hunsaker, 2d Croke, page 315. Man vs. Archer, 3d Modern Reports, page 135.

In Giddings vs. Canfield, one Northrop had conveyed by deed a tract of land with covenants of seizen and warranty; the plaintiff claimed under a judicial sale and conveyance upon a judgment recovered subsequently to the conveyance by Northrop. The plaintiff then brought ejectment to recover the premises on the ground that Northrop's conveyance was fraudulent and passed no title as against a creditor. At the trial, the defendant, though deriving title from the conveyance of Northrop, offered in evidence Northrop's deposition, which was excluded by the court at Nisi Prius. Upon error to the supreme court, the decision was reversed, upon the ground that Northrop's covenant was not broken by an eviction under the judicial sale, because that title accrued after the date of the covenant. Says Chief Justice Hosmer in delivering the opinion of the court. "By this contract (the covenant of warranty) Northrop assured the defendant that he had a valid title to the property conveyed existing at the time of the conveyance." And again, "The covenant of warranty has long since received a construction not conformable to its letter, but to the spirit and intent of it, and an eviction to subject the covenantor [sic], must be lawful and by elder and superior title." Giddings vs. Canfield, 4th Connecticut Report, page 482 and 488, Wotton vs. Hele, 2d Saunders, and editor's note, 10 s 181 (a).

The objection to the notice of location of the Webb and Kirby ground is not well founded. This notice is doubtless vague and indefinite, though probably not more so than the great majority of such notices, both in this Territory and California. It has never been the practice of the courts to require in such cases any considerable degree of clerical accuracy or particularity of description. Such strictness, if it existed, would most certainly defeat the very object of the notice itself. For it is well known that in the large majority of case mining notices, especially in new and recently discovered districts, are written under circumstances which preclude accuracy of description and expression, and were we to require in them the same degree of certainty as is essential to deeds, patents and many other instruments, it would in  $\diamond\diamond\diamond$  many of the oldest and  $\diamond\diamond\diamond\diamond\diamond\diamond$  in the country. Counsel  $\diamond\diamond\diamond\diamond\diamond\diamond$  call the notice the miners  $\diamond\diamond\diamond\diamond\diamond$  but this is a misnomer. The true  $\diamond\diamond\diamond\diamond\diamond\diamond$  or source of his title is the act of location, which is a compound act, consisting of a series of subordinate acts, of which posting and recording the notice form a part. It owes all its virtue and effect to the mining laws of the district, and whenever, taken in connection with the other acts of location, it answers the purpose of pointing out and defining the ground claimed, it is a sufficient compliance with the laws. That the notice in this case was sufficient, when taken in connection with the other facts, to define the claim, is shown by the  $\diamond\diamond$ nant circumstance that the defendant's own



notice of location refers to it in fixing its boundary. It is urged, however, that the notice should be so far certain, that the record of it would impart informaties [sic] as to the exact locality and boundaries of the claim. So high a degree of certainty is not even required in in deeds, for few deeds ever existed which were so extremely certain and definite in their terms that a party could and the lands conveyed without the aid of any information save what they furnished.

Every man who goes to the record for information is presumed to possess a large share of local knowledge derived from sources independent of the records themselves, and this is especially true of mining records. The primary object of the notice is, that it be posted on the ground, so that, taken in connection with the other acts of location, such as planting stakes, working upon and occupying the ground, etc., it may inform all who are it that that particular ground is claimed. Recording of the notice is considered as of secondary importance-the principal object is no doubt to preserve the evidence of location, while at the same time it may subserve [sic] the purpose of giving information to persons wishing to locate-though in our opinion, the ground itself is the most proper and convenient place for persons so circumstanced to inform themselves whether it is vacant or not.

A number of special instructions were asked at the trial by the respective parties, a part of which were given and a part refused. Appellant objects to all of those given at the instance of the plaintiff, and assigns the giving of them as error.

The first special instruction merely states the rule as laid down in all the books respecting evidence of verbal admissions and declarations. Vide 1st Greenleaf, Ev S 700. See also Phillips on Evidence.

The court below also read in connection with the instruction the rule as laid down by Greenleaf, together with the qualification annexed for the purpose of qualifying the language of the instruction.

In giving this instruction the court below, we think, did not transcend its legitimate authority. No court is justified in assuming the duty of weighing the evidence—as this would be palpable usurpation of the functions of a jury, and would in the end cause the trial by jury to become a mere farce.

But where the law attributes a specific character or right to any particular kind of testimony, it is both the right and duty of the Judge to point out to the jury the legal rule, and call their attention to its operation. This is the daily practice of the courts, and they might well be accused of neglecting their duties were they to fail in this respect. Thus we see courts

of law constantly explaining to juries the legal difference between primary and secondary-direct and circumstantial-prima facia and conclusive evidence. In doing this, they merely declare the legal rule, and in no sense can they be said to invade the province of the jury. That the contents of the instruction constitute a legal rule, and not the mere enunciation of a natural standard for judging of evidence, is manifest from all the authorities.

They all give it as a rule of positive law, which it would be error in a court or jury to disregard.—vide Greenleaf, 1st vol.; Phillips; Milner vs. Turner's Heirs, 4<sup>th</sup> Munroe Rep'ts., 240; Perry vs. Gerbeau, 8th Martin, N.S. (Sa) 383; Molen vs. Molen, 1 Windell, 886; Law vs. Merrill, 6, 277.

That the instruction is correct in point of law, we think there can be no doubt. Of all evidence known to the law, hearsay evidence is the most dangerous—the most uncertain—most liable to be fabricated and to be tampered with. It is deemed, in the great majority of cases, to be of very little consequence, and never to be much regarded, except where, for want of positive proof, the Jury is necessitated to give a determination even upon such slight probabilities as may be laid before it. For, besides that this kind of testimony is weakened by its removal from its first source, it is liable from its very nature to important objections which must greatly diminish its authority.

Very few persons impose upon themselves such strict laws of veracity, that every word which drops from them in conversation, can be regarded as judicial testimony. Vanity, self-interest, talkativeness—a variety of motives, even the most frivolous—make men indulge themselves in fictions of this nature. And they think themselves the more secure, both as detection is not attended with any important consequences, and as their hearers never dreamed of sifting their story, or examining circumstances, so as to render detection possible. If such hearsay narratives have small authority at first hands, what weight is due to them when repeated after an interval of several years, by persons, too, who were in no way interested in attaining to the truth. The memory of man is never so tenacious as to retain with any tolerable exactness circumstances which enter merely by the ear; which could at first make but a slight impression upon them, and which  $\diamond\diamond\diamond\diamond\diamond\diamond\diamond$  interval, and any  $\diamond\diamond\diamond\diamond\diamond\diamond\diamond$  one's exper $\diamond\diamond\diamond\diamond\diamond\diamond\diamond$  no conversation,  $\diamond\diamond\diamond\diamond$  even while recent, by a small number of persons, without some material variations, and some times [sic] contradictions, in the circumstances.

Such is the character ascribed to hearsay evidence by law and reason alike, and we are at a loss to understand how a Judge, who in proper terms calls the attention of jurors to its inherent vices and infirmities, and warns them against its too great influence, can be said with

propriety to have erred in so doing. The present was eminently a case calling for the warning. A large portion of the evidence introduced consisted of the very class of loose declarations, uttered without thought, and scarcely remembered a moment afterward, by those who uttered them—which the authorities consider the most hazardous of all kinds, to the cause of truth. The parties to whom the allusions were imputed, in most instances either deny the facts, or seek to place a different construction upon their words, and thus the complication of conflicting testimony is added to the intrusive frailty of the testimony itself.

It is not necessary for us to determine whether the Court below ought to have given or withheld the qualification mentioned above. It is enough to say that it removed the only possible objection to the body of the instruction, viz: its possible tendency to mislead the Jury. We have elaborated this point thus far because of its great practical importance.

Very few cases of any magnitude are tried in the Territory, in which evidence of verbal admission and declarations is not given; and it is well, therefore, for the Courts and Bar to understand, that when such admission are old and stale, they are the most feeble kind of testimony, and ought not to weight much in the decision of a cause, except in the absence of a higher and more certain character.

It is well to remember, also, that these declarations are not such, as being made in advance of their location, and acted upon by the Potosi Company in making the same, would become of eminent dignity in the cause, but that they were made by persons not now parties, and to persons not now parties to the suit, and that the knowledge that they were made and were brought home to the owners in the Potosi Company. Many of them were made, also, by those who were not.

The second instruction is not liable to any serious objection. It consists altogether, of legal truisms, and we confess ourselves unable to see how it could have misled the Jury.

It was evidently drawn and offered with a view to meet the evidence respecting the claims set up by some of plaintiff's grantors to the Beach and Chandler and Dow & Co. ground. Of course, it plaintiff's original claim covered the western, instead of the eastern, lot of ground; or, if after locating the eastern lot, its grantors abandoned it and shifted their location to the western lot, —either fact would be sufficient to defeat plaintiff's actions, and the instruction contains not the slightest intimation to the contrary. Its sole tendency is to guard the jury against drawing an improper inference from the evidence—leaving it at perfect liberty to draw a proper one. To suppose the Jury to have been misled by it, is to ascribe

to its members a far lower standard of intelligence than the law ascribes to those who sit in judgment upon our lives and property.

The second instruction is also erroneous. A location “for quarts and surface” is, as we have already stated, a location of any quartz ledge or ledges found within the exterior limits of such location, provided no other exclusive method of location is provided by the mining laws.

The third instruction relates to declarations and admission by tenants in common respecting the common property, and embodies the true rule as we have always understood it.

Nothing, indeed, is more clearly established by the Common Law, than the rule excluding such hearsay altogether.—1st Greenleaf’s Ev., S. 176; Law vs. Brown’s 4 Cowen. 492; Cowen and Hill’s Note; Phillips on Evidence, part 1st. vol. 3. p. 397.

In California, however, it has not been the practice to exclude such evidence, but it has been generally admitted, though no clearly defined rule has been laid down as to its legal effect. Indeed, its admissibility can usually be vindicated upon the ground that verbal admissions are always good evidence against the person making them; and in the majority of cases, such person is a party plaintiff or defendant to the suit. The rule of total exclusion, though sanctioned by the Common Law, would probably be found to be unwise and unjust in its operation. While to give to one tenant in common the power to destroy his co-tenant’s estate and subvert his rights would be equally repugnant to our sense of justice and in conflict with the rule of law.

A medium between the two extremes, could it be established, would probably prove to be the most satisfactory in its results; but it is not for us to establish it. We can only declare the rule as we find it, and according to it, it is most certainly true that one tenant in common cannot by his declaration or acts prejudice the rights of his co-owners in a mining claim. It was suggested by one of the counsel for respondent, at the argument, that inasmuch as locating a claim was a joint act, that the declaration of one of the parties respecting the act of location, would effect [sic] his associates, but that the rule would not extend to the ownership and possession of the ground, because they are not of a joint nature.

We are inclined to think that the rule of the common law is well settled and we will not now concur in its modification.

Whether the declaration of one co-owner made while he is in possession of his own possession and in the absence of an absent co-owner may not be admissible

as part of *res gestae* it is not necessary now to decide, as there is no proof that any declarations were made in this case of that particular character.

The abstract correctness of the fourth instruction is admitted by appellant's counsel, but it is objected that there was no evidence upon which to predicate it. If that were so it could scarcely have caused any injury to appellant, but the truth is, this instruction was evidently asked for a similar purpose as that for which the second was asked—viz: to guard the jury from drawing an erroneous conclusion from the alleged attempt of some of the plaintiff's grantors to appropriate the back or western grounds to themselves. There was, moreover, some evidence of a separate location of the western lot by some of the claimants of the eastern, for the witness Chollar states explicitly, that while sinking the "old Chollar shaft" on the eastern lot, he prospected and kept what he called "a pick and shovel location" on the western claim.

In any event, this Court cannot undertake to reverse the judgment in a cause of such magnitude merely because of the Court below had given to the jury a correct abstract rule of law, there being no evidence to which it could apply. The propriety of the seventh instruction depends chiefly upon the mining laws in force in the Gold Hill District in May and June, 1859. By the general rule of law, the location or appropriation of the surface of the soil, carries with it a right to all mines of whatever kind that may be found beneath it. The mining laws may probably change or modify this rule so as to restrict the rights acquired by location to some particular element of the earth, and thus render it possible for a number of persons to acquire limited and special rights in the same piece of land. But this was not done by the mining laws of Gold Hill, which, on the contrary, evidently contemplated the location of superficial and rectangular claims for the sake of the float gold and placer washings, as well as the quartz ledges found within them. The ninth instruction involves the well known and oft declared rule, that work done upon any part of a claim, is in effect work done upon the whole. If a man holds by purchase a hundred claims lying in a body, then for the purposes of working they all become one claim. As long as they belonged to divers persons, each claim was required to have a certain amount of work done upon it, but the moment they become consolidated in a single owner, they lose their separate character and identity and become to all intents and purposes one claim.

The rule itself is an extension of the constructive possession of the common law, to mining claims and as in the one case, a person in actual possession of a part of a tract of land claiming title to the whole, is constructively in possession of the whole, however extensive it may be, and however numerous the former owners may have been; so in the other case, a person working in one section or corner of his claim is

constructively in possession of the whole, to the extent of his boundaries, however extensive his claim may be, and notwithstanding it may have formerly been subdivided into a number of separate claims owned by separate persons. [Vide Hicks vs. Bell, 3 Cal. Rep. 434. McGarraty vs. Byington, 12 Cal. Rep. 432. Packer vs. Heaton et al., 9 Cal. Rep. 670.]

The propriety of the 11th and 12th instructions is probably more open to objection than the preceding ones. Still we think, under the circumstances, that the Court committed no error in giving them. It will be remarked that the instructions assert nothing of themselves as to the situation of the Webb & Kirby ground. They merely declare that if defendant in its notice of location, bounded by the Webb & Kirby ground, it was estopped from denying the existence of such claim at the date of such location, and its situation as shown by such notice. Upon mature and careful investigation we can perceive no error in those instructions. They declare, what seems to be a branch of the ordinary law of estoppels, especially in case of rights acquired by location or appropriation. In the recent case of Pennery vs. Cory, decided by the Supreme Court of California, as we learn from a certified copy of the record, the same point was raised and determined. The Court below had instructed the jury to the same effect and in more emphatic terms even than the Court below did in this case, and the Supreme Court held that it was not error. Besides, the defendant pleads its notice of location in its answer, and of course must be taken to have adopted all of its recitals and admissions. Hence, as is well argued by one of respondent's counsel, if it is not estopped by the notice itself, it certainly is by its answer—and it matters very little how defendant is precluded from denying a fact, provided it is precluded. A number of instructions were asked for by appellant's counsel and refused by the Court. We cannot consume the time necessary to a full examination of them, but will briefly advert to each. The first is objectionable because it assumes, in effect, that the plaintiff, as a corporation, could only be entitled to the possession of the ground conveyed by the deed from the old owners to the corporation. The title to a mining claim may be transferred to a corporation, as to a natural person, by a parol [sic] conveyance: and a corporation may in like manner, as a natural person, sustain ejectment upon a prior possession without a paper title, and we see nothing peculiar in this case to change the rule. [Jackson vs. the Feather River Water Co., 14 Cal., 22. Penn. Mining vs. Owens, 15 Cal., 185. Atwood vs. Free, 17 Cal., 37.]

The fourth instruction we have already disposed of, in passing upon the admissibility of the Webb & Kirby notice. The sixth is open to similar objections as the preceding, it assumes what the Court had certainly no right to assume, that the Superintendent of the Chollar Company had authority to bind the corporation, with respect to boundaries, by his acts, declarations and admissions. There is no reason for saying even, that

his declarations could be used as evidence against the Company, much less, that they could operate as an estoppel. The 8th is open to several grave objections. It is calculated to mislead the Jury by the vagueness of its language. It's location would necessarily be Webb, Kirby and others made and there is no evidence in the Record. They first put their notices near the supposing it to be fourteen hundred south line of the Hale & Norcross. After found by measurement that they were too the Hale & Norcross line, and they at once their location, so as to take in the quantity of ground to which they were entitled. This is a common occurrence among miners, and it is merely completing a location already commenced. The instruction however, affected in regard the several acts as constituting two separate and independent locations and therefore properly refused. The 14th instruction was also properly refused. It is a matter of very serious doubt whether the Virginia Mining Laws could exact a forfeiture of a claim, held and acquired under pre existing laws, for non-compliance with their requirements. Such a forfeiture would be *ex post facto* in the highest degree, and liable to all the objections usually made to laws of that character. But whatever power the Virginia miners may have to impose forfeitures for non-compliance with established rules, they have not done so in this instance. Forfeitures being void, the Courts will not permit them unless the law is positive. This has been decided in California, in a case too, where the alleged forfeiture existed, not by a retractive [sic] but by a prospective rule.

Vide Dutch Flat Water Co., vs. Mooner—12 Cal. 534.  
 McGarraty vs Byington—Ibid, 431.

We come now to the general charge given by the Court upon its own motion. The exception to this charge is of the most general character, and the question arises whether under our law this Court can consider it. The wording of the exception is as follows: “We except to all the charges given at the instance of the plaintiff, in the whole of the charge given by the Court upon its own motion, and to the refusal of the court to give our instructions-- each and every one asked.” Our statute, after defining an exception, goes on to provide that, “the point of the exception shall be particularly stated, and may be delivered in writing to the Judge, or if the party require it, shall be written down by the Clerk.” When delivered in writing, or written down by the Clerk, it shall be made conformable to the truth, or be at the time corrected until it is so made conformable. Act of 1861, p. 245. It is, to say the least, doubtful whether the exception referred to is a substantial compliance with the law, even as respects the special instructions, given or refused, at the instance of the parties, though as each special instruction usually contains but a single proposition of law, we are inclined to regard it as sufficiently certain and specific as to them.

But as respects the general charge, it is certainly insufficient. The object of the law is manifest: it is intended both for the protection of the Judge, and the promotion of justice. The most careful Judge may easily fall into an error in the statement of a fact, or of expression which would be corrected instantly were his attention called to it, and it would be most unjust for a party to keep silence at the trial when he should speak, and afterwards for the first time in an appellate Court, suddenly, by means of a general exception, spring some accidental error, which would have been corrected at the time had the exception been special instead of general in its terms. Such a practice would often defeat the ends of justice, for a Judge may commit an error of law through inadvertence or mistake, which would in like manner be corrected, were his attention properly raised to it at the time. Nevertheless, were we at liberty to do so, we should be inclined to overlook the too general character of the exception, and consider the points attempted to be raised by it, for the reason that this is the first instance in this Court of an objection of this kind being made to an exception. According to our views however, we have no choice in the matter; the rule prescribed by the Statute is imperative, and not merely directory as contended by appellant's counsel. We cannot, as suggested at the argument, declare the statutory requirement as a rule of future practice, and at the same time withhold its application to the case before us. Such being our opinion of the law, we have no choice but to administer it as we find it, and therefore we cannot go into an examination of the alleged errors in the general charge. In this we are fully sustained by the authorities. The New York cases particularly, are very full and clear upon this point: *Jones vs. Osgood*, 21 S<sup>o</sup>lden. 233; *Hunt vs Mayher* 3, *Ibid*, 266; *Hart vs the R. and S. Railroad Co.*, 4, *Ibid*, 43; *Durk* vs. *Mathews*, 2, *Kernan*, 327; 4, *Kernan*, 314; 5, S<sup>o</sup>lden, 174; 6 *Smith's Court of Appeal*, (20, N.Y..) 463; 5. *Deni*, 218; 16 *Cal.* 248. Believing that we are precluded from determining upon the propriety of the general charge, we think that whatever its character may be, whether correct in point of law or not, would not become this Court as such, to intimate any opinion in regard to it. The last error assigned is the refusal of the Court below to grant a new trial, on the ground that the verdict is not sustained by the evidence, and this Court is asked to do what the Court below refused.

It must be an extraordinary case which would justify a compliance with this request. The law attributes to the verdicts of Jurors an almost sacred character, and will not allow them to be disturbed, except in extreme cases, and especially is this the case when the Judge who tried the cause is satisfied with the result, and refused to interfere with it. *Fanstall vs. \_\_\_\_\_*, 2 A.K. *Marshall*; *Fleming vs. Hollenback*, 7, *Rarbour*, 27; *Kuler vs. the F. Ins. Co*, 3, *Hill*, 251; *Dawson vs. Robbins*, 5. *Gilman*, 72; *Gliddon vs, Dunlap*, 28, *Main*, 379; *H. \_\_\_\_\_ vs Robb*, 1, *Cal.*, 373; *Taylor vs. McKinley*, 4, *Ibid*, 104; *Buell vs. Bear River Water Co.*, 5, *Ibid*.



84; *White vs. Todd's Valley W. Co.* 8, 444; 9, *Ibid*, 177; 12, *Ibid*, 432; 13, *Ibid*, 58.

The California Courts have manifested a peculiar unwillingness to interfere with verdicts in mining cases, and this unwillingness is certainly well founded. A Jury of the vicinage is far more competent to decide upon the rights of claimants to mines, depending as they do, upon local rules, usages and customs, than any Court can be. In a case of as much magnitude and importance as the present, we should feel inclined to refuse to interfere, even had errors been committed, unless such errors were of vital character. With what propriety then can we order a new trial upon the ground specified, when to say the very least, the evidence is conflicting? It would be carrying the superintending power of the Court to a most injurious extent, and would have a tendency to subvert the very objects and purposes for which Jury trials were established. But from our examination of the record, we are certainly not prepared to say that the verdict is in any degree opposed to the ~~facts of the case~~ than it ~~is~~ plaintiff's ~~rights~~ established, ~~and~~ the efforts of ~~the~~ succeed in sho~~wing~~ an abandonment, ~~between~~ some members of the Chollar ~~Company~~, and then Beach & Chandler and Dow Companies, did not invalidate their ~~claim~~sion, or have any effect in fact, but to prove that some members of the former Company knew very little of the true situation on their ground ~~and~~ disputes do not aid the defendant; for it is ~~the~~ testimony of the persons who had the best ~~of~~ of informing themselves, that the Chollar Co. ~~did~~ yielded to their opponents, and actually brought up the conflicting titles, to the back or western~~side~~. There is no pretense for saying that the persons ~~located~~ defendant's claim was ~~by~~ by these quarries, for if they knew of them they also knew of the manner of their adjustment. Upon the whole record then we believe the verdict of the Jury was right, and in accordance with the law and evidence in the case. In the rulings of the Court, we can perceive no material error—no such error as could have influenced the minds of the Jury so as to have led them to a wrong conclusion upon the facts of the case. Even were we of opinion that errors of law had been committed, unless such errors were of a vital character we should deem it our duty to affirm the judgment. The sole object of exercising the power of granting new trials is in the attainment of justice, and when the Court can clearly perceive that the ends of justice have been attained, and the same verdict might to be returned upon a new trial, it will refrain from exercising the power, *Graham & Waterman*, on new trials, vol. 3, p. 725, 862, and authorities cited. In our opinion there is no reasonable probability that a different result would follow if the judgment of the Court below were reversed and a new trial ordered, although it is proper to state that we were strongly impressed for a time with the idea that the initial or north-caster~~d~~ point, perhaps, was placed too far by the east by the Jury.

The above decision was concurred in by JUDGES TURNER and MOTT.

SUPREME COURT OF NEVADA  
TERRITORY

THE DAILY UNION

JUDGE JONES'  
Dissenting Opinion

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THE CHOLLAR G. AND S.M. CO.

V.

THE POTOSI G. AND S.M. CO.

ON APPEAL

This was an action in the nature of an action of ejectment to recover possession of certain mining ground in Storey county. The plaintiff obtained a verdict in its favor in the District Court, and the case comes before us on appeal from an order refusing to grant the defendant a new trial. The amount in controversy being very great, and accidental circumstances concurring, an extraordinary degree of earnestness, not to say passion, has been developed in the progress of the case. The Judge who tried the cause is charged to have thrown the weight of his character, personal and official, unduly into the scale, and to have prejudiced the result. By the vice of our judicial system, this Judge is a member of this Court—which is composed of the lowest number of persons to whose action the majority rule can be applied—and to that degree of interest which men naturally take in their own decisions, there is added the feeling provoked by the bitter criticism indulged in. He makes no secret of his intense interest in the result of the present appeal. Characterized as the case is, he conceives his judicial character as involved in it to some extent; and thus, most unwillingly, we are brought in contact with the passions the case has aroused.

With these passions we have nothing legitimately to do. As to acting in the cause we have no option; but the only question for our determination is, whether such error exists in the record as demands a remanding of the cause for a new trial. If error exist therein which may have prejudiced the result with the jury, the judgment should be reversed. If instructions were given to the jury substantially and materially incorrect; if such instructions were not merely abstract and immaterial, but stated the rules of law erroneously, and applied them in a manner calculated to mislead the jury, a new trial should be granted. We sit to determine the legal propriety and expediency of submitting the cause anew to a jury not to weigh the testimony as contained in the record merely, and to affirm or reverse the judgment according to our opinion upon the bearing of that

testimony, when considered in connection with rules of law correctly conceived, irrespective of the correctness or incorrectness of the instructions actually given for the jury's guidance. The jury are the triers of the facts at issue in a cause, made so by the law itself. No higher regard for substantial justice can be shown than by justly conceiving and stating and applying fully and fairly the rules of law applicable to the determination of issues of fact contested before juries. The realization of substantial justice in this manner should be the great aim of courts, not the attainment of results believed to be just and right by warping and misstating the law from sympathy with this or that side according to the supposed right and justice of the case. Nothing but entanglement and scandal can result from pursuing the latter course. It is especially the duty of Appellate Courts to see to it that no violence is done to the law; that the rules of law laid down authoritatively to juries to guide them in deciding contested issues, should be substantially correct and fairly applied, and to correct aberrations from a normal standard of judicial propriety. It is, of course, a substantial, not a strictly formal, correctness that is required.

Of the facts in this case I have nothing to say, except that they are not of such a character as to demand of us any other procedure than that of requiring the various issues of the cause to be fairly submitted to the jury. If they have been so submitted, the judgment must be affirmed; if not, it must be reversed. We sit not here to determine any question as to the preponderance of the evidence.

Before entering upon a consideration of the instructions given and refused, it may be well to dispose of the objection raised to the competency of Alexander White as a witness on behalf of plaintiff. He was one of the original locators of the Webb and Kirby ground, as it is called. This location was made in June, 1859. White and others, in August, 1859, executed an instrument, not under seal, conveying with warranty said Webb and Kirby ground. The plaintiff, the Chollar Company, claims by virtue of mesne conveyances from the grantees in this instrument. The defendant, the Potosi Company, claims by virtue of a location made in March, 1860; they made no claim whatever previous to that date. The objection taken to the competency of White rests upon this warranty alone. Saying nothing of any other view of the question, it is a sufficient answer to the objection to say that there could be no breach of a covenant of warranty except by an eviction, actual or constructive, by virtue of a paramount title existing before or at the date of the conveyance in which the warranty is contained. An eviction by title subsequent in its inception would be no breach. The defendant claiming by title having an inception subsequent to the instrument executed by White, no judgment in this action would be admissible in evidence in an action upon White's covenant or contract of warranty.

There are two main issues in this cause, as I conceive, around which most of the questions raised as to the rulings of the District Court naturally group. The first is as to the regularity and validity in the first instance of the location of the Webb and Kirby ground. The rulings of the Court bearing on this issue, that we are called upon to review, are these touching the original notice of location of the Webb and Kirby claim, its construction and effect, the proper mode of viewing and treating it; also the rules laid down as to the designation of the limits of the claim. The second leading issue is that of abandonment. In, considering this, we shall review all the instructions bearing on this question of abandonment, including the alleged estoppel based upon the notice of location of the Potosi Company. I shall reserve for the present any question as to the general charge of the District Court, and the formality and sufficiency of the statement of the grounds of the motion for a new trial, and also of the exceptions taken to the general charge and special instructions.

The notice of location of what is known in the cause as the Webb and Kirby ground, is as follows:

NOTICE.—That we, the undersigned, do claim seven claims of two hundred feet square each (200), including quartz and surface; commencing on the divide between Gold Hill and Six-mile Canon, running north. [Signed] A. White, [and six others]. Recorded June 27, 1859. [Signed] V.A. Houseworth, Recorder.

The above claim was taken up by the claimants the 15th May, 1859. The above is a copy of the record in the mining records of the Gold Hill Mining District. The admission of this notice in evidence against the objection of defendant, is one of the rulings of the Court assigned as error.

We will here set forth all the special instructions given and refused, bearing upon the first leading issue in the cause, as we have stated it. The Court, at the instance of the plaintiff, gave the following:

6. If the jury believe, that those from whom plaintiff derives title did locate a set of claims of rectangular form fourteen hundred feet and two hundred feet wide, as quartz and surface claims, before the alleged entry of defendant thereon, and that such location has never been abandoned or forfeited; then, that as against defendants, and all other parties, subsequent in time, they are entitled to all the quartz rock and ledges found within or beneath such rectangular location.

7. That there is nothing in the mining laws in evidence, or in the nature of quartz ledges, to prevent a party from making a surface or rectangular location for quartz ledges; and a party making such location is entitled, as against subsequent locators, to all mineral lodes or ledges found in or under such location, to whatever depth the same may extend.

10 That if the locators of the Potosi ground, at the time of their location, had knowledge of the notice of location of the Webb and Kirby ground, and if the contents of such notice were sufficient to put

them on their guard, and induce them to make inquiry relative to the true situation of said Webb and Kirby ground, then such locators were bound by the content's of such notice, and were also bound to make all reasonable inquiries necessary to fix definitely, the situation and location of such Webb and Kirby ground.

The Court, at the instance of the defendant, gave the following instructions:

3 That a mining claim must be taken up in accordance with the mining rules and regulations of the mining district in which it is situated.

5. That if, at the time of the location of the premises by the Potosi Company, there were no open, plain, and notorious monuments upon the ground, evidencing a previous appropriation, and no notice, and no actual possession of the premises by the Webb and Kirby Company, but the Chollar Company were at work on or near the ledge outside of the ground in dispute; and the Potosi locators had, at the time of their location, no actual notice of the claim of the Chollar Company to the ground so last located by the Potosi Company; the title to the Potosi Company became vested to the ground in dispute, and could not be subsequently divested, except by transfer or abandonment.

7. That, by the mining rules of the Gold Hill District, in evidence, the locator of a claim was required in place stakes upon the claim to mark the boundaries thereof, and that this is an essential requisite to perfecting the titles of such locator; and if the jury believe from the evidence that no stakes were on the ground up to the time of the location of the Potosi Company, and no actual notice given the Potosi Company of the limits and boundaries of the Webb and Kirby claim prior to the location of such claim by the Potosi Company, and the Potosi Company located the premises according to the rules, then the Potosi Company have priority by such location over the Webb and Kirby location.

The Court refused the following special instructions asked by the defendant:

2. A location for surface and quartz is not a location of a ledge; and if, subsequently to such a surface and quartz location another party locate a ledge with its dips and spurs, outside the limits or lines of such surface and quartz location, and discover the ledge, and strike it outside of said lines, then the locator and discoverer of the ledge has a right to follow the ledge, with its dips and spurs, wherever it may go, to the extent of his claim, even if it should run into the lines of the surface location.

4. That an essential requirement of the rules of the Gold Hill District, in which district the ground now claimed by said plaintiff then lay, is the recording of a notice describing the claims; and that the record of the notice of the claim in evidence, dated and recorded by Webb, Kirby & Co., on the 27th day of June, 1859, is void for uncertainty on its face, and insufficient to maintain the plaintiff's title, as against a subsequent locator of the ground entering thereon in accordance with the rules of the proper mining district.

6. That if at the time of the location of the Potosi Company the locators, or any one of them, went upon the ground and found there no evidence of previous appropriation by the Chollar Company and inquired of the members of the Chollar Company and the Superintendent in possession, if there was any claim to it by the Chollar Company and were answered that there was no such claim, and if, after and in consequence of such inquiry and response, the Potosi Company located the premises in dispute according to mining rules in force, such location gave them priority over the Chollar Company under the notice and record of Webb and Kirby.

8. That the notice and record of the Webb and Kirby location being vague and uncertain in the description of their claims and applying as well to other localities as to the ground in dispute, if at the time of the posting of the notice, as testified to by the witness, Alexander White, the same was placed on a bush, and the intention thereof and of the locators, was to appropriate the ground to the extent of 1,400 feet north of said bush and the position of said notice, then this was an election to treat the ground so lying 1,400 feet north of said notice, as that taken up, and the plaintiff and those through whom it claims, cannot shift the lines so as to include other ground than that so designated, and cannot recover for other or different ground; and that if no such claim as that just described, that is, for 1,400 feet running from said notice, has been recorded in the Recorder's office of the district, nor described in plaintiff's complaint the same cannot be recovered in this action.

9. That the object of a notice and the record thereof, is to give advertisement of the particular claim taken up by a locator, so as to apprise the public of such claim, so that the residuum may be appropriated by those entitled to take it up, and that a notice which does not particularize the claim sought to be appropriated, is void, and furnishes no foundation for an action.

It may be well to say here, that the Webb and Kirby notice was recorded in the Gold Hill District, which embrace then the region now included within the Virginia Mining District. The Gold Hill Mining Laws were adopted June 11, 1859. The Virginia Mining District was created and its laws adopted September 14, 1859. The "divide" between the canons is the boundary between the two districts. The ground in controversy lies mostly within the Virginia District.

It is contended most strenuously before us that the Court erred in admitting the Webb and Kirby notice and the record thereof in evidence. The view taken is that a record of a notice is essential to a valid appropriation by location of a mining claim; that this record must be of a notice "describing the claim;" that the notice in question in no sense describes any claim whatever; that it is consequently, void on its face for vagueness and uncertainty, and cannot legitimately play any part in the appropriation of mining ground, or be considered for any purpose whatever.

What bearing a failure to record a notice of location as required by the mining rules, may have on the question of the validity of the appropriation of a mining claim, it is unnecessary here to consider. Counsel are mistaken in supposing that the Gold Hill laws required a record of "a notice describing the claim." The matter is, however, of no importance, as I think, for if there had been such a requirement, the case would not have been substantially different from what it now is. The question would still have been, how describe? It is not just to criticize these notices of locations of mining ground with great severity. They are all very similar in form and marked with the same characteristics of vagueness and indeterminateness. It is going entirely too far to insist that a notice, to have any validity, "must either, by force of its words, unaided by anything else, identify the claim, or by reference to something else identify it." What identification of a claim is there in the ordinary form of a notice of location of claims upon a ledge or supposed ledge by its croppings? "We, the undersigned, claim four claims of 200 feet each on this ledge, running north." Here extensive evidence comes to the aid of the notice, showing upon what croppings, and upon what particular point thereon, the notice of location was posted. The notice alone, no position having been given to the claim on the surface of the ground, amounts to nothing. So with a surface or square claim. It is not to the notice of location that we are to look for that certainty of designation so earnestly insisted upon. It is to the defining of the boundaries and limits of the claim upon the surface of the ground. This defining of the limits of the claim on the ground, in substantial compliance with the requirements of the mining laws, is in such case, as essential to a valid, regular appropriation of the mining ground, as the posting and recording of a notice. Of course, it is of great moment that the designation of the limits should be in harmony with the notice. In this case this designation, so claimed to have been made, is in entire harmony with the general calls of the notice. The Court, therefore, properly admitted the notice in evidence.

However much we may lament that so much uncertainty and doubt attend the location of mining claims in the earlier stages of development of a mining region, and however clearly we may see that by pursuing different methods the litigation that seems to follow regularly upon the mines becoming productive, might be avoided, our duty is plain. We cannot build up on an ideal basis, but must adjust our rulings to the situation as it is made for us, and must act in view of the whole situation. The argument "ab inconvenienti," may, properly conceived, weigh heavily with us. The indeterminateness of mining notices have, however, but a slight influence in producing the uncertainty and doubt alluded to. They are not to be construed like deeds, but are rather evidence of the intent of the parties claiming under them, and constitute only a portion of the evidence upon which an appropriation of mining ground can be built up.



It remains to be seen whether the rulings of the Court touching the effect and bearing of the notice, and with respect to the designation of the limits of the claim, are substantially correct, and submitted these matters fairly to the jury. The appellant has no reason to complain of the manner in which the Court, in the special instructions given, submitted to the jury the whole question of the designation of the boundaries of the Webb and Kirby, or Chollar, claim. The tenth instruction, given at the request of the plaintiff, is not entirely unexceptionable. It was going very far, perhaps, to submit to the jury the sufficiency of the notice alone to put the locators of the Potosi ground on their guard; still, this instruction, taken in connection with the fifth and seventh special instructions given at the request of the defendant, placed this whole question before the jury in a manner as favorable to the defendant as could reasonably be demanded. The rules laid down in these instructions—the fifth and seventh—are certainly sufficiently stringent. There is no error, under the circumstances, in refusing the sixth instruction asked by defendant.

The propriety of the Court's ruling, as to the form and character of the location as claiming "quartz and surface" is a matter of more difficult determination. The District Court held that the Gold Hill laws authorized a rectangular location for quartz ledges: that "a party making such location is entitled, as against subsequent locators, to all mineral lodes or ledges found in or under such location to whatever depth the same may extend." Now there is nothing in the mining laws of Gold Hill, existing at the date of the record of the Webb and Kirby notice, expressly authorizing square locations for quartz ledges. The only provision in those laws on the subject of square claims was the following: "No claim shall exceed two hundred feet square, hill claims excepted, which may be reduced to fifty feet front." Those laws also contain this provision: "All quartz claims shall not exceed three hundred feet in length including the dips and spurs." It is also provided that: "All claims shall be properly defined by a stake at each end of the claim, with the number of members forming said Company and the number of feet owned." A record of claims is also required. Those laws, though rather vague, seem to distinguish between "quartz claims" on the one hand, and "hill dry gulch, and ravine claims" on the other. It is a fact with which we are acquainted historically, and the evidence of which is contained in the record in this cause, that the original locations of claims at Gold Hill were square locations. These were made before the adoptions of the Gold Hill laws on June 11, 1859. The initial steps, at least, of the Webb and Kirby location were taken prior to the adoption of these laws, though the record took place June 27, 1859. No question seems to have been raised in the cause, at least no action of the Court on the question has been brought to our attention, touching the customary law, if any, existing at the date of the adoption of the written laws in question. The Court seems to have based its rulings as to rectangular locations entirely upon the construction of the Gold Hill laws,

or upon the general law of the Territory. The ruling is peremptory, and is not connected with the submission of any question of fact to the jury. No question was raised even so far as appears, as to the practical construction, if any, given by the miners generally to those laws, which might perhaps have a bearing on their construction.

This question is important from this point of view. Where locations of mining ground are regular, and made in conformity with customary law in force, the Courts apply very liberal rules as to the constructive possession of the ground claimed. Now if the ruling of the District Court in the seventh special instruction given for plaintiff be correct in its present form, it is difficult to see why, in any of the mining districts, no matter what their rules may be, a rectangular location would not be as regular, and entitle the joint locators, throwing their claims together in any form, to “all” the ledges found, at “whatever depth” within perpendicular, descending lines, as fully as a location of claims upon a single ledge by posting a notice upon croppings and recording it as specifically authorized and required by the mining rules, would be a valid appropriation of the ledge to the extent of the claim thereto. To sanction the instruction given, in its present general form, would, I think, give rise to misconceptions, and lead to entanglement. Where ledges are blind, and their exact position, if they exist at all, is a matter of conjecture only, many different disputes might be avoided, probably, by the making of locations in rectangular form according to the Spanish and Mexican methods. It is not for us, however, to invent methods not authorized by the customs adopted by the miners themselves. It must be our aim to carry out the true spirit of those customs so far as they do not conflict with the general law. One of the causes, probably the most potent cause, of so much litigation about productive mining claims is the failure on the part of the miners themselves to act conformably to their own customs and rules.

These remarks are made not by any means by way of intimating that a rectangular location must necessarily fall as a valid appropriation of claims upon a ledge. I do not so think. I doubt the correctness of the instruction in the extent to which it goes, in giving to the rectangular locator, making claim under such laws as those of Gold Hill, as a matter of right, all ledges within the exterior limits of his claim, *usque ad inferos*, independent of any specific intent of such locator in making the location and in working upon the claim. A location in this form, under such mining laws as the old laws of Gold Hill, may amount to a valid appropriation of claims upon a ledge. Where a party actually intending to locate a claim upon a ledge, conjectured to run in a certain direction, makes his location in a rectangular form, defining his boundaries, and commences his necessary working with a view to the prospecting of his claim as containing a ledge, and all this working—accompanied with and actual claim of a ledge, showing to the world the actual character of the

claim in the intent of the parties—is done before other and possibly conflicting locations are made, and the claim by notice harmonizes perfectly with an actual claim to a ledge, and the work done shows a ledge to exist substantially as conjectured and intended to be covered by the location made, in such a case certainly it would be unjust to invalidate the location on a technical view as to its form. Although too at the time of the making of such a location the parties making it may have erroneously supposed that there were good surface diggings, and may also have intended to claim surface, still if the notice also claimed quartz, as well as surface, and parties, by their mode of working, practically treated it as a claim to a ledge, and evidenced that intent to the world by their open and notorious acts before adverse claims intervened, this erroneous supposition touching the value of the surface as such and the abandoned intent as to it would be entitled to very little weight in determining the question of the validity of the appropriation of the ledge. This whole question was not discussed on the argument of this case, and the views I have stated are those suggesting themselves to my own mind. Whether they are sound time will determine.

There was no error in refusing the second instruction asked by the defendant. A “location for surface and quartz” may be a location of a ledge under such laws as the Gold Hill laws. A Court is going too far in pronouncing it not to be so. It is a question depending, as we have seen, very much upon the intent of the parties, as shown by their acts and the manner of working their claims. What is said in the instruction about the right of a party discovering and locating a ledge outside of the limits of what is called therein a “surface and quartz location,” to follow the ledge to the extent of the claim, even if it should run within the lines of the square claim, may be correct or not, according to circumstances. In a case like the present this would depend altogether upon the validity of the claim of the plaintiff upon the ledge in controversy, as determined by the application of the rules above laid down. The evidence conducted to show that this ledge runs within the lines of the Webb and Kirby ground, as claimed by the plaintiff to have been originally located, except at and near the northeast corner of the claim, where a portion of the ledge near the surface of the ground lies east of the lines of the claim of plaintiff, as recognized by the verdict in this cause. There is no more than this one ledge within the limits of the claim. It is to such a state of facts that the instruction asked was intended to apply. It seems to me to be inapplicable in the forms it not assumes.

The Court committed no error in refusing the eighth special instruction asked. There was testimony tending to show that the Webb and Kirby notice was posted on the ground a short time before any attempt was made to designate the limits of the claim, and when it was the intent of the locators to claim north from the notice; that finding there was not

room to run northward without interfering with the Hale and Norcross location, they ran southward from the Hale and Norcross line, fixing their southern boundary very near the divide and leaving the notice in about the middle of the claim running north and south. So long as parties claim under a notice, there can be no impropriety in restricting their claim under it to one substantially consistent with its terms. The notice here does not claim north from the notice, but from the “divide,” the fixing of the exact line of which in this case was a matter of some difficulty. Now until the locators had given a definite position on the ground to their claim, they were entitled to locate it anywhere in harmony with their notice, provided they did not interfere with vested rights. They certainly were not concluded by a mere intent existing in the mind of the person posting the notice at the time of doing so, but unacted upon. The designation of boundaries was an essential portion of the location, which could not be said to be until that took place.

In this connection we may notice the action of the Court in refusing the 14th instruction asked by defendant. It is as follows:

14. That by the laws of the Virginia District, a claim lying in the Gold Hill District, before the formation of the Virginia District, and after such formation lying in said last district, is required to be recorded in the Virginia district; and if the jury believe that the premise sued for, or the greater portion thereof, lie within the bounds of the Virginia District, and the plaintiff failed to record his claim in said Virginia District, before the location of defendant’s claim, then so much of the plaintiff’s claim as lies in the Virginia District is invalid as against the defendant’s subsequent location, if the latter were made in accordance with said rules.

Where valid appropriations of mining claims have been made under the laws of a mining district, and, as frequently happens, a new district is formed out of a portion of the old, and the rules of the new district require the record, within a specified period, in its mining records, of claims lying within it, that had been previously recorded in the old district, a failure so to record would not work a forfeiture of the claim. The laws of Virginia do not provide for such forfeiture. They merely require the recording of such claims within thirty days after the enactment of this provision. If they had done so, it would not have made the case substantially different, it is conceived. There was no error in refusing the instruction.

We now come to the second branch of this case—the rulings of the District Court in the special instructions having a bearing on the question of abandonment. The Court at the request of the plaintiff gave the following instructions:

1. The law regards evidence of verbal admissions as the weakest and least satisfactory of all species of testimony, especially when a long period of time has elapsed since the making of such admission: and

they are to be received with great caution by the jury, and not allowed to countervail positive facts satisfactorily established by the testimony.

2. That a party does not lose that which is his own, by asserting a right to what is not his own. That, therefore, if those from whom plaintiff claims did locate the disputed ground before the defendant or its vendors entered upon the same, and retained possession of it by performing the acts required by the mining rules and regulations in force in the Mining District in which the claim is located, then they did not lose or forfeit their rights to said ground, because they or some of them, claimed or pretended to claim, other distinct and separate ground.

3. That when a number of persons own mining ground together, or as tenants in common, each party having an undivided share of the whole—then, that one or more of such common owners cannot, by their declarations or acts, prejudice the rights of their co owners or associates in such mining ground. That, therefore, even if it should be shown to the satisfaction of the jury, that a party of the owners of the so-called Webb and Kirby ground such assertion of title did not deprive their co-owners of their right to the same.

4. That if those from whom plaintiff derives title did locate and own the Webb and Kirby ground, they did not lose, forfeit or abandon the same by making a location of other ground to the west of said Webb and Kirby ground, unless they actually intended to relinquish their first location, or to make the second location a substitution therefor.

5. That abandonment of a mining claim is in all cases voluntary, though the intention to abandon may be proved by acts as well as by declarations. That, therefore, if those from whom the plaintiff derives title did locate and acquire possession of the disputed ground before the entry and location of defendant, then they could only abandon the same by a voluntary and intentional relinquishment of all their rights and claims to said ground, so that the same became once more vacant and subject to relocation by the first comer.

9. That work done upon one portion of a set of mining claims lying in a body, is considered by the law as work upon the whole; and, furthermore, that work done upon a tunnel running to claims is considered to be work upon the ground; that, therefore, if the jury believe from the evidence that the plaintiff or its predecessors owned two sets of claims, lying in a body, one called Webb and Kirby ground and the other called the Beach and Chandler location, then that work upon the Webb and Kirby ground was legally effectual as work upon the Beach and Chandler ground, and work upon the Beach and Chandler ground was effectual as work upon the Webb and Kirby ground, and work done in running a tunnel to the same was work upon the whole of such mining ground.

11. That if the defendants in their notice of location, bounded their claims on the west by the Webb and Kirby ground, this fact constitutes an acknowledgment of their part of the existence at that time of the Webb and Kirby location, and that the same had not been abandoned or become vacant; and they are estopped from proving that the same had

been abandoned or had become vacant at the time the defendants' location was made.

12. If the Jury believe from the evidence, that defendants obtained the information upon which they made their location, from the notice of the Webb and Kirby location, and bounded on the west by such Webb and Kirby ground, then, that defendants are bound by the contents of such notice, and by the situation of the Webb and Kirby ground, as shown by said notice, and are estopped from denying that the Webb and Kirby ground had been located, and that such location was then in existence.

The Court gave the following instructions asked by the defendant:

11. That if the work for the required time, or to the required amount, be not done on a located claim according to the rules of the district, then the claim so unworked is liable to be appropriated by a subsequent locator acting in pursuance of the mining rules.

13. That as the title of the holders of a mining claim on public land comes from possession, it may be lost by abandonment: and that abandonment may be shown by admissions or acts of the parties, or by conduct inconsistent with the continued holding of the claim."

The Court refused the following asked by defendant:

10. That by the proper construction of the mining rules of the Gold Hill District, and the rules of the Virginia District, work is required to be done for and towards the development of the particular claim located: that this may be done in the vicinity of the claim, and for the purpose of working the claim; but that work done upon a shaft, or in a tunnel or drift, for the purpose of working another claim above it is not work done on the spot where the work is done, so as to entitle the party to that spot.

12. That if the jury believe, from the evidence, the second location by Webb, Kirby & Co., notice of which was posted at Norcross south line, running 1,000 feet to the south, was intended to be a substitution of the first location testified to by the witness, White, this is evidence of abandonment of the first location and that if notice of said location was not recorded in the proper district, the same is invalid as against a subsequent locator of the same premises.

Of the evidence in the case in its bearing on this issue of abandonment I have only this to say: it was such as required the submission of this question to the jury with a fair and just statement of the rules of law applicable. The general question is of very great importance, for issues of abandonment are raised in almost all mining controversies; and it is highly desirable that the whole question should be properly considered and the law on the subject determined with reasonable certainty. We have no such system as the Spanish and Mexican authorizing the "denouncement" of mines supposed to be abandoned. Hence, unfortunately, this issue comes on to be tried and determined only in suits between parties, and often after very great expense has been incurred

under locations adverse and conflicting though perhaps not thought to be so when made.

When a valid appropriation of mining ground has been made by a regular location thereof, the possessory right thus acquired can be lost or relinquished in behalf of the general public in two modes only—by forfeiture and abandonment. In so far as the doctrine of estoppel can be invoked as bearing on any issue of abandonment, it must be strictly as between parties. Doubts have been expressed as to the validity of a law of a mining district declaring claims “forfeited” for non-compliance with the requirements of the mining rules. It is unquestionably true that these local rules and customs are subordinate to the general law, and have validity so far only as they are consistent with it, still where so consistent the obligations imposed by them should, in some manner, be enforced by the courts. As to the mode of appropriating mining ground in the first instance, and the extent of claim to be allowed each locator, these rules have an acknowledged validity, though here too the general law has its voice. The troublesome question has been to determine in what mode to enforce their requirements touching the working of claims, and the bearing of a failure to meet the obligations thus imposed on any question as to the loss of the mining ground formerly appropriated. Leaving out of view any questions as to the validity of forfeitures as such, it seems to me a due and proper enforcement of the mining rules can be had by considering them and any alleged non-compliance with them in connection with abandonment.

I make these remarks merely as preliminary to the determination of what I conceive to be the necessary elements of an abandonment of a mining claim. First, it must be in behalf of the public generally. Secondly, it must be the common act of the co-claimants, and participated in by all, either actually and affirmatively, or negatively and constructively. One co-owner of a mining claim or several co-owners, cannot abandon for all; nor indeed, can one lose his interest by abandonment proper, while the others retain theirs, though he may be disseized or dispossessed and lose his interest upon some other ground. Abandonment must then be a joint act. Thirdly, it may be voluntary, as where parties give up work upon a claim with no intent to resume it again. There the abandonment takes effect instantly, and the ground becomes open to the public. There may also be an abandonment which is not voluntary and intentional, at least not affirmatively so, as where the cessation of work upon a claim may not be accompanied with a positive intent not to resume it again, but is followed by a failure to resume the work within a reasonable time and with reasonable diligence. In determining what is reasonable diligence in such case, the requirements of the mining rules touching the working of claims should be regarded and enforced. If parties owning a mining claim cease to work thereon as

required by these rules, and other parties, during this reservation of work, make an adverse location, a good excuse should be shown for this relinquishment of work. All the surrounding circumstances are to be considered in deciding this question. There are other things beside “snow storms” that would justify parties in failing to comply literally with those requirements. The diligence required in such case in the resumption of work on the claim is that which is a prudent miner, respecting the obligations imposed by the mining laws, would, under all the circumstances of the case, show.

By submitting the question of abandonment to juries in this manner we incorporate into the law of abandonment of mining claims no element inconsistent with either the customary or general law. Indeed we harmonize them both by giving to abandonment only those elements which the general law applicable to the subject-matter would give, and by subordinating the local law to that general law.

We will not ~~omit~~, partly in the light of these views, the correctness of some of the rulings of the District Court, bearing principally on the question of abandonment. I say, bearing principally upon that question, for some of these instructions bear also on the disputed issue as to the original designation of the Webb and Kirby claim.

The plaintiff’s ninth special instruction, as it stands, seems calculated to mislead. It may be true that work done on one set of mining claims may properly be regarded as work done on adjacent set of claims “lying in a body” with the first set, and owned by the same parties; yet this intendment is warranted only where such work is done with intent to prospect and work the adjoining set of claims, or with such an intent as to both sets considered as a whole. The proximity at the two sets of claims alone, does not make all work on either set have relation to both. The intendment of the law is based upon the intent of the parties.

The Court did not err in refusing defendant’s 12th instruction. Saying nothing of the bearing of the posting of this second notice on the issues in the cause, the defendant had no right to call the Court to assume that the posting of the second notice at the Hale and Norcross line was intended as a second location. The instruction as asked does assume this.

The third instruction given at plaintiff’s request, seems calculated to mislead the jury. The original act of locating a mining claim by the posting of a notice, and recording it, and designating the boundaries, if it be a square claim—though usually performed by a portion only of the locators—is necessarily a common and joint act. On any issue raised as to the actual location of a set of claims, as originally made, declarations of such original locators, made at the time of making the location, and



characterizing and explaining their acts, are necessarily admissible in evidence, as forming a part of the *res gestae*. In so far as the intent of the parties at the time of making the location is a legitimate object of inquiry at all, it is difficult to see why such declarations are not admissible in favor of such locators and their grantees, as well and as fully as against them. The location being made, the mining laws of the District impose upon the locators the obligation to work upon their claims, with a view to their development. In the earlier stages of work upon claims, the organization of the mining companies is generally very loose. If the location be regularly made in conformity with the mining rules, the law allows the parties to invoke quite liberal doctrines of constructive possession. The acts of one co-claimant done on the claim are regarded in law as the acts of all. The law allows the co-owners generally to take advantage of acts done by a portion only of their number with a view to the development of the common claim. All acts done by such co-owner, or any of them, in prospecting the claims, and declarations made by them, or any of them, characterizing and showing the intent of such acts, are competent evidence both for and against such co-owners or claimants, as part of the *res gestae*. In so far as the intent of the parties in the sinking of shafts, running of tunnels, drills, &c, is a legitimate object of inquiry on any issue as to the position of mining ground claimed, or on any issue of alleged abandonment, their declarations at the time of the doing of such work as to the aim and intent of it, are competent evidence, upon the same principle, both for and against such co-claimants or their grantees. So, independent of any question of estoppel as between parties, the acts and accompanying declaration of the co-owners, or a portion of them, on the ground, in defining and designating the situation and extent of the ground claimed, and the title by virtue of which it is claimed; are competent evidence against themselves, their co-claimants or their grantees, on any issue raised as to the valid appropriation of the ground or the abandonment of it as originally claimed. Of course no one co-owner has a right to abandon for ing upon all, must be substantially, and by intendment of law, the act of all, as we have seen. Acts and declarations of parties adduced to show an abandonment must have all their significance by virtue of their relation to some act either actually, or by a reasonable intendment, the common act of all, as the cessation of work on a claim, the making of claim under a particular location, and to a particular piece of ground. In so far as they form part of the *res gestae* and are relevant on other grounds, they must be admissible in evidence against themselves, their co-claimants and their grantees.

The third special instruction given for plaintiff seems to be in conflict with these views, and if they are sound, the instruction must have suggested an erroneous view to the jury. The converging force of all these instructions, taken together, is palpable. In the 1st instruction given for

plaintiff, the Court denounces “verbal admissions” generally, in language similar to that which judges may sometimes be found to have used when referring to the testimony adduced in the cases they were deciding, but which no writer on the law of evidence can be found to have substantially adopted, notwithstanding the assertion of the District Judge in his general charge to the contrary. In the second instruction—which, properly qualified by other instructions, would have been correct enough and applicable ♦♦♦♦ Court tells the jury that “a party does not lose that which is his own by asserting a right to what is not his own.” In such a way as to create the impression that the assertion of right to one thing would not be evidence tending to show a want of right to another. In the third instruction, the Court, in substance, strikes out of the case all the ♦♦ and declarations that had been adduced in evidence in so far as they bore in favor of the defendant. What impression must it have made on the jury to tell them “one or more common owners cannot by their declarations or acts prejudice the rights of their co-owners or associates in such mining ground?” “Prejudice” is a vague term, and could scarcely have been understood by the jury to mean anything else than this: that the declarations and acts referred to were not worthy of being noticed, and should not be considered as tending to prove any state of facts prejudicial or unfavorable to the claims of the co-owners, or of the Chollar Company, the successor of all the claimants. The instruction could scarcely be understood to assert no more than that abandonment must be a common act of all the co-claimants, for it applies to all the issues in the cause. The truth is, a portion only of the owners or claimants of mining ground may do many things to the “prejudice” of their co-owners. To a great extent, in the earlier stages of development of a mining region, previous to the organization of mining companies, the claimants in the vicinity of a claim, in a marked sense, represent all the claimants. The possessory right to the ground is acquired by appropriation and possession; it may be lost by abandonment. All take advantage of the acts of each; the possession must be retained; work must be done on the claim. How decisive of the rights of all under such circumstances, may be the acts of those on the ground! This is not because one tenant in common of a mining claim, as such, has any right of control over the interest of his co-owner, but because of the existence, under certain circumstances, of a representative character for certain purposes, in a portion only of the common claim acts, based to some extent on the peculiarity of the mining law and the reason and fitness of the thing.

We now come to the conclusion of the eleventh and twelfth instructions, given at the request of the plaintiff. The claim of the Potosi Company is based upon a notice, the body of which is as follows: “The undersigned claim two hundred feet each on this ledge, with all its dips, angles and spurs, situated east of the Webb claim, and south of the Norcross claim.” There seems to be no possible point of view from which

the call in this notice for the “Webb claim” on the west can be regarded as working an estoppel as against the Potosi Company and in favor of the Chollar Company on any question touching the validity of the Webb and Kirby location or the abandonment thereof. This call may, unquestionably, be treated as an admission of the Potosi locators that the Webb and Kirby claim was then a valid, subsisting and unabandoned claim; but as such an admission it has no element of conclusiveness in it. There can be no *estoppel in pais* worked by it. It is not an admission addressed to the Webb and Kirby claimants. There was no privity between the companies, the instruction does not put to the jury the hypothesis of its having been acted upon by the Chollar company, if such action were possible; it treats the admission or call as conclusive as against the Potosi company as to the validity of the Webb and Kirby claim, simply by virtue of its own force and operation, irrespective of any question of its having missed the Chollar company or its grantors. Of course the notice admits nothing touching the exact position of the Webb and Kirby claim except that it lay west of the Potosi claim. The true view of this whole matter seems to me to be this: if the Potosi company made their location in such a way—and whether they did or not it is not for us to say—that it would have attached to the ledge in controversy if the Webb and Kirby and all other prior locations had been entirely out of the way as non-existent claims, it still attached to the ledge, except so far as priority of appropriation may have given superiority of right to other locators. In making out an alleged superiority of right on the part of the Chollar company, this notice and the call for the Webb claim on the west could play no other part than that of an admission, from the nature of the case, inconclusive and subject to explanation.

The whole question then resolves itself into this: The call for the Webb claim on the west being an admission only of the validity of that claim at that time, it was evidence in favor of the Chollar company. Its effect as an admission might be obviated in various modes. It might be shown that the Chollar claim had never had a substantial existence at all; that if it had had a valid existence it was an abandoned claim at the date of the Potosi location I do not see why an abandonment by the Chollar company might not be shown to have taken place after the date of the Potosi location. No matter who may have entered upon the ledge in controversy, nor under what pretence [sic] of right, the Chollar company could recover possession only upon the basis of showing a superiority of right, based upon priority of appropriation, a right too existing at the date of the alleged wrongful entry.

But it is urged that, admitting the call in the Potosi notice did not alone estop the Potosi locators or their grantees, to deny the validity of the Webb and Kirby claim, still the defendant by its answer in this suit pleads and relies on that notice as the foundation of its title, and is thus excluded

by pleading title under the notice from claiming anything inconsistent with its terms. This is precisely the same question we have been considering in another form. The defendant, it is true, claims title under this notice, but it claims the very ledge in controversy; and if the Potosi location under that location would have attached to that ledge-provided there had never been a Webb and Kirby location and the call for it had been purely imaginary-it still must have attached except so far as the Webb and Kirby claim as a valid, subsisting, unabandoned [sic] claim prevented such a result; and hence the plaintiff must recover upon the strength of its own right by showing priority of appropriation.

The Court, therefore, erred in giving the 11th and 12th instructions referred to. The claim is the Potosi notice of a ledge “situated east of the Webb claim,” through evidence tending to show the validity of the Webb and Kirby location at that time, is not conclusive upon the Potosi locators; not does it amount to a limitation in the notice itself of the amount or extent of the claims. That is determined in this case by the extent of each claim, 200 feet, and the number of them. So far as there was any interference or conflict of the two claims the superiority of right must be determined by the application of well-settled principles of law. After these instructions were given there was no issue left open except that as to the position of the stakes defining the Webb and Kirby claim.

It is a sufficient answer to the objection that the verdict is against the evidence to say that the objection as taken only goes to the *quantum*, so to speak, of the recoverer [sic] had; and the evidence was conflicting. Besides, there is very great doubt whether the statement in the motion for a new trial of the ground of the motion, in its bearing on this question, was not too general to entitle it to consideration. No general insufficiency of the testimony is asserted.

It is also urged that the sixth cause assigned for a new trial in the motion therefor—“Errors in law occurring at the trial and expected to by the defendant”—is too general to merit attention. Now any “errors in law” relied on must appear on the face of the statement, and must be pointed out with a reasonable degree of certainty by exceptions properly taken: otherwise they will not be noticed. With the observations of Chief Justice Field in *Barrett vs. Tewksbury*, 15 Cal., 156, I most heartily concur. The court in that case, however, gave only a prospective application to the decision, on the suggestion that a strict adherence to it would operate with great hardship upon parties whose records had already been made up, the general practice of the profession in the preparation of statements on appeal differing from that held by the decision to be essential. It resorted to a sweeping order allowing parties whose statements had been already prepared to file and annex thereto the grounds of appeal *nunc pro tunc*. In that case there would appear, from the report of the case, to have been no

statement of the grounds of appeal however general. I cannot think we would be justified in refusing to examine the record in this cause on a ground so purely technical as this is in its application to this case.

The principal questions in this cause are raised upon the instructions given and refused by the District Court, and upon the general charge of the Court. It is most strenuously contended that the exceptions taken to the action of the Court in giving and refusing special instructions asked, and in charging generally, were not specific enough to warrant us in reviewing the Court's action, in that particular. These matters appear in the record in this cause in the form of a phonographic report of the proceeding actually transpiring at the trial. Saying nothing of several objections taken to the general charge of the Court while the Judge was delivering it and the altercations ensuing thereon, the report states the exceptions to have been taken on both sides, as follows:

MR. HILLYER. We except to the refusal to give the charges asked by us, and to the giving of those asked by the defendant.

MR. REARDAN. We except to all of the charges given in behalf of the plaintiff; to the whole of the charge given by the Court upon its own motion, and—

THE COURT. [Interrupting]—and all the evidence given at the trial.

MR. REARDAN. If the Court will allow me, I believe I have a right to take an exception.

THE COURT. Yes.

MR. REARDAN. We except to all the charges given at the instance of the plaintiff; to the whole of the charge given by the Court upon its own motion, and to the refusal of the Court to give our instructions, each and every one asked.

Mr. Hillyer was of counsel for plaintiff; Mr. Reardan for defendant.

Notwithstanding the very great earnestness with which the objection is pressed, I cannot see how we would be justified in refusing to review the Court's action in the giving and refusing of the special instructions asked. Let us state the case fairly. At the close of a trial of a cause, and just as the case is about to be submitted to a jury, the court announces its rulings upon the giving and refusing of numerous instructions asked upon both sides. Counsel on one side, or as in this case counsel on both sides, arise in court, having perhaps never seen the instructions asked on the other side, and announce, in the customary way and in perfect good faith, that they except to the giving of the instructions given at the instance of the opposing party, and to the refusal to give those asked by themselves. Would any court be justified in refusing afterwards to review its action in such matters thus excepted to generally, unless a well known practice existed requiring a more specific form of exception? "Such general exception," it is urged, "is nothing more than an assertion that the instructions asked were all good and should have been given. If

any one of them was untenable the general exception fails.” Now the practice in the matter of handing up special instructions to a Judge on the trial of a cause, is familiar to all the members of the profession. No one thinks of accompanying such an act with a special request as to each instruction asked. If the argument addressed to us be sound, why would not a Judge be justified in refusing all of such special instructions, because no specially announced request accompanied each several instruction, if any one of them was erroneous or inapplicable? How would the matter be made better by putting the exception in the most particular form possible? How, it might be said, could such a mode of asking special instructions be more “than an assertion that the instructions asked were all good and should be given? If anyone of them were untenable,” why should or might not the general request to give them be denied by the refusal to give any of them? The truth is, this is, for the most part, a matter of good faith and fairness as between the bar and the bench. A just and fair Judge would facilitate, and judges generally do, the taking of honest exceptions. It is true the exception in this case might have a character more correct in point of form. They were, however, no doubt, taken the entire good faith on both sides; and taken under the circumstances under which they were taken, we could scarcely preserve a decent self-respect if we should refuse to review the action of the District Court in giving and refusing the special instructions asked.

With respect to the taking of exceptions to a general oral charge of a Court, we may say the subject is beset with great intrinsic difficulty. The ablest counsel would sometimes be at a loss how to frame an exception having the requisites so earnestly insisted upon in this case. It may be long, loose and rambling. The same erroneous views as to what are the real issues in the cause and the principles of law applicable may appear again and again in the charge. It may not contain a single sound legal idea, and may be characterized by nothing so much as an obvious tendency to confuse and bewilder a jury, and yet the drift of the Judge on the merits may shine through every word. An example of such a charge is furnished in the charge given by the District Judge of the First District, in the Childer’s case decided by this Court in June last. The jury may have the most inaccurate views as to their duties and rights imposed upon them, and that, too, more by the general spirit and tone of the charge than by any particular portion. The Judge may, in his talk, steer along close to the boundary line—necessarily not very clearly defined—which separates rules of law and rules of evidence and legal presumption on the one hand, from the principles of natural presumption on the other, trenching upon the province of the jury, and yet doing it in such a way that the jury will not know what is ‘aid down to them authoritatively as law, and what is merely the opinion of the Judge on the facts. What can counsel do in such cases? How can they state their objections to the charge and take specific exceptions, except by entering into an analysis and criticism of its general

scope and tendency? The hurry of a nisi prisus trial will not permit this; besides counsel would not be permitted to criticize and point out the supposed general or just bearing of such a charge; and if they were, the Judge would in all likelihood, have the best of the argument. Hence have arisen, in some jurisdictions where they enforce strict rules on this subject, the struggles between the bar and the bench, as to the form of exceptions to such general charges. In New York—and by the by, it is rather remarkable that the very learned counsel who elaborates this point cites none but New York authorities—although the strict rule in force there, in the form in which it is usually enunciated, is not of recent origin, but must be well known to the profession generally, this struggle is still going on—cases turning on this question in the very latest reports. It is not likely to cease soon. How could counsel take exceptions to the general charge of the Court in this case with the particularity of specification insisted on? It has chiefly the character of an argument addressed to the jury, mingled with an erroneous statement of the rule of law applicable. It is the general bearing, the obvious misleading tendency of such a charge considered as a whole that constitutes its most marked feature. Its misleading tendency may be as much due to its omissions as to its utterances. Its whole animus may be bad. How can counsel take exceptions to these features of a charge with the particularity alleged to be necessary?

I do not mean to intimate by these remarks that it is an allowable or fit practice to take general exception only to the general oral charges of courts. I think the exceptions should be as specific as a just view of each case would require and allow. General exceptions may, however, be sufficient in particular cases, and I think the exception taken in this case was sufficient. But, apart from any questions as to the most proper form of exceptions in a case like the present, there is a consideration of overpowering weight with me, and that is the gross injustice—in a more matter of practice like this—where a departure from a proper mode of procedure has been general; and has taken place with the indirect sanction at least of courts—of making a sudden return to stricter methods apply retrospectively, and prevent a proper review of the action of courts upon some view purely technical. To sanction the working of such hardships can scarcely be made to consist with a regard to substantial justice. The Supreme Court of California in *Barrett vs. Tewksbury*, 15 Cal. 356, worked no such injustice by their decision. So, too, the Supreme Court of the United States, in *Carver vs. Jackson*, 4 Pet. 40, pursued a course such as should be pursued here, granting that the exception as taken is informed. That case turned on appeal on the correctness of a very long and remarkably able charge of the Circuit Court of the United States for the Southern District of New York, in which the testimony was extensively reviewed. To this charge only a general exception to each and every part was taken. Touching the character of this exception, Mr. Justice Story, in delivering the opinion of the Court, makes the following remarks:

We take this occasion to express our decided disapprobation of the practice, which seems of late to have gained ground, of bringing the charge of the Court below, at length, before this Court for review. It is an unauthorized practice, and extremely inconvenient both to the inferior and to the appellate court. With the charges of the court to the jury upon more matters of fact and with its commentaries on the weight of evidence, this court has nothing to do. Observations of that nature are understood to be addressed to the jury, merely for their consideration as the ultimate judges of matters of fact, and are entitled to no more weight or importance than the jury. In the exercise of their own judgment choose to give them. They neither are, nor are they understood to be, binding upon them as the true and conclusive exposition of the evidence. If, indeed, in the summing up, the court should mistake the law, that would justly furnish a ground for an exception. But the exception should be strictly confined to that misstatement; and, by being made known at the moment, would often enable the court to correct any erroneous expression, or to explain or qualify it in such a manner as to make it wholly unexceptional or perfectly distinct. We trust, therefore, that this court will hereafter be spared the necessity of examining the general bearing of such charges. *It will in the present case be our duty to hereafter consider whether the objections raised  $\diamond\diamond\diamond$ the present charge can be supported in point of law.*

The court did, accordingly examine fully the charge in question under an exception not varying materially in form from that taken in this case.

We now come to the consideration of the general charge of the Court. To charge juries properly, in cases of any complication, is the most difficult of all tasks imposed upon a judge. To state the issues correctly and fairly, to collate and group with perfect impartiality the evidence adduced on both sides to support those issues, if he should attempt it all, to enunciate and apply fully and justly the rules of law bearing upon the decision of those issues, to go as far as the law allows and requires, and no further, in setting forth the rules of legal presumption and of evidence, in short, to say everything that the law has to say on the case as it stands before the Court; and to let, the matter rest, there, paying a proper respect to the rights of the jury as the exclusive Judges of all questions of fact, require a wisdom rarely found. A reasonable approximation to such a result is all that can be required and enforced. A fruitful source of  $\diamond\diamond\diamond$  between judges and lawyers arises out of invasions, or alleged invasions, by the former of the province of juries. The true theory of a trial is that the jurors being the exclusive judges of all questions of fact, the judge has no right to obtrude his "advice" upon them, or to charge them touching such questions. He stands as the embodiment, for the purposes of the trial, of the law alone, and so far as it as any rules to announce he should give expression to them fully and impartially. He should know no parties, —sympathize with none. It is with a profound meaning that justice is symbolized as sitting with bandaged eyes. No doubt many precedents can be cited warranting this invasion of the



province of juries. In England, where the rights of juries as against courts have never been vindicated except in criminal cases of a political character, and then by the powerful pen of Janus—it is the general practice to give “advice” to juries freely on disputed questions of fact, and substantially to dictate verdicts. There is some excuse for this in England, where judges come to the bench only after long and laborious training at the bar. This right of charging and advising juries on facts also exists in some, perhaps most, of the older States of the Union. In most of the newer States, it is believed, the feeling of protest against the exercise of this right, or rather power, has impelled the legislative power to intervene and restrict the power of the judges within what are conceived to be due and proper limits. The State of California has fallen in with this general tendency, and, by its Constitution, has forbidden the charging of juries with respect to matters of fact. This is a necessary and salutary restraint upon caprice. Our own Legislature would seem to have adopted the same more just view of a judge’s power and duty in this matter. [Laws Nev. Terr. 1850, sec. 165.]

I shall say very little concerning consideration of it in its general aspects. It is certainly not characterized by that justness of view and impartiality so imperatively demanded. The opinion of the Judge on the merits is shown throughout. It is palpable on the face of the charge that, at the time of giving it, he, either consciously or unconsciously, regarded the defense of what seemed to him so plain a case preposterous. Certainly the jury must have received that impression. The most striking characteristic of it is its thorough one-sidedness. So far as it could produce any impression at all—and it must have been all powerful in this regard—it must have thrust upon the jury the belief that, legally considered, there was only one side to the case. Not content with asserting, in the special instructions, that “a party does not lose that which is his own by asserting a right to what is not his own” and applying it in a manner somewhat calculated to produce the impression that the assertion of right to one thing might, would not in any way tend to show a want of right to another; with averring that one or more common owners of mining ground cannot by their declarations or acts prejudice the rights of their co owners, so as to impress the jury with the belief that such declarations and acts could not be considered by them as tending to prove, or as having a legal sufficiency to prove, the existence of any state of facts unfavorable to such co owners or to the Chollar Company claiming under such co owners, although it also claims under the parties doing these acts and making these declarations; not satisfied with throwing out of the case, incorrectly as we have seen, any issue as to the original validity of the Webb and Kirby location, and also any issue of abandonment of such original location, by invoking an estoppel based upon the calls in the defendant’s notice, thus reducing the open issues in the case to the one issue touching the boundary line as originally fixed by plaintiff’s grantors,

and throwing of the case the acts and declarations of a portion only of the co owners [sic] as bearing on even this branch of the case; the Judge, in his general charge, seemingly unconscious of the legal effect and bearing of these rulings, proceeds to denounce these acts and declarations without stint. He commences his charge with a denunciation of them, and as if fearful that the Jury might attach some importance to them—even although the only issue left open was the one as to boundary stakes of the Webb and Kirby claim—he recites to them again and again in his charge, and finally winds it up by a p~~o~~ on Billy Chollar. No doubt all this took place from ~~o~~ sympathy with what was supposed to be the right of the case; yet another Judge, just as honest, allowing his sympathies to run in a different channel, might have departed as ~~o~~ly from the normal standard of impartiality ~~o~~ the charges upon the alleged vagueness and indeterminateness of the plaintiff's notice, by descanting upon the necessity of certainty in making of locations and in the designation of boundaries, &c., until, at last—by what would truly be only an argument in the case; but which might, from the mode of its enunciation, appear to the jury as authoritative as the law itself—he might have produced the impression, the profound conviction, that the security of mining properly generally depended upon throwing the plaintiff's case out of court. It is perhaps purely accidental that just such an untoward result did not take place in this case. All this is wrong, radically wrong. A Judge has no right to have biases, no right, in the trial of causes, to give ~~o~~ to his sympathies, no matter how spontaneous nor how honest they may be.

I have discussed thus extensively this case, and the questions of law involved in it, because of its immense importance, not only to the parties to the suit, but because it is, so to speak, a test case. By our course in it is to be determined, in a very great degree, the mode of building up a jurisprudence in this Territory; whether ~~o~~ shall ~~o~~, or an intelligent regard for the law. The views I have announced represent my present convictions as to the law on some of the questions often broached in our mining controversies. Whether they are sound future discussions will determine. The annunciation of them will at least serve as points of departure.

The judgment of the District Court should in my opinion be reversed and the case remanded for a new trial.

HORATIO M. JONES

SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

FRIDAY, SEPTEMBER 11, 1863

Opinion of CHIEF JUSTICE TURNER

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JAMES PEREGRINE, Plaintiff and Respondent,

v.

JAMES ALLEN and SARAH ANN ALLEN, his wife, R. R. BEACH, BURRIS & McBride, PENROD & LEWERS, and S.A. CHAPIN, Appellants.

This cause comes to us on appeal from the Third Judicial District. The chief controversy arises upon a question of interest; a short analysis of the pleadings will present it in the proper form.

James Peregrine complains of the above named defendants, and for cause of action herein shows to the Court that on the 26th day of October, A. D. 1860 at the county of Carson, and Territory of Utah, but now the county of Lyon, in the Territory of Nevada, at the special instance and request of the defendant, James Allen, he, the said plaintiff, loaned to said Allen, the sum of five thousand (hundred) and fifty dollars, to become due in ninety days thereafter, and to bear interest at the rate of six per cent per month from the date of said loan until paid. He adds other recitals in the usual form.

Plaintiff then alleges, that an indenture by way of mortgage, to secure said money and interest, was duly executed to him, on certain premises situate in Silver City in said Territory. He makes defendants to his petition Allen and wife, as mortgagers, Burns & McBride, and Penrod & Lewers, subsequent lien-holders on the same premises, and S. A. Chapin a subsequent purchaser of the same.

The various defendants answered in usual form. The answer of Chapin particularly denying that interest at six per cent per month was legally due on said notes after their maturity, but alleges that after due, they should draw no more interest than ten per cent per annum.

The said cause was referred in open Court, and consent of parties to Jonas Leely, Esq., "to take the testimony, find the facts and report a judgment" – (decree).

The testimony was duly submitted to the referee, and upon the same he presented the following findings:

I.

That the said plaintiff did, on the 26th day of October, A. D. 1862, loan to the defendant James Allen, the sum of \$550 which the said James Allen agreed to repay the said plaintiff in ninety days from the date of said loan, with interest at the rate of six per cent, per month from the date of said loan until paid; and that in order to secure to said plaintiff of the payment of said money and the interest thereon, at the time and rate above stated, the said James Allen and his wife, executed a mortgage as aforesaid, that the said mortgage on the face thereof, purports to be a security for the payment of said sum of \$550.00 in ninety days from the date thereof, with interest at the rate of six per cent, per month, that it was the intention of the parties, to said mortgage, that it should secure said sum and interest, from the date of the loan until fully paid, and the failure to so express their intentions in said mortgage, was the result of a mistake or inadvertence.

II.

That on the 3d day of November, 1860, the said James Allen and Sarah Ann Allen made and delivered to said Penrod and Lewers, their certain note of that date for the payment, of the sum of \$350 in sixty days from the date, with interest at the rate of five per cent, per month from date until paid, and that the same was secured by a mortgage on said property, as mentioned in said plaintiffs' complaint, from said James and Sarah Ann Allen to said Penrod and Lewers, as is set forth in the answer of said Penrod and Lewers.

III.

That on the 24th day of May, 1861, said James Allen did execute, and deliver, to S. G. McCullough his promissory note of that date, for the payment of the sum of \$824.83 three months after the date thereof; that the payment of said note was secured by a mortgage on certain property, expressed in said mortgage, to be lot No. 23, block No. 11, in Silver City; but that it was the intention of the parties to said mortgage, that the same should cover the property mentioned in the said plaintiffs' complaint and mortgage and no other as is set forth in the answer of said defendants, Burus and McBride; and that the said McCullough did on the 3d day of October, 1861, duly assign said note and mortgage to Burus and McBride, and that said mortgage is a lien, upon said property described in said plaintiffs' complaint.

## IV.

That the said James Allen and Sarah Ann Allen did on the 25th day of January, 1862, conveying said premises mentioned in said plaintiffs' complaint, to said S. A. Chapin, as set forth in his answer herein.

## V.

That there is due to said plaintiff from said defendant James Allen, on said mortgage, on this 7th day of August, A. D. 1862, the sum of eleven hundred and fifty-four dollars (\$11.54).

## VI.

That there is due said defendants, Penrod and Lewers, on their said note and mortgage, the sum of three hundred and sixty-eight dollars and eighty-one cents (\$368.81).

## VII.

That there is due said defendants Burns & McBride, on their said note and mortgage mentioned in their said answer, the sum of six hundred and fifty-four dollars and eight-three cents (\$654.83).

## VIII.

That all of said mortgages are valid, and subsisting liens on said property, for the several sums aforesaid due thereon, and the said S. A. Chapin took said conveyance of said property with full knowledge of the existence of said mortgage, and subject thereto: as well as with full knowledge of the rate of interest, which the said loan to the said defendant Allen, by said plaintiff was to draw, and the mistake or omission so made in plaintiff's mortgage.

## IX.

That the said liens, are in point of time, as between the respective parties, and should be discharged as follows, to-wit:

- 1st. The lien of said plaintiff to the extent of \$550.
- 2d. The lien of said Penrod & Leweres to the extent of \$368.81.
- 3d. The lien of said Burns & McBride in the amount of \$654.83.
- 4th. The lien of said plaintiff for the remainder of his said debt, to-wit:  
the sum of \$604.00.

And a judgment or decree, is reported, directing a sale of said mortgaged premises, and applying the proceeds arising from such sale, to the extinguishment of said liens, and debts, in the order above stated, which is herewith filed.

In pursuance of said report, being filed, the Court approved and confirmed the same and thereupon entered a decree in the usual form finding the facts the law as reported by said referee, confirming the

priority of liens as he had reported the same, approving his amounts and ordering a sale.

In said decree the Court finds “inter alia” that the said Samuel A. Chapin, took said conveyances of said property, with full knowledge of the existence of said mortgages, and subject thereto, as well as with full knowledge, of the existence of said mortgages, and subject thereto, as well as with full knowledge of the rate of interest, which the said loan to said defendant James Allen was to draw, and the mistake or omission made in plaintiff’s said mortgage.

Thereupon a decree was entered “pro forma” for the sale of said premises and distribution of the proceeds in pursuance of said report.

The assignment of errors in this case, is founded upon three things:

- 1st. The admission of improper testimony
- 2d. That the facts do not support the findings of the referee, and
- 3d. That improper interest has been allowed.

In all of these assignments we think the appellant commits an error. No illegal testimony prejudicial in his rights or injuriously affecting his case was admitted.

Secondly. The evidence bring somewhat conflicting, we would be loth to review it, scrupulously, unless wrong had been done; but on the contrary, we think it supports and justifies the findings of the referee.

Thirdly. The question of interest would give us some embarrassment were it not for the peculiar circumstances of this case. It is true that the various District Courts of this Territory have unanimously decided that a note due sometime after date, and drawing a specified rate of interest monthly and not stipulating that the interest shall run “until paid,” has been held to draw the interest expressed in the note, until its maturity, and that after maturity, it shall draw legal interest – not exceeding ten per cent. per annum – upon the ground that it is all a matter of contract: and if parties desired their paper to draw the interest named “until paid,” they would have so provided. The Supreme Court of this Territory, has never yet given its authority to this construction, but when the question is presented we doubt not that it will adopt the rule aforesaid. We are aware that the converse of this rule has been followed by the Supreme Court of California, but we have seen fit to follow the decisions in the United States Courts upon this subject, and those of other States who agree with this doctrine.

This judgment is right; but the reason given is, perhaps, somewhat questionable. Mistake or inadvertence in drawing this paper, is not the proper ground upon which to base the ruling. It is better supported by the

various facts in the testimony which show, knowledge, consent and contract, upon the part of Chapin. He bought the premises with these charges on it. He computed them at the time, agreed to pay them in full, and pay part of them, obtained the premises at a greatly reduced price on account of these liens, and retained in his hands a portion of the purchase money, coequal in amount with the sum of these liens, as computed by the referee. This money should properly be subrogated to the payment of these liens in his hands as a Trustee, and in pursuance of his contract.

Let the judgment be affirmed.

SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

FRIDAY, SEPTEMBER 11, 1863

-AND-

DAILY UNION

FRIDAY, SEPTEMBER 15, 1863

Opinion of CHIEF JUSTICE TURNER

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THE PEOPLE

V.

S. AND JOHN STRAUSS

This cause comes to us on appeal from the District Court of Storey county.

Solomon and John Straus were indicted by the Grand Jury of said county, at their September term, A.D. 1862, for a violation of the criminal statutes of said Territory, and by said indictment it is charged – “That on the first day of August, A. D. 1862, and on divers other days and times, between that day and the taking of this inquisition, in Virginia City aforesaid, in the county of Storey aforesaid, a certain common nuisance, in and upon the lands and tenements of them the said Solomon Straus and John Straus, upon which the said Solomon and John Straus carry on the business of slaughtering and herding cattle, sheep and hogs, situated at and in Virginia City, near to certain public passage ways and streets, leading from said Virginia City to Flowery District, and also the dwelling houses of divers citizens of the United States in the Territory of Nevada, did willfully cause, suffer, create and maintain, by then and there causing and suffering great quantities of offal and entrails of beasts, manure and stinking filth, solid and fluid to collect, stagnate, ferment and be mixed together, in and upon their said lands and tenements, used for the purposes aforesaid, and from said offal, entrails of beasts, and offensive and stinking substances and filth, did willfully [sic], cause, suffer and permit, divers, noxious, offensive, deleterious, unwholesome and unhealthy vapors, exhalations and smells to arise, be emitted and sent forth, and then and there to poison, contaminate and destroy the atmosphere above, around and near the same tenements and lands, and in, upon and over the public passage ways and streets aforesaid, over which the good citizens of the United States, in the Territory of Nevada, pass and repass every day,



to-wit: to the number of one hundred daily, and near which many citizens inhabit, live and work, to the great damage and common nuisance, of the good people of the United States, in the Territory of Nevada, inhabiting, living and working, in the neighborhood thereabouts," *contra statutam* in the usual form.

A second count appears in said indictment, charging the same offense, substantially, and differing only in its technical averments. Said defendants, being arraigned plead not guilty, and were represented by the counsel.

The cause was fairly submitted to a jury, and the jury returned a verdict of guilty in due form.

The following instructions were given by the Court:

1st. Was the trade or business carried on by defendants conducted in so negligent, careless, and uncleanly a manner, as unnecessarily to make it offensive and dangerous to the health and comfort of persons living in the neighborhood, or passing their place of business, on a public highway.

2d. Was the business carried on by the defendants established before any highway or thoroughfare was opened and used in the immediate vicinity of defendants' slaughter house, and occupancy of the grounds, in the immediate neighborhood of defendants' slaughter house and yards.

Motion for a new trial was made and overruled by the learned judge then presiding.

And thereupon a sentence was passed as follows: Fining defendants fifty dollars each, and directing the sheriff to procure the removal of the premises, so condemned, to a point beyond the city limits of Virginia City, within ninety days from date.

The defendants filed a bill of exceptions to the aforesaid in instructions, and appealed said cause.

No assignment of errors, points of error, petition in error, or brief was filed. Upon argument, the question was mooted whether in a criminal case like this, any such things were necessary.

We think this judgment should be affirmed. The law of appeals is as follows, both in civil and in criminal cases. 1st of civil cases:

It is the duty of the appellant, who wishes to bring before the appellate Court, any matter of error which he complains of in the Court

below for a review, to prepare a statement, settled in pursuance of law, which shall exhibit the error and have it made a part of the Record.

Section 276 of the Statutes of Nevada, provides as follows:

When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall within twenty days after the entry of such judgment or order, prepare such statement, which shall contain the grounds upon which he intends to rely, on the appeal and so much of the evidence as may be necessary to explain the ground, and no more, and shall file the same with the Clerk.

It goes on to provide then the needful machinery for the settlement of said statement. Section 282, provides as follows:

Upon an appeal from a judgment, the Court may review any intermediate order involving the merits and necessarily affecting the judgment.

Section 295. Appeals in the Supreme Court may be brought to a hearing, by either party, upon a notice of three days to the opposite party. Before the argument each party shall furnish to the other a copy of his points, and file one copy thereof with the Clerk.

Secondly. Let us consider what is necessary in an appeal in a criminal case. Section 421 of the Criminal Statute, page 480, provides as follows: On the trial of an indictment, exceptions may be taken by the defendant to a decision of the Court, upon a matter of law, in any of the following cases:

- 1st. In disallowing jury challenges.
- 2d. In admitting or rejecting witnesses or testimony, or in charging the triers of a challenge to a juror for actual bias.
- 3d. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter discretion, or in charging or instructing the jury, upon the law on the trial of the issue.

Section 122. The exception may be taken by the District Attorney, &c. The law also provides for the settlement of the bill.

Section 472, provides as follows:

Upon the appeal, any decision of the Court, in an intermediate order, or proceeding forming a part of the record, may be reviewed.

Both the civil and criminal statutes provide that the appellate Court may affirm, reverse or modify the judgment of the *nisi prius* Court, as may seem best.

These statutes do not require an assignment of errors, or a petition in error, as the laws of New York, Kentucky and Ohio, and many other states provide for, but there is a rule of the Supreme Court of this Territory, which is No. 16, and provides as follow:

Before the argument, both the appellant and the respondent shall furnish to each other and to each of the Justices of the Court, a copy of his points and authorities; or either party may file one copy thereof with the clerk, who shall order the copies to be made for the Court, and may tax the same in his bill of costs.

Now, this cause was upon the docket of this Court, at its last term, and no points of error were filed; some agreements as to continuance, &c., between Counsel may account for this.

But as this term of the Court, this rule should have been complied with, but the same was not done.

On the contrary, the case was called and judgment affirmed, without objection, and no one appeared to resist the same until after this was done, when Counsel for the defendants moved to set aside the judgment, which motion we overruled for the reasons intimated above.

Again. A public nuisance adjudged to be so, by a jury of the vicinage and condemned by a competent Judge, exhibits no points of merit or sympathy, by reason of which the measure of justice "should be strained."

Finally. We wish it understood that too great laxity has heretofore been exhibited in Counsel, who fail to comply with the established rules of filing points, briefs and other papers, on account of the newness of our judicial machinery, and hereafter we give notice that we will enforce the letter of the law, as we think with Lord Coke "that swift justice is the sweetest."

SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

October 4, 1863

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE, Concurring.

E. RUHLING & CO., Appellants,

v.

O'FARRELL, JAMES & CO., by PAXTON & THORNBURG, Respondents.

This cause comes to us on appeal from the First Judicial District, Storey county.

In the Court below there were four suits, styled as follows:

Oyer et. Al. vs. O'Farrell, James & Co., Ruhling & Co. vs. O'Farrell, James & Co; Ruhling & co. vs. Mears & ○○○○ and ○○○○○ fourth  
○○○ ○○○ ○○○ & Thornburg vs. O'Farrell & Mears.

The suits of Ruhling & Co. were both matured into judgments and executions on property issued, levied, &c. One of the suits of Paxton & Thornburg was irregular, as the judgment was not finally entered, and the other one was also defective, being simply an entry of default.

This statement of the condition of the case is sufficient.

Under these four cases sundry property was sold by the sheriffs, and by agreement of parties, the fund resulting from the sale was brought into Court for distribution. At this stage of the case the attorney on all sides entered into an agreement that these funds should be distributed by the Court as upon original bill in equity, and that the party who was entitled to be paid under the law and who had the first lien on this land should be declared prior, and his claim first paid.

One clause in this agreement reads as follows:

That the motion for an order *nunc pro tunc* and the rule to show cause previously given counsel shall be heard at the same time as if on original bill upon the different judgment rolls, agreements and affidavits appearing herein.

The Court thereupon declared Paxton & Thornburg to be first in point of priority and directed their claim to be first paid; whereupon this appeal was taken. A brief is on file for appellant; none for respondent.

We think this order should be affirmed. The property sold was that of O'Farrell & Mears, and Paxton & Thornburg are the only plaintiffs having judgment against them. Other plaintiffs had judgments against one or another of the individuals comprising this firm, but no other party had a judgment against the entire partnership, except those alone referred to. We are asked here to disregard technicalities and distribute this fund according to the equities between the creditors. In that case it is our clear duty to give the partnership property to the partnership creditors before we distribute it among the individual creditors. This we do by affirming this judgment.

A partnership creditor is entitled to be first paid out of partnership funds. *Grosvenor & Co. vs. Austin*, 6 Ohio, 103; *Belnap vs. Cram*, 11 Ohio, 411; *Hubbell vs. Perrin*, 3 Ohio 287; and works on Partnership *passim*.

Let this judgment be affirmed.

# SUPREME COURT OF NEVADA TERRITORY

Russell McDonald Papers  
Territorial Supreme Court – Box 4 Transcript No. 31  
Copy of the Opinion is also located in the:

DAILY UNION  
SEPTEMBER 13, 1863

THE PEOPLE OF THE UNITED STATES )  
IN THE TERRITORY OF NEVADA )  
v. )  
A. BATEMAN )

This cause comes to us on appeal, from the 3rd Judicial District, Humboldt County.

The Indictment is as follows:

In the District Court of the 3rd Judicial District for Nevada Territory begun and held in Humboldt County, at the Town of Unionville, in the year of our Lord Eighteen Hundred and sixty three, on the 3rd Monday in April at a stated term thereof, before Jones, Judge. The Grand Jury of Humboldt County good and lawful men, duly summoned from the body of the county and duly empanelled and sworn and charged to enquire concerning public offences committed in said County, do on their oaths present and find twelve good and lawful Jurors agreeing thereto. That A. Bateman of the County of Humboldt on the 3rd day of September in the year or our Lord Eighteen Hundred and sixty two, at the town of Unionville in the County of Humboldt and Territory of Nevada, at the time aforesaid, and then and there, at the time aforesaid (have and) feloniously and unlawfully did, then and there, exhibit a deadly weapon, to wit, a Pistol, feloniously in the presence of two persons, to wit, Hugh McMahan and Hugh Patten, in a rude, angry and threatening manner, not in necessary self defence [sic], within striking distance of the persons aforesaid. And so the Grand Jurors aforesaid, upon oath aforesaid, do say that the time said A. Bateman, did then and there have and feloniously exhibit a deadly weapon, to wit, a Pistol, in the presence of two persons in a rude, angry and threatening manner not, not in self defence [sic], against the peace and dignity of the People of the United States in the Territory of Nevada, and Contrary to the form of the Statute in such cases made and provided.

To which Indictment, the following demurrer was filed.

And now comes said Defendant by his attorneys Aud and Veake, and demurr to the Indictment herein.

1st. On the grounds, that the same does not substantially conform to the requirements of sections two hundred and thirty four, and two hundred and thirty five of the Criminal Practice Act.

2nd. That more than one offense has been charged in the Indictment.

3rd. That the facts stated, do not constitute a public offence.

4th. That said Indictment, by reason of the repetition and inconsistencies therein contained, is wholly obscure, ambiguous, uncertain and unintelligible, so much so, that it is impossible to ascertain what is intended.

This cause was appealed to the Supreme Court—upon argument in this Tribunal, the errors chiefly relied upon are as follows;

1st. The indictment does not comply with Section 234 and 5 of the Criminal Practice Act.

2nd. No offence is laid.

3rd. The facts constitute no offence.

And in argument it was urged that it should have stated the exceptions of the statute to wit-

That Defendant was not a Sheriff, Marshall, Constable or other peace officer, and again it was claimed that the Indictment should have stated that the Pistol was loaded etc-

These are the objections that we shall consider.

We wish to make some remarks in limine however, before considering the legal questions involved, and it is proper to state in advance that this cause comes from the Court of the Honorable Horatio M. Jones, and the Record was prepared by the Clerk of the Court. The whole Record as well as the proceedings in the Cause are sui generis. Indeed the whole matter is so thoroughly confused and illegal that we thought for a time of dismissing it entirely. Some of the questions however, having been frequently raised in other cases, we thought the public good required that we settle them now & here.

Apropos of the Record. It is defective under the Rules adopted by the Supreme Court, in the following particulars.

1st. In not being written on suitable paper as described by the rules.

2nd. In not being chronologically arranged.

3rd. In not having marginal notes.

4th. In not being indexed.

The proceedings in the Court below and in the appeal are also very defective and illegal.

Some of the errors are as follows.

It does not appear that the case was ever tried. The record states that the Demurrer was overruled and there it stops.

There was a Defendant in Court presented by a Grand Jury of the County for a violation of the Criminal law and a Court to try and punish him if found guilty, but yet according to this record he was never tried, found guilty or acquitted, and of course was never punished. Upon the overruling of the demurrer, counsel for the prisoner very shrewdly gave notice of appeal and there the whole matter stopped.

Again; no security was taken for defendants appearance, in that or any other Court, to answer to the charge at any future day, no matter what the judgment of the Supreme Court might be. If this were proper legal practice, it would only be necessary for every defendant, in every Criminal Case, to demur in the Indictment and this would suspend, at once, all legal proceedings.

Justice would be hors du combat and the defendant without imprisonment or bonds would range the Earth at will 'with none to molest or make him afraid.'

Should he ever be arraigned again to answer to the Indictment, it would only be necessary for him to demur again, and repeat the performance already so successful in his former role.

Happily for us this is not correct legal practice.

The Statute provides page 486, Section 469, in the 2nd Clause that an appeal may be taken to the Supreme Court, from a final judgment of the District Court in all criminal cases.

Also from an order of the District Court allowing a demurrer (this of course would result in a final Judgment). —But there is no law for an appeal, and a total suspension of all legal proceedings in overruling a demurrer. This whole matter was considered and settled by Chief Justice Terry in the People v. Ah Fong, 12th California, page 425, in accordance with the views above expressed, authorities might be cited ad libitum if required, from Kentucky and Ohio, establishing this doctrine.

Notwithstanding the illegality and irregularity of this whole matter, and for the sake of the public good, this being a new Statute, requiring an exposition of its terms, by the highest Judicial Tribunal of the Territory, we will proceed to give our views upon it.

Section 234, page 459, Criminal Practice Act, reads as follows.

The Indictment shall contain the title of the action, specifying the name of the Court to which the indictment is presented and the names of the parties; a statement of the acts constituting the offence, in ordinary and concise language, and in such manner, as to enable a person of common understanding to know what is intended.



Section 235, page 460, Criminal Practice Act – says; “It may be substantially in the following form.

The People of the United States of the Territory of Nevada against A.B. in the District Court of the \_\_\_\_ Judicial district in the County of \_\_\_\_ term AD 18\_\_ A.B. is accused by the Grand Jury of the Counties of \_\_\_\_ by this indictment, of the crime of (giving its legal application such as murder etc) committed as follows.

The said A B on the \_\_ day of \_\_ AD 18\_\_ at the County of \_\_\_\_ (stating the act or omission constituting the offence in the manner prescribed in this Act according to the forms mentioned in the next section where they are applicable.

Section 236 is as follows:

The Indictment must be direct and certain as it regards:

1st. The party charged.

2nd. The offence charged.

3rd. The particular circumstances of the offence charged, when they are necessary to constitute a complete offense.

Section 243 has the following:

The indictment shall be sufficient, if it can be understood there-from; First; That it is entitled in a Court having authority, to receive it, though the name of the Court be not accurately set forth. Second, That it was found by a grave Jury of the District in which the Court was held. Third, That the defendant is named, or, if his name cannot be discovered, that he be described by a fictitious name, with a statement that he has refused to discover his real name. Fourth, That the offence was committed at some place within the Jurisdiction of the Court. Fifth, That the offence was committed at some time prior to the time of finding the indictment. Sixth, That the act or omission charged as the offence, is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Seventh, that the act or omission charged as the offence, is stated with such a degree of certainty, as to enable the Court to pronounce judgment upon a conviction according to the right in the case.

These sections were enacted in California, and their construction gave some trouble to the very learned Judges who presided in the Judicial Tribunals of that state, whose erudition has furnished so many beacon lights to guide us in the sea of judicial uncertainty with which we found ourselves surrounded in the novel circumstances which presented themselves before the Courts of Nevada.

All difficulties will be solved however, if we bear in mind that these statutes were intended to relieve criminal pleadings of matters of mere technicality and form, as known at common law, but not to deprive it

of any of the matters of substance in that wonderful system. Upon the enactment of these statutes, slovenly pleading became very general, and, as a matter of course, tribunals so learned as those which presided in California were compelled to condemn these inartistic pleadings. A glance at the Reports of California, will show this to be true. For instance. In the case of the People against Thompson, 4th California, Chief Justice Murray, Justly celebrated for his Judicial perspicuity, uses the following language.

While we are unwilling to reverse a case upon a mere technicality, we desire to call attention of Courts and prosecuting officers throughout the state to the necessity of more strictness of pleading than has been evinced by the appeals lately brought to his Court.

In the People against A∅, 6th California, page 208, the Court set aside the indictment in a cause where the defendant was charged with murder, in a very clear opinion delivered also by Chief Justice Murray, in which it was charged “that the defendant murdered with deceased with a located revolver etc”, upon the ground that every indictment should state the facts necessary to constitute the offence, and that the word murder was a conclusion of law from facts which should be stated in the indictment, and hence the pleading was bad as the allegation was too general.

In the case of the People against Hood, page 236 ibia, an indictment for arson was held bad by Judges Murray and Terry, for the reason that it also, was too general.

In the case of the People against Wallace, 9th California, page 31, Chief Justice Terry and Justice Burnett, held an indictment for murder also, in which the charge was laid in the general language superinduced by this Statute to be too general, and hence, bad.

In support of the view which he have already intimated, that it is form and not substance, which this Statute dispenses with, we would allude to the case of the People against Parsons, 6th Vol California Reports, page 488 – in which Justices Heydenfeldt and Terry held that an indictment for perjury was good without the technical averment that the false oath was taken feloniously.

Although Chief Justice Murray, with that fondness for blackletter learning which always characterizes his mind, and which is so pardonable among true lawyers, dissented from the opinion.

In the light of these views, let us turn to the case in hand. The indictment is drawn under Section 40 and 62 of Nevada Laws, which reads as follows:

That any person in this Territory having, carrying or procuring from another any dirk, dirk-knife, sword, sword-cane, pistol, gun or other

deadly weapon, who shall in the presence of two or more persons, draw or exhibit any of said deadly weapons, in a rude angry or threatening manner not in necessary self defence, or who shall in any manner unlawfully use the same in any fight or quarrel, the person or persons so offending, shall be fined, etc.

In the latter part of the Section occurs the following language.

Provided nevertheless, that no Sheriff, Deputy Sheriff, Marshal, constable or other peace officer, shall be held to answer under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned, while in the lawful discharge of his or their duties.

It is also made the duty of all Judges to give this act in charge to each recuering Grand Jury, which is a wise provision in view of the melancholy frequency of this barbaric practice in our Territory.

Now let us consider the objections to this indictment. The first objection is noy well taken, it does comport with Sections 234 etc.

The second objection is not well taken. It does state an offence under the law.

The third objection is also unsound as the facts alleged do constitute an offence.

The fourth objection is not well taken, as this indictment is not ambiguous.

The other objection that it does not state the weapon to have been loaded, is also not well founded; for the crime consists in exhibiting a pistol, and not a loaded pistol.

The further objection that this indictment fails to allege that the defendant was not a Sheriff, Deputy-Sheriff, Marshal, Constable or other peace officer, is also groundless, as it is a legal rule that negative averments to which form "an exception or proviso qualifying the description of the offence, the general rule is that the indictment should negative the exception or proviso."

It is also, however, a settled rule of Criminal pleading, that where the negative averment does not strictly qualify the offence, or is not of the essence thereof, or is peculiarly within the knowledge of the defendant, or is purely matter of defence [sic], as for instance, that an act was done under color of his office, by an officer of the law, or that Liquors were sold under a license in the hands of defendant, they are not necessary, but must be set up by defendant in his defence [sic].

It is also a general rule of criminal pleading that a negative averment, which might be necessary in an indictment, from the fact that it is part and parcel of the clause describing the offence, becomes unnecessary when it appears at the end of the Section as an addenda to it, or in a proviso separate from it. Vide Whartons American Criminal Law, page 225, Archibalds Criminal pleading – and Chitty’s Criminal law.

We hold therefore, that this negative averment denying the official character of defendant, is not necessary.

Finally, we will notice one further objection to these indictments which often occurs, although this one is not obnoxious to such an exception, viz. That the indictment does not state the names of the “two or more persons,” before whom the weapon was exhibited. We have carefully considered the arguments in favor of this allegation.

1st. That it is necessary to identify the crime. That a plea of Auter-fois acquit, or auter-fois convict, might be set up in a subsequent suit.

2nd. That the names of persons jointly engaged in a riot, are required to be alleged; but yet we hold that the arguments which prove these allegations to be necessary in those cases, do not apply here.

This is not a common law action, but a statutory crime, in charging it no technical averments have grown up, by force of usage and the authority of learned Courts and Judges, until they have become indispensable [sic]. Again, no peculiarities belong to these two persons, which render it necessary to name or describe them. It is sufficient that the weapon be exhibited in the presence of two or more persons, and if it be so charged, the description is complete. In a charge for riot, the two or more persons are participes criminis, and co-defendants or wrongdoers. Of course then, they should be named or an averment added in the language of the books “that they are unknown,” but these two or more persons, are simply charged to have been present, to show that the public peace has been disturbed. This allegation bears more analogy to the interrorum populi of a common law in indictment for the crime of riot.

In conclusion, we would adopt the language of the learned Judge Baldwin in the Supreme Court of California in the case of the People against Saviers as being applicable to this subject, 14th Vol. – page 30.

The indictment is as follows:

George Saviers is accused by the grand Jury of the County of Placer, and State of California, by this indictment of the crime of dealing the

game of Monte for money, committed as follows; The said George Saviers on or about the 23rd day of February 1859, and before the finding and presentation of this indictment, did, at the County of Placer and State of California, to wit, at the house known as Tyne's Hall, in the town of Dutch Flat in the county and state aforesaid, willfully, unlawfully and feloniously deal the game of Monte, then and there played for money etc.

The substance of the Statutory offence is, in such a case as this, to deal the game of Monte for money; and the averments seems to follow the law. But the ground of the demurrer is, that the offence is not sufficiently described; that the particulars attending and characterizing it are not given, as the persons present, the room, the persons betting and the like; and it is insisted that this is necessary in order to protect the defendant from a second prosecution, and also to enable him to defend against this one.

Possibly, if this indictment were tested by common law rules, there might be something in the objection.

But our Statutes, have relieved the administration of Criminal Law, of a good deal of the unnecessary strictness, of the English forms of Criminal pleading.

An indictment is good here, if it give a statement of the acts constituting the offence in ordinary and concise language, and in such a manner, as to enable the person of ordinary understanding to know what is intended. It must be direct and certain as to the party charged, the offence charged and the particular circumstances of the offence charged, when they are necessary to constitute a complete offence.

But the offence is no way constituted by the number of, or particular persons engaged in the game. The offence is playing for money. This implies of course, that some one or more persons were betting against the bank, and this fact is stated by the general averment as given.

The offence is complete for the simple fact of dealing a banking game – monte – for money. The rule is that were a Statute introduces a new offence without reference to any thing [sic] else, it will be sufficient if the indictment describe the offence in the terms of the act.

(State vs Brown 4th Porter 410, State vs Duncan 9 Id – 260, State vs Click 2 Alabama 27.)

In the last case, the indictment was for carrying concealed about defendants person, fire arms, to wit, a Pistol, contrary to the Statute which declares “that if any person shall carry concealed about his person, any fire arms” etc. The Court held the indictment good upon the principles we have stated.

It would be very difficult to give the Act of 1857 any effect, if we recognized the proposition of appellant's counsel; for how full and explicit must be the description of the offence, and how many of the circumstances bearing a relation to it, must be stated? If the room is to be described, how full must be the description? If a person betting must be named, must not all betters be named and all spectators too? And if a variance should occur in any of these particulars, would not the defendant be entitled to an acquittal? We think these matters have nothing to do with the essence of the offence which is the playing for money at the place specified and about the time.

We had thought of adding to this opinion, a blank form which should have the approval of this Court, and which would answer as a guide for the various District Attorneys through-out the Territory, in charging this fearfully common and equally revolting offence, as it is the determination of the Courts to suppress it; but the opinions here expressed will dispense with that necessity.

It will be readily seen that an indictment will be good otherwise in the usual form, which alleges that A-B- of the County of \_\_\_\_\_ on the \_\_\_\_\_ day \_\_\_\_ AD 18\_\_ at the Town of \_\_\_\_\_ in the County of \_\_\_\_\_ in the Territory of Nevada then and there did unlawfully exhibit a deadly weapon, to wit, a pistol, in the presence of two or more persons (naming them or not as the pleader chooses) in a rude, angry and threatening manner and not in necessary self defence [sic], contra statutain etc.

This is all the law requires. Let the Judgment be affirmed and remanded for further proceedings.

SUPREME COURT OF NEVADA  
TERRITORY

RUSSELL MCDONALD PAPERS

Supreme Court Decision  
Folder XI-I – Transcript No. 38

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE Concurring.

A. BATEMAN, Plaintiff and Respondents,                                     )  
 v.   )  
 J.C. BATEMAN & A.S. PAUL, Defendants and Appellants.                                     )

This cause comes to us on Appeal from the First Judicial District Storey County.

The original action was a Bill in Equity in which A. Bateman claimed to have been a partner of J.C. Bateman in California, equal in all things, that said copartnership extended to Nevada Territory and that when the defendant J.C. Bateman associated himself in business with one A.S. Paul & carried on business with him, said A. Bateman became and was a partner in said firm. This Bill was therefore filed praying for dissolution of the co-partnership and an accounting.

Defendants filed an Answer totally denying the Partnership and Plaintiff replied re-affirming the same.

The issue was primarily partnership or no partnership.

The Plaintiff moved that the cause be referred to a Referee to which the Defendants objected but the Court sustained the motion and the Defendants excepted. Judgment was rendered on the Report for Plaintiff and thereupon Defendants appealed.

The reference for this cause made as aforesaid is assigned for Error and in addition sundry findings of the Referee also are objected to but we will dispose of the case upon the first point.

We think the Court erred in referring this cause.

The first issue to be determined was that of Partnership this should have been first disposed of and if found for Defendants no accounting would be necessary. If found for the Plaintiff it would.

Our statute is a literal copy of the New York Code in regard to the compulsory reference of a cause and the Courts of that State by a long line of decisions have held that in a suit of this kind a compulsory reference of the cause cannot be had until after the question of partnership is determined.

The only exceptions to this rule are those cases where an accounting is necessary to determine the issue of Partnership or no Partnership.

As where a Partner was to be interested in the Profits of the concern or a person was to become a Partner upon contributing a certain amount to the business and cases like character.

But where the Partnership is denied "in toto" and being found in one way an accounting would be necessary and in the other it would not be necessary, in cases of this kind, it cannot be said, that "the trial of the issue of fact requires the examination of a long account on either side" in the language of the Statute.

This principle seems to be well settled & founded in correct reason and we do not see fit to depart from the New York practise in cases of a similar character.

See	10 Howard Practise Reports	11
	2 Do Do Do	156.
	18 Do Do Do	215.
	11 Do Do Do	439.

and particularly 7 Howards Practise Reports page 260 where the precise point is decided which is presented in this case.

Let the Judgment be reversed & remanded for further proceedings in pursuance of the opinions herein expressed.



SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

OCTOBER 3, 1863

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE, Concurring

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DAVID MEYER, Plaintiff and Respondent,  
v.  
F. BIRDSALL & CO., Defendants and Appellants.

This cause comes to us on appeal from the Third Judicial District, Lyon county.

The suit was originally brought in Storey county, in the First Judicial District, and a change of venue ordered to the Third.

The action was in debt upon an indebtedness from the defendants due to Philip Vertimer, and assigned by said Vertimer to the plaintiff. The chief issue seemed to be the legality of the assignment, and the *bona fide* character of plaintiff's alleged condition as an assignee. After a full and a fair trial, judgment was rendered in favor of the plaintiff, and an appeal taken to this tribunal, a record of the proceedings was brought to this Court and placed on file.

No assignment of errors was made, no points of error or briefs are filed.

Upon looking casually over the record, we see no error, but on the contrary, are satisfied that justice has been done.

We have not been asked to add any penalty in case this judgment be affirmed.

It is therefore ordered that his judgment be affirmed, with costs.

SUPREME COURT OF NEVADA  
TERRITORY

THE DAILY UNION

SEPTEMBER 27, 1863

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE Concurring.

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ALEX. WARFIELD, ET AL., Respondents,

v.

LOUIS MCLANE, ET AL., Appellants.

This cause comes to us on appeal from the Second Judicial District, Ormsby County.

In the Court below, the plaintiffs complained of the defendants, Louis McLane (proprietor), and Charles Stump (Driver), of a certain stage coach for that –

Said defendants negligently, wrongfully, wantonly and unlawfully drove into a certain band or drove of cattle belonging to the plaintiffs, while ascending the grade of the western summit of the Sierra Nevada Mountains, and prays damage in the sum of seven thousand dollars.

To this petition said defendants filed separate answers fully denying the allegations of the petition, and a reply was filed thereto.

This statement of the pleadings is sufficient to exhibit the issue. The cause was submitted to a jury, and a verdict was returned in favor of plaintiffs in the sum of thirty-one hundred dollars.

A written charge was given to the jury to which no exception was taken by either side. A motion for a new trial was made and overruled, and there upon the cause was appealed.

The first ground of error assigned is as follows: the verdict of the jury is against law. It may be as well in the outset to state some of the facts in the case, proven by the plaintiff, as reflecting on this exception. It was shown, by the evidence of Parker, that on the 16th day of October, A.D., 1860, five hundred and eighteen (518) head of the plaintiff's cattle were being driven by himself and others from the lands occupied by the Creek and Cherokee nation, and were upon that day upon the grade aforesaid. Further, that when they were about half way up the grade they met a stage coming down, which drove violently into and among these

cattle injuring quite a number of them, knocking one hundred and sixty six of them off the grade, one hundred and ten of which were afterwards recovered, more or less injured, and fifty six fully lost. The cattle lost he states to be worth twenty-five hundred dollars, and the expenses of recovering the others amounted to the sum of thirteen hundred dollars.

One Ritchie swears the fifty-six lost cattle to have been worth seventy or eighty dollars per head; also that he went up in advance of the cattle and asked Mr. Stump, the driver of the coach, to stop upon the summit, until the ascending cattle got up, who refused to do so, whipped up his team, trotted in among them and did the damage aforesaid.

Mr. Flinn also testified substantially to these same facts.

It is but fair to say that much of this evidence was contradicted by the witnesses of the defendants. The jury thus having this contradictory evidence to settle, which is their peculiar province. Now, as to this verdict being contrary to law, if the law was properly given to the jury, and the evidence was conflicting, it was the duty of the jury to settle the case and an appellate tribunal could give no relief.

The written charge of the Court is made by law a part of the record and contains the following propositions:

1. Where a plaintiff sues for damages for the carelessness and recklessness of one driving a coach, he must show that he himself exercised that ordinary care and prudence which prudent men exercise in their own business, and this care and prudence is to be considered under a full view of all the circumstances, both as to the place and the character of the property in his charge.
2. If the plaintiff exercised this care, then you are to inquire if the accident was the result of carelessness and unskillfulness of the defendant, Stump and his case is to be judged of in the light of the same circumstances.
3. The defendant, Stump, is liable, whether the accident was the result of design or carelessness on his part.
4. To make McLane liable, the accident must be the result of carelessness and unskillfulness on the part of the driver, as he is bound to furnish careful, skillful and prudent drivers, but if this act was the wanton and intentional act of Stump, which McLane did not expressly assent to or approve, then it is Stump's trespass, and he is responsible for it himself.
5. If the casualty be the result of inevitable accident, defendants are not liable. If the result of mutual wrong and carelessness, wherein both parties are equally blamable, then plaintiff cannot recover. But if plaintiff used ordinary care and diligence, and the driver, by his carelessness and unskillfulness, caused it, the defendants are both

liable. But, lastly, if the driver was not guilty of carelessness and unskillfulness, but intentionally committed this act, then he alone is liable.

6. A plaintiff cannot recover unless he shows himself to have used ordinary care; if he is negligent, and that contributed directly to the loss, the law will not apportion how much fault was his, and how much defendants.

7. If the plaintiff was guilty of some want of care, which did not directly contribute to the loss, and the defendants, by ordinary care, could have avoided it, but did not, and his want of care was the direct cause of the injury, then plaintiff can recover.

8. If plaintiff is entitled to recover, he is entitled to compensation for the cattle killed and injured, and a fair recompense for his labor and expense in reclaiming the cattle.

9. You can return a verdict against plaintiff, or against one defendant, or both of them.

This certainly embodies the law of this case; the conflict of fact the jury had to settle; and if any error occurred, it was in the next branch, which we will now proceed to consider.

The second error assigned is that the verdict of the jury is against the evidence.

As to this assignment it is only necessary for us to say that the evidence was conflicting; it was fully submitted to the jury, and they decided the case after weighing and carefully considering it. This is the special duty, as well as privilege, of the jury, and an appellate Court has no right to invade, or destroy it. Where no fraud or misconduct exists, the verdict of a jury should not be disturbed when rendered upon a question of fact. Where the evidence is conflicting and where no rule of law has been violated.

This principle is as old as the common law and were we merely to cite the names of the  $\diamond$  Hoppe vs. Robb, 1 Cal., 373 ;  $\diamond\diamond$  Cal., 137; Dwinello vs. Heariquez, 1 Cal.  $\diamond\diamond\diamond\diamond$  vs. Smith, 2 Cal., 423, *et seq.*; Brown vs.  $\diamond\diamond\diamond$  McKinley, 4 Cal., 104; Duelle vs. Bear River, 5  $\diamond\diamond\diamond\diamond$ ; McHenry vs. Moore, 5 Cal., 93; Ritchie vs.  $\diamond\diamond\diamond$ aw, 5 Cal., 229; Pickett vs. Sutter, 5 Cal., 413;  $\diamond\diamond\diamond$  vs. Flint, 5 Cal., 329; Adams vs. Pugh, 9 Cal.,  $\diamond\diamond$  White vs. Todd’s Valley Co., 8 Cal., 444; People vs. Ah Ti, 9 Cal., 17; Williams vs. Gregory, 9 Cal.,  $\diamond\diamond$ ; Scannel vs. Strahle, 9 Cal., 177; Weddell vs. Stark,  $\diamond$  Cal. 806; Bensely vs. Atwill, 12 Cal., 240; Ritter vs. Stark, 12 Cal., 402; McGarrity vs. Byington, 12 Cal., 432; Oritann vs. Dixon, 13 Cal., 40; Visher vs.  $\diamond\diamond$ bster, 13 Cal., 60; Beckman vs. McKay, 14 Cal.,  $\diamond\diamond$ ; McGurvey vs. Little, 16 Cal., 31; Weaver vs. Eureka Lake Co., 15 Cal., 273; Stevens vs.

Erwine, 15Cal., 504; Paul vs. Silver, 16 Cal., 75; Baker vs. Joseph, 16 Cal., 180.

We add also a few striking authorities from other States; 5 Mass., 263; 16 Mass., 291; 7 Halst., 163; 4 Wendell, 423; 11 Conn., 440; 1 Mo., 13; 5 Ohio, 346; 6 Ohio, 456; 22 Maine, 131; 12 N.H., 171.

This disposes of this assignment. The third assignment of error is this: "The Court erred in refusing to grant defendants a new trial, on account of the absence of a person named, who is a party in interest, or the managing agent of the most responsible of the defendants."

To this objection there are quite a number of answers. The Court below evidently set the case two weeks in advance, to accommodate the parties, all of whom, on both sides, were within two days' travel of the Court.

Again, it appears to have been set in the presence, and by the consent, of all parties.

Among the numerous statutory grounds for a new trial, a casualty of this kind is not named; and, further, this record exhibits the fact, from first to last, that the attorney who represented the defendants in the Court below, and who prosecutes this appeal, was learned and energetic, faithful and efficient; so much so, that it would appear from this record, hazardous even to the rights of the defendants to grant a new trial, as another jury might very possibly, on the same proof, render a verdict for a much larger sum. Again, even were this ground good, the law, as to diligence, was not fulfilled; and, of course, and finally, it is the duty of counsel to notify their clients when cases are set.

The fourth ground of error is as follows: "The Court erred in refusing to grant defendants a new trial on the ground of newly discovered evidence."

In the brief of counsel the affidavit of Brumfield, alone, is urged in support of this assignment, and it is stated that the names of J.M. Dorsey and Robert Lyon were inserted by mistake in the affidavit.

It is true that the affidavit of Brumfield tends to show that it was customary for droves to be driving up the emigrant, and not the Hawley grade, but it is also true that J.M. Dorsey swears he was a drover in 1860, and drove several bands of cattle over this route during that year. He also testifies that he always drove over this same grade, that it was preferable, and the old emigrant trail was difficult to ascend.

He also denies any negligence in plaintiff's driving as described.

Robert Lyons, also, in his affidavit, states that he is a drover, and drove several bands over this same route in 1860; that he always went over the Hawley grade, and considered it the only practicable route; and further, that the emigrant trail was steep and rough, and difficult to ascend. It broke the hoofs of cattle and made them lame. He denies all negligence, also, in the driving of plaintiffs as described.

This would be enough to dispose of this matter, but the following rules of law reflect upon it, and we will conclude by referring to them.

Where the evidence is merely cumulative on a point disputed on the trial, a new trial will not be granted. – 11 Ohio, 147; 6 Pickering, 114; do 16; 2A. K. Mash, 248; 5 Ohio, 375; 8 Johnson, 84 1 Sumner, 451; Gaven vs. Dapman, 5 Cal., 342.

Motion will not be granted where, with due diligence, the party might previously have had the benefit of the evidence, – ♦♦♦♦ ♦♦♦♦ ♦♦.

Motions for new trial on the ground of newly discovered evidence, are regarded with ♦♦♦♦ and disfavor, and the strictest showing of ♦♦♦♦♦♦♦♦ all other facts necessary is required ♦♦♦♦ vs. Joseph, 16 Cal., 180.

A new trial will not be granted if such evidence was within reach, and by ordinary diligence might have been procured. Berry vs. Metzler, 7 Cal. 418; People vs. Marks, 10 Howard Pr. 261.

It is only when a party is wholly free from negligence in preparing for the trial, that he is entitled to a new trial on the ground of newly discovered evidence. Loavy vs. Roberts, 8 Abbott, 310.

An application for a new trial on the ground of newly discovered evidence must show affirmatively that the evidence is new, material and not cumulative; that the applicant has used due diligence in preparing his case for trial, and that the new evidence was discovered after trial, and will be important, and tend to prove fact which were not distinctly in issue on the trial, or were not then known or investigated by proof. Bartlett vs. Hodgson, 3 Cal. 57; Brooks vs. Lyon, 3 Cal. 114; Burrill vs. Gibson, 3 Cal. 399.

Upon a careful inspection of this record we are satisfied that another jury would render a verdict for the plaintiff in as large or a larger sum than that found at their trial which we are reviewing.

In that view of the case it would therefore be improper and illegal for us to reverse this judgment.

But aside from this, we have reviewed the errors assigned by appellant, *ϕerialim* and shown that the objections are not well taken in the light of law and approved authorities.

Let the judgment be affirmed.

# SUPREME COURT OF NEVADA TERRITORY

## THE DAILY UNION

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE, Concurring.

J.A. SANBORN, Plaintiff and Respondent,  
v.  
JAMES WOODS, Defendant and Appellant.

This cause comes to us on appeal from the First Judicial District, Storey county.

On the 28th day of July, A.D. 1862, one F. Matthews executed a deed to James Woods, the appellant, of an undivided ten feet “of all that certain mineral  $\diamond\diamond\diamond\diamond$  and gold and silver bearing quartz lode, owned and held by the Best and Belcher Company,” the ground being situated in Storey county. This deed was duly recorded in Storey county on the 29th day of July, same year. On the 9th day of September, same year, Mathews conveyed the property to  $\diamond\diamond$  A. Si $\diamond$ onds, who, on the 18th day of September, same year, conveyed the property to respondent. May 9th, 1862, respondent commenced this action in the District Court, “to cancel and render void  $\diamond\diamond$  deed from appellant, on the ground that it was fraudulent and void. Summons and complaint were duly served, appellant suffered a default, whereupon judgment was taken against him, and his deed de $\diamond\diamond\diamond\diamond$  fraudulent and void, as against respondent, and  $\diamond\diamond$  ever cancelled and annulled.

From this judgment the appellant appeals to the Court, and asks that the same be set aside,  $\diamond\diamond$   $\diamond\diamond$  ground that the complaint does not state facts sufficient to constitute a cause of action.

The default confesses only such material  $\diamond\diamond\diamond\diamond\diamond$  are alleged in the complaint, and if the com $\diamond\diamond\diamond$  fails to state a sufficient cause of action, this  $\diamond\diamond\diamond$  will set aside the judgment on appeal.

Where there is jurisdiction, an irregular judgment cannot be collaterally impeached. See our argument in Luce vs. Grier at this term. Further, why should a judgment stand unless plaintiff proved himself



entitled to it, and how could he prove what he has not alleged, or on default how can a defendant be held to confess what is not charged?

Rayer vs. Clark, ◇ Code Report, 230; 7 Harbour 581; Derente vs. Sullivan, 7 Cal., 279; Watson vs. Zimmerman, 6 Cal., 46; Hentsch vs. Porter, 19 Cal. 555; Abbe vs. Marret, 14 Cal., 210.

The complaint of respondent asks the cancellation of respondent's deed on the ground of fraud. What allegations of fraud are contained in his complaint? Only two, and they are as follows:

1. That the deed was executed without any consideration, and with the intention of design of hindering, delaying and defrauding creditors. And the second is as follows: "That appellant was a purchaser without any consideration, in bad faith, for fraudulent purposes: and that appellant never advanced, or paid, or agreed to pay, any consideration for said conveyance.

Surely this complaint is radically defective. Its allegations of fraud are obnoxious to the charge or too great generality. The fraud, as charged, amounts to nothing more than a conclusion of law. The complaint should set forth the facts and circumstances constituting the fraud.

This is a general rule of pleading, and almost universally approved. Van Santvoord's Pleading, pages 80, 81, 215; Bailey vs. Ryder, 6 Selden, 363; Russell vs. Clapp, 3 C.R., 64; Harris vs. Taylor, 15 Cal., 348; ◇ender vs. Macey, 7 Cal., 206.

Admitting that this deed was executed to defraud creditors, this complaint does not show any reason good in law which justify respondent in assailing it. His complaint should show that he has acquired some specific lien upon the property conveyed, either by attachment, judgment or execution, or some analogous proceeding, or if he claims as a creditor at large before he can maintain his action in this capacity, it is an essential allegation of his complaint that he has exhausted his remedy at law.

Authorities might be cited *ad. libitum* in support of this proposition, vide Insurance Company vs. Graham, 5 Sand. 197; McIlwain vs. Willis, 9 Wendell 548; Bishop vs. Halsey 3 Abbott, Practice Reports 400.

Even if this deed were executed to hinder, delay and defraud creditors, it is valid as between the parties to it; and voidable only as to creditors. See Territorial Laws, page 20 section 69. This also is a well settled rule in Ohio.

The complaint does not even allege that the respondent, or either of the grantors, was a creditor of Matthews, and as to this assignment of fraud, the deed was valid and binding as to them.

Now let us look at the condition of respondent in the aspect of a subsequent purchaser for a valuable consideration. Our statute invalidating the conveyance as to subsequent purchasers, is as follows:

Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created with the intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents and profits as against such purchaser, shall be void. Territorial Laws, page 18, section 50.

Certainly a deed executed to hinder, delay and defraud creditors, is not a deed to defraud prior or subsequent purchasers. The respondent is in the position of a subsequent purchaser, for a valuable consideration. Unless the deed was executed to appellant with an intent to defraud prior or subsequent purchasers, it is valid and binding as far as this respondent is concerned. As a matter of course, to maintain this action the complaint must contain a positive averment that the deed was executed with this intent. No such allegation is in the complaint, and therefore no such intent is confessed by the default.

This, also, is a radical defect in this view of the case. Under section 51 of the act “no such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance or person to be benefitted by such charge was privy to the fraud intended.”

It appears from this complaint that the deed to appellant was recorded in the public Recorder’s office two months before the execution of Matthews’ deed to respondent’s grantor. Certainly then legal notice of appellant’s deed was brought home to respondent in pursuance of law.

Finally, it cannot be said, upon looking at this complaint, that the appellant was privy to an intended fraud upon prior or subsequent purchasers.

We may say, generally, that the vice of this complaint is, that it is sweeping, general and indefinite in those particulars where the law and all the authorities upon the science of pleading require it to be explicit, detailed and definite.

The default only confessing these m○○○○○○, cannot be held to admit the omitted ○○○ which is essential though absent.

Plaintiff filed his complaint in ejectment for recovery from defendant of a certain lot in Virginia City, which it is not necessary further to describe.

Defendant, answering, denied the title of plaintiff to this lot, and alleged, *per contra*, that the title to the same was in the one Daniel Dyer, recently deceased, whose administrator defendant was, and in this fiduciary capacity defendant claimed the right of possession to be in himself for the benefit of said estate.

The cause was submitted to a jury, and verdict was rendered in favor of defendant. Motion for a new trial was made and overruled, and thereupon the cause was appealed.

The case was orally argued by both parties in this Court, and a brief is on file for appellant; none for respondent. The grounds of error are as follows:

- 1st. The verdict is against the weight of evidence.
- 2d. The Court erred in refusing a new trial.
- 3d. The Court erred in refusing sundry instructions asked for by plaintiff.
- 4th. Defendant did not plead his representative character property, and his evidence must be rejected as to this matter.

Let us briefly consider these assignments of error.

1st. As to the weight of evidence, it is sufficient to say it was contradictory, fully submitted to the jury, no fraud or misconduct occurred, and no rule of law was violated; hence the verdict must stand without interference from any Court.

For the authorities in support of this proposition at length, we would refer to the opinion in the case of Warfield et al. vs. McLane et al., rendered at this term.

2d. As to the refusal of a new trial, we see no error in this refusal for the aforesaid reasons.

3d. As to the refusal of instructions asked. These instructions are three in number, and we think they were properly refused. The second (first one excepted to) was erroneous as under it the most transitory possession would give title, and no subsequent abandonment would ever be possible on the part of the possessor.

The third is objectionable, as Dyer's entry might have been without right, but afterwards have ripened and matured by contract or lapse of time, or a variety of modes into a right of possession. Again, it is too direct and partisan for a legal charge

The fourth instruction was hardly applicable.

These are all the exceptions taken to the instructions.

The last error assigned upon this record as to the pleading and proof of defendant's representative character, comes too late in this tribunal.

It was set up in this answer, and not demurred to; on the contrary, was replied to by plaintiff.

In evidence, both sides submitted proofs on the point, without objection pro and con., and now it is too late to raise an exception in this manner and place.

The rules of abandonment, and the prior appropriation of land, are discussed in a manner exhibiting diligence and skill in the brief on file, but it will not be necessary for us to elaborate them here, as we have no means of knowing upon what particular phase of fact or law the case went off.

It is sufficient for us to know that this cause, involving as it does almost entirely issues of fact, was fairly submitted to the jury, a verdict was rendered, and it is our duty to permit it to remain undisturbed. ♦♦♦♦ judgment be affirmed.

SUPREME COURT OF NEVADA  
TERRITORY

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DAILY INDEPENDENT  
OCTOBER 6, 1863

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE, Concurring

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A.D. COWAN, Plaintiff and Appellant,  
v.  
D.C. FARGO, Defendant and Respondent.

This cause comes to us on appeal from the Second Judicial District, Ormsby county.

The question involved is only one of costs, and will be best exhibited by the assignment of errors, which is as follows:

Plaintiff commenced suit for balance of account, claiming over and above all offsets and payments made by defendant, the sum of \$352, his whole claim being \$751.75.

Defendant admitted \$563.52, but claimed an account of \$697 as his account against plaintiff, and claimed a balance of \$133.48 to be due from plaintiff to him.

The case was referred.

The referee found claims to the amount of \$651.65 for plaintiff—payments of defendant amounting to \$257, and offsets in favor of defendant to the amount \$312, leaving defendant indebted to plaintiff in the sum of \$82, for which referee entered judgment for plaintiff, with costs of suit, which costs amounted to more than \$200. On motion of defendant the Court struck out the costs so allowed, and entered judgment against plaintiff for costs. This, appellant claims to be error, and claims that where a plaintiff recovers a balance which added to the amount of his claim extinguished by an offset plead and proved by defendant exceeds one hundred dollars, then he is entitled to his costs.

The whole question in this case is, when a plaintiff in District Court recovers a sum less than \$100, but extinguishes an offset, and the sum recovered and the amount applied to extinguish the offset make an aggregated sum of more than \$100, is the plaintiff entitled to his costs.

In contravention of the affirmative of this question, the respondent quotes Sec. 445, page 444, Nev. Laws, which provides that no costs shall be allowed in an action for the recovery of money or damages where the plaintiff recovers less than \$100.

Similar statutes exist in nearly every State of the Union. Such a statute does exist in Pennsylvania, (Sec. 1st, Wharton's page 400, ss. 97 79 page 399) yet there where an amount is reduced below \$100 by an offset, if the offset and the amount of the judgment exceed \$100, then plaintiff is allowed costs. (See Wharton's Digest, page 399, sections 73, 74, 75, 76, 77, 80. See also Bartlett et al. vs. McKee et al., 39 Ala. 40, 1st Watts; Manning vs. Eaton, 7 Ala. 346-7.)

The case of Stroh vs. Urick, 1st Watts, and Serey 57-8-9, shows that a credit is not a payment, and that Cowan could not lawfully have given credit to Fargo for all he considered due him and have sued in a Justice's Court, for the amount actually recovered by him for his offered credit of about \$500 would not have been a payment and the whole amount claimed by him, viz: about \$700 would have been considered the amount in controversy, so the Justice would have been ousted of his jurisdiction.

The same doctrine is held in Kelly vs, Thompson, 2 Brevard 56, quoted in 4 U.S. Digest, page 442. (See also Burton vs. Martin, 4 Missouri, page 200, quoted on page 442, 4th U.S. Digest.) This is also the rule in Ohio, and several other States of the Union, which it is not here necessary further to refer to.

Let this judgment be reversed, and the cause remanded for further proceedings in consonance with this judgment.

SUPREME COURT OF NEVADA  
TERRITORY

DAILY INDEPENDENT

OCTOBER 6, 1863

Opinion of CHIEF JUSTICE TURNER,  
MOTT JUSTICE, Concurring

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H. MARTIN SMITH AND RICHARD V. DAY, Plaintiffs and Respondents,  
v.  
WILLIAM FREEBORN AND MARK SHELDON, Defendants and Appellants.

This cause comes to us on appeal from the District Court of the First Judicial District, Storey County.

Plaintiff sued defendants as surviving partners of one George N. Shaw for the sum of \$3,785.24 with legal interest, alleged to be due them, for certain lumber and materials, furnished by them for the erection of a quartz mill for said alleged partnership. To this petition defendant answer, claiming that they were not partners of said Shaw as alleged, but were merely interested as mortgagees of said property.

Plaintiffs reply re-affirming their complaint. The cause of submitted to a jury in a Court below, evidence *pro* and *con* was fully given upon this issue by both parties, the cause was thoroughly argued, the Court charged the jury, and after deliberating, they returned a verdict in favor of the plaintiff, for the amount of his claim, and judgment was thereupon entered by the Court against said defendants, for the full sum sued for in said complaint. A motion for a new trial was made and overruled, and the cause appealed to this Territory.

A brief statement of the facts may be proper in this place.

George N. Shaw bargains, sells and conveys to Freeborn and Sheldon the defendants certain town lots in the town of Mineral Rapids, and also his interest in a water privilege on Carson river, appurtenant to the land embraced in these lots.

This conveyance, in the language of their agreement, "is intended as a mortgage, and is subject to the following contract and condition:"

Shaw agrees to construct on the premises sold, a substantial twenty-four stamp quartz mill, to be propelled by water, the plan of which is described in the contract and to construct a dam and race, so as to apply the water to the propulsion of the mill – the mill to contain all the improvements and appurtenances necessary to make it a first-class mill, all the cost and expenses of these improvements to be paid by Shaw, and the entire work was to be completed before the first day of January, 1862. Upon the completion of this work by Shaw at the time specified, he was to convey to these defendants fifty-one one-hundredths of all the property, as a condition, for sum of \$12,000, which was previously to be advanced by defendants to Shaw – \$3,000 on the first of June (the date of the agreement) \$1,000 on the thirty-first of July, and \$5,000 on the thirty-first day of August, 1861.

But if Shaw failed to complete the work within the time specified in the contract, and to convey to defendants the fifty-one one-hundredths, they were to have the right to enter upon and take possession of all the property, and hold it without any further conveyance.

Three months before the time had expired, on which Shaw was to complete the work, he became embarrassed and had contracted debts to a large amount, for labor employed and materials furnished in the construction of the mill, dam, etc.

Under these circumstances Shaw called upon these defendants for assistance. They came forward on the fourth day of October, and took from Shaw a conveyance of the entire property with a condition of defeasance, providing that when Shaw should pay to defendants the amount advanced by them on the property, and for work upon it and materials furnished, and the amount subsequently to be advanced by them, in the completion of the mill, together with the interest on these sums defendants, were to reconvey to Shaw for forty-nine one-hundredths of the property. The business of constructing the mill, dam, etc., was conducted by Shaw in the name of Geo. N. Shaw & Co.

The defendants are now and have been since the fourth of October, in the possession of the property mentioned in the first conveyance of Shaw to defendants, together with the improvements since made upon it by Shaw, and for which the indebtedness sued upon in this action was contracted.

These are the leading facts in the case. The evidence was very voluminous.

We will now proceed to notice the errors assigned by appellant, and will refer to them for the sake of brevity by the numbers which they



bear in the assignment filed, and to avoid repetitions we will dispose of them as we quote them.

And as most of the errors assigned turn upon questions of fact, we will lay down a principle of law  $\diamond\diamond\diamond\diamond$  by which we shall be governed in this case.

The determinations of issues of fact is the peculiar province of the jury and the following principle is the one which should govern all appellate Courts.

Where fraud or misconduct exist, the verdict of a jury should not be disturbed, when rendered upon questions of fact where no rule of law has been violated, and evidence is conflicting.

In the case of Warfield et. al. vs. McLean et. al., decided at this this term we refer to scores of cases where the rule has been affirmed by the first courts of this country and England, and we will not repeat them here.

Premising this much let us turn to the assignments.

First, the verdict and judgment was contrary to law.

The record in our judgment fails to support this assignment.

Second, the verdict was against the evidence. Under the rule above laid down the assignment fails.

The third assignment and also the fourth, the fifth, the sixth, the seventh, the eighth, the ninth and the tenth are all obnoxious to the same objections. Hence they are all unsupported by the record, under the rule which we have stated above. Each and all of them turn upon matters of fact only, which the pleader says, were or were not proven, and our oft repeated answer to  $\diamond\diamond$  objection is, that these matters all passed in review before the jury. They have decided them, and it is our duty to leave their verdict undisturbed.

One other matter is left undisposed of in this case.

The following assignment is made: "The Court erred in refusing to admit in evidence the telegraphic dispatch and letters which passed between the defendants Freeborn and Sheldon and George N Shaw, numbered in the record respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12."

We think that the Court did not err in excluding these matters. They were obnoxious to several fatal objections; they were *ex parte*; they consisted of declarations, conversations and correspondence between the defendants themselves; they were matters of which the plaintiffs had no knowledge and could have none. Where letters are offered in evidence, those to which they reply should also be exhibited; and finally upon this point the *nisi prius* Court expressly charged the jury that the indenture exhibited did not create the relation of partners between these persons, but on the contrary, that the mortgagor and mortgagee, and the case was put to the jury upon this hypothesis, that defendants were not partners *inter se*, but were liable as partners *quoad alios*, if at all.

What influence the secret correspondence of defendants between themselves, of which plaintiffs and community had no knowledge, could have had in proving or disproving that defendants held themselves out to the world as partners, we cannot see. One is essentially a private and the other public matter.

We have carefully examined the record and briefs in this cause and have failed to find any error sufficient in law to justify the reversal of it.

Let the judgment be affirmed.

SUPREME COURT OF NEVADA  
TERRITORY

RUSSELL MCDONALD PAPERS

Territorial Judiciary Box 4  
Folder XI-F – Transcript No. 48

B R MORGAN, Plaintiff and Respondent,                     )  
v.   )  
J A CALDWELL, Defendant and Appellant.                     )

This is an Appeal from the first District Court Storey County to recover in ejectment a certain lot or parcel of ground situate in Virginia City Storey County and fully described in Respondents Complaint. The suit was commenced in the Probate Court and a writ of restitution awarded the Plaintiff.

Defendant then appealed to the first District Court and the Cause having been fully considered it was ordered that the Judgment of the Court below and the same is hereby affirmed.

To the ruling of the Court the defendant duly excepted and brings his case to this Court on appeal.

From the evidence appearing in the record and also a diagram it appears that there were three lots fronting on “D” Street fifty by one hundred feet with an excess of thirty feet fronting on “D” Street, making an aggregate of one hundred and eighty feet fronting on “D” Street.

It also appears from the evidence that by a custom prevailing at the time a person was entitled to hold by location one town lot, and the size of the Lot, fifty feet front by one hundred feet in depth.

The ground claimed by Morgan would embrace three entire lots of the size above stated.

The evidence and also the diagram show that Morgan’s house was upon the Middle lot and Caldwell’s house is situate on the South lot.

It is contended by plaintiffs Counsel that as Morgan and two others located in the Spring of 1860 a tract of ground about one hundred feet in width by one hundred and fifty feet in length that then Morgan and his co locators are tenants in common and hence the possession of Morgan was

the possession of the other two locators. The case of Waring vs Crow 11 Cal. has been cited, but we are unable to see wherein the analogy consists. In the case above referred to the interest were undivided. In this case each party was entitled to a lot of a given size. Morgan erected a house upon one of the lots, the inference might be drawn that the other persons had abandoned their Lots.

The only question that arises in this case and the only one that we feel called upon to determine is whether Morgan could maintain ejectment against Caldwell. There is no doubt as to Morgan's right to the lot upon which his House stands and there is just as little doubt that if Caldwell is wrongfully in possession of the Lot upon which he erected a house it is against one of those who located at the time Morgan did and against Morgan.

This case will be reversed and remanded to the District Court. We are of Opinion that the Probate Court Committed Error in not allowing Morgan to introduce evidence tending to show that he was entitled to the Lot by purchase.

I concur  
“ “

PB LOCKE, J  
GEO TURNER, J  
JW NORTH

OPINION RENDERED AND FILED )  
FEBRUARY 4TH 1864. )

SUPREME COURT OF NEVADA  
TERRITORY

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THE PEOPLE                                    )  
v.    )  
EDWARD DONNERY                            )

The Defendant was Indicted for the Crime of Robbery, under our Statute the offense is described as follows:

Robbery is the felonious and violent taking of money, goods or other valuable thing from the person of another by force or intimidation. See Laws of 1861 page 66 Sec-60.

The first objection taken is to the sufficiency of the Indictment in that the indictment does not allege that defendant took the property with “intent to rob and steal”, this averment is certainly not necessary and under our Statute the indictment contains substantially a description of the offence. The language of the indictment after the usual recital is as follows: “from the person and against the will of said George M. Northway on the highway &c. then and there feloniously and violently did seize take and carry away Contrary to &c.” Words used in a statute to define a public offense need not be strictly pursued but other words conveying the same meaning may be used” Laws of 1861 page 460 Sec 242.

After looking through the record in the case we are unable to find anything that would authorize the Court to reverse the Judgment, the testimony was certainly very strong against the defendant the Law presented the case fully to the Jury giving the defendant the benefit of the reasonable doubt, and we cannot see that the Jury could have done less than to find the defendant guilty.

Therefore the Judgment will be affirmed.

I concur  
“ ”

P.B. LOCKE, J  
GEO TURNER, J  
JW NORTH, J

RENDERED

SUPREME COURT OF NEVADA  
TERRITORY

RUSSELL MCDONALD PAPERS

Territorial Judiciary Box 4  
Folder XI-F – Transcript No. 50

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DRAKE & ELAM, Plaintiffs and Respondents,

v.

DELANY, Defendant and Appellant.

This was a suit commenced in the first District Court Storey County to recover in ejectment a Town Lot in Virginia City.

Quite a number of authorities have been cited by defendants counsel to show that there was a non-joinder of parties but from the evidence presented in the statement of the case certainly Dunlap (?) possessed no such interest in the property in dispute as would render him a necessary party to the suit. We are unable to gather from the Record that he had even an equitable interest in the lot.

The second objection raised was that the Referee was not sworn. Our statute does not require that the Referee shall be sworn nor do we know that it has ever been the practice at Common Law or under the statutes of any of the States or Territories. The presumption is that the proceedings in this case in the Court below were regular and if an objection of this kind could be taken it would be more proper in the Court below.

The question is also raised that the judgment reported by the referee is for a different lot from the one described and claimed in the Complaint. We are unable to see that such is the case. The Complaint describes Lot No. 9 in Block 177 Range “E” lying and being in Va-City etc. By reference to the answer of defendants it will be seen that the only issue raised is as to the Lot above described. The Language of Deft-answer being (?) as follows. Defendant further denies that the said Plaintiffs are or ever were the legal owners etc. of Lot No.9 Block 177 Range E. in said City. We cannot see but that this description is sufficient indeed Reference is had to the official map of the City and it would seem that this is all the description of a Town Lot that would be necessary. It is true that the Complaint contains a very lengthy description of this lot that might be regarded as surplusage. The Answer only describes the lot as to number of Lot Block & Range. This we think is proper and all that is

necessary for any purpose and would enable a person to ascertain where the Lot was with as much certainty as any description that could be given.

The Judgment will be affirmed.

LOCKE, JUDGE

SUPREME COURT OF NEVADA  
TERRITORY

VIRGINIA DAILY UNION

REFEREE'S DECISION

The following case in Equity was submitted a short time since to Charles Lindley, Esq., as Referee. WE publish his opinion in full, as it may be of interest to many of our readers:

—

*TERRITORY OF NEVADA, COUNTY OF STOREY—  
DISTRICT COURT, FIRST JUDICIAL DISTRICT.*

ROBERT APPLE,	)
v.	)
THEODORE WINTERS.	)

CONCLUSIONS OF LAW

The nature of this cause seems to require that the conclusions of law should be more fully stated than is usually found necessary in cases on reference.

The common law was in force at the time of making the sale which is the subject of the controversy, except so far as modified by the Utah Statutes. This property (mining claim), is not such an interest in land to be within the scope and meaning of any of the English or American Statutes, providing for the sale of lands.

It may be said that our Courts will take judicial notice that the sovereignty is the paramount proprietor (the *fee simple* owner) of the mines, and that the property of the individual citizen therein, is a *lesser* estate.

This estate is created in the first instance by what Justice Baldwin terms in "Gore vs. McBrayer," the "parol fact" of *appropriation*. It is held by an implied *license at ∅∅*. It may be terminated by the "parol fact" of *abandonment*, and without Deed.

The property right involved in this case is an *incorporeal* right: a license at will to extract the mineral wealth, and is capable of assignment. Substantive *corporeal* property commences in the extracted ore and is



perfected in its reduction to amalgam. It is not the absolute property thus segregated or extracted, that is in controversy, but the house to extract it. If, therefore, an estate or right of property of such inferior possessory character can be originated and terminated without *Deed*, then it would seem a strange anomaly in law, if it could not be conveyed by a *parol* sale, accompanied by the “parol fact” of a *change of possession*. I therefore am of the opinion that such parol sale, with possession, conveys all the interest of the licensee or occupant—all the interest which the defendant held in the ground in dispute.

The power of the Agent to make such sale need not be in writing. I find no authority which requires a higher degree of solemnity in conferring a power, than is required in the execution of it. If, therefore, a *parol* sale is valid, then the parol power to make such sale must be held valid also. In speaking of *parol* sales it is intended to refer to *verbal* sales, as well as those in *writing* not under seal, being of the same degree of dignity, differing only in the mode of proof.

Even when contracts are required to be in writing, to give them validity, the power of the agent may be verbal, unless the statute also expressly requires such power to be in writing. [Storey on Agency, Sec. 50.]

This is the rule in cases of executory contracts for the sale of land. [2d Kent’s Com. 798, 8 Ed.; McWharton vs McMahan, 10th page, 394; Clina vs. Cook, 1 Sch. & Lef. 27, 31.]

What now is the legal appellation and legal effect of the instrument which purports to be an absolute deed from defendant to plaintiff, which was sealed acknowledged and delivered in the name of the defendant by Morse, the Agent, having only a *verbal* power? When an agent under a verbal power executes a deed under seal, it amounts only to a simple contract in writing. [Wande vs. Munn, 1 Seldon, 229.] The deed then must be treated as a contract for a sale of the ground in controversy. If the law required such contract to be in writing, to be followed by a deed, in order to pass the title as in cases of real estate, then this instrument would be treated as such contract, which a Court of Equity would require the defendant to complete by making a deed. But upon the principles above stated, governing the transfer of mining property, this so-called deed is simply a bill of sale, accompanying the change of possession, and created in the plaintiff a complete title at law; as complete as an ordinary bill of sale of personal property. The fraud practiced upon the defendant by his agent will not defeat the sale: it appearing that the plaintiff had no knowledge of such fraud, but was a *bona fide* purchaser.

It would seem quite clear that plaintiff is not entitled to the particular relief prayed for in his bill—namely, another and better deed from defendant. Plaintiff’s counsel pray *orally* at the hearing under the general prayer for relief that a decree be entered as on bill, *quia timet*, and also contends that the special prayer for a deed involves a prayer for confirmation of title. The rule seems to be well settled, that the relief sought, whether specially prayed for in the bill, or moved for orally, at the hearing, *must be agreeable to the case made by the bill*. [Story’s [sic] Eg. Plea. Sec. 40.]

“If the plaintiff doubts his title to the relief he wishes to pray, the bill should be framed with a double aspect.” [Storey Eg. Plea, Sec. 42.]

To entitle the plaintiff to a decree quieting title, his complaint should show ownership and possession in himself, and a claim of title by defendant, which it fails to do. The findings establish the two first, and the defendants answer the two last of these requisites. Can the plaintiff bring to his aid the findings and answer, in order to make a case that shall justify the relief now contended for? It might be here remarked that defendant would hardly be “surprised” by a decree for such relief, having permitted testimony (without objection) to be taken touching plaintiff’s possession, and having shown by his answer that he claimed title.

Indeed, the only possible “surprise” to defendant, would be found in omitting (if such were the case) to prosecute his defense as vigorously as he would otherwise have done, had he not confidently expected that the plaintiff must fail in obtaining the relief demanded, and that he would be left to his remedy at law to repossess himself of the property. The *oral* prayer was not made till the testimony was closed, and the cause was about to be submitted.

The possibility of such a “surprise” is not sufficient to control the decision of the point involved. However much the defendant was impelled to his line of defense by the judgment of the Court on demurrer, still, it must be presumed, that he exhausted his evidence upon questions upon which testimony was permitted to be taken, one of which was the plaintiff’s possession.

This is a case in my opinion in which it is the duty of the Chancellor to direct an amendment of the bill, so as to make it commensurate with and agreeable to the case made by the pleadings and findings—but not to go beyond, so as to raise new issues [Storey eq., 895; 3 Cal. 82; 9 Cal., 58.]

As the costs in the case have been chiefly incurred while the plaintiff was in pursuit of relief to which he was not entitled, such costs are properly charged to him.

It is therefore ordered and adjudged that plaintiff pay the costs of this action, and upon the payment of such costs he have leave to amend his bill agreeable to the directions of this opinion, and that thereupon he have a decree of this Court to be obtained on further application, assuring and confirming his title.

If he fail to pay costs and amend his bill in ten days, then the same is to be dismissed at the plaintiff's cost and without prejudice.

SUPREME COURT OF NEVADA  
TERRITORY

VIRGINIA DAILY UNION

JULY 3, 1864

THE PEOPLE  
VS.  
FLEISHHACKER & MEYER,

and

THE PEOPLE  
VS.  
MANDELBAUM & KLAUBER.

The above were two suits for taxes levied in Ormsby county. The appeals were taken to this court [sic], and both the judgments were unanimously ordered to be affirmed. The questions involved being similar, we will dispose of them together. There is no defense in either cause, except as to the tax on seven thousand dollars. The original complaint was filed under the provisions of the statute, page 158, sec.4, setting up an assessment between the 1st of March, 1862, and the 1st of August, 1862. Answer denied it. Amended complaint was filed as to a special or subsequent assessment between the 1st Monday of August and the last Saturday of October. Defendants made no denial.

The delinquent tax list was offered, however, and showed the assessment to have been made in every way conformable to law, vide Section 43, page 159, Nevada laws, 1861. Same section in laws of 1862, page 144, and Sec. 42.

This proof made the plaintiff's prima facie case. If the Assessor had not made this assessment, the Board of Equalization should have done so. Vide page 153, Sec. 23. As to appellants' second point that the levy was excessive, no answer setting up the fact was filed, and in a cause like this we cannot grope through the record and the statutes in search of error not exhibited in the pleadings.

The act legalizing the assessment, and the act regulating the finances of Ormsby county both refer to it.

Appellants complain of the attorney's fees, under the Act of 1861, page 161, Sec. 46; the charge seems justifiable, at least we should treat it so here, as the objection was not taken in the District Court. Vide 5 Cal., 417.

Appellants object to the judgment being for coin. A ready answer to this is presented by the fact that such is the precise letter of the law. We think the provision is proper and wise, and furthermore that it should be enforced in letter and spirit.

Let the judgment stand affirmed.

GEO. TURNER, C.J.,  
P.B. LOCKE, J.,  
J.W. NORTH, J.

The petition for a rehearing of this cause was filed and overruled.

SUPREME COURT OF NEVADA  
TERRITORY

RUSSELL MCDONALD PAPERS

Territorial Judiciary Box 4  
Folder XI-F – Transcript No. 65

SAMUEL SANKEY, Appellant,        )  
 VS.    )  
 M.A. JESS, ET AL., Respondents.    )

This is an action of ejectment brought to recover a tract of land in Steam Boat Valley in the County of Washoe. The cause was tried before a jury in Washoe County, who rendered a verdict for Defts, on which Judgment for Deft was duly entered. A motion for new trial was made, and denied in the Court below and an appeal is taken to this Court from the order refusing a new trial.

The Plaintiff and appellant claims to recover the land in controversy, on the ground that he is the successor in interest to J.B. Jenkins and his associates, who located the land in the fall of 1860.

Jenkins and associates sold to Bryant and others on the second of Feb. 1861, by an executory contract which was in writing but not recorded. Bryant & others went into possession under the purchase; and being so in possession, sold and delivered possession to Defts. who were purchasers, for a valuable consideration, and without notice.

In 1863, Jenkins & others commenced suit against the Defts, and pending this suit, the present Plff, who was Plffs attorney in that action, purchased his clients interest in the land, discontinued the action, and commenced another in his own name; which is the action brought by appeal to this court.

Where there is no record of title, or of existing claims to land, other than in him who is in possession holding adversely to all the world, a bond fide sale, and actual delivery of possession, to an innocent purchaser, must be regarded as a complete transfer of title.

We think the verdict of the Jury and the action of the Court below correct; and see no reason, developed by the record, for distributing the Judgment.

Judgment affirmed.

GEO TURNER , C.J.,  
JW NORTH, J.,  
PB LOCKE, J.

SUPREME COURT OF NEVADA  
TERRITORY

OPINION NO. 66 AND NO. 67

Opinion of JW NORTH,  
P.B. LOCK(E), J. Entered

FILED MAY 5TH 1864  
ALFRED HELM, Clerk

POTOSI GOLD & S. M. CO., Respondents,  
V.  
CHOLLAR GOLD & S. M. CO., Appellants.

CHOLLAR G & S. M. CO., Appellants,  
V.  
POTOSI G & S. M. CO., Respondent.

An appeal is brought in each of the above entitled causes, from an Order of the Judge of the First Judicial District granting a preliminary injunction in the First, and denying an Injunction in the second cause above named.

The facts and alleged errors being precisely the same in each case, they have been argued & submitted together; and a decision of one necessarily determines the other.

About the 17th of Jan 1862, the Chollar Company above named, brought an action in ejectment <against the Potosi company above named> to recover possession of a surface claim known as the Strattan survey <about 1400 feet in length and 400 feet wide> “and being the same premises surveyed by James P Strattan on the 8<sup>th</sup> day of June 1860, and including the Comstock lead or ledge so called, with all the dips, angles, spurs and variations thereof. Together with all the quartz leads and ledges and earths containing the precious metals within said described boundaries,” acquired by virtue of four several locations known as the Webb & Kirby – Bench & Chandler locations.

The Potosi Company, the defendants in that action, denied the allegations of the complaint and claimed ownership <and possession> of fourteen hundred “feet of that certain quartz ledge, with all “its dips angles and spurs, which runs along “and within the Eastern portion of the ground



“described in plffs. complaint, and which is “the ground in dispute in this action.”

The plffs in that action denied the lawful possessing, and the ownership, of the Potosi company in the ledge described in the answer in that action.

Upon the final trial of that cause the jury rendered a verdict for the plaintiff, and the Court rendered a judgment in favor of the plaintiff for the ground included in the entire Stratan survey, “and including the Comstock lead or ledge so called, in dispute in said action, with all the dips angles, spurs and variations thereof within said described boundaries,” and “all the quartz leads or ledges and earth containing the precious metals within the described boundaries.”

It is <being> ascertained that the ledge in controversy extends East of the East line of said Strattan survey, and the Potosi company claiming ownership of and being in possession of that portion East of the Stratton survey, bring their action to enjoin the Chollar Company from entering or working thereon.

On the hearing of the ~~XXXXXXXX~~ <application> for a preliminary injunction, before the Judge of the 1<sup>st</sup> Judicial District, affidavits were offered for the purpose of proving the right of the Chollar Company under the Webb & Kirby and Beech and Chandler locations, as well as to the custom of miners in locations of claims ~~of claims as to quartz ledges~~ as to quartz ledges being an above location and as to development of ledge since the trial of the former suit: and also as to what was litigated in the former suit.

The plaintiff objected upon the ground that the ground now in controversy was litigated in the former action & that the record in the former action was a bar to any action or proceeding based on claims which had been litigated in that action, between the same parties.

The objection was sustained; and the cause being submitted on the other affidavits offered, the injunction was granted as asked for by the Potosi Company.

The cause of the Chollar vs. the Potosi being also submitted upon the same evidence, the injunction asked for by the Chollar company was denied.

An appeal from the order of the Judge, is taken by the Chollar company in each case.

The record in the former action shows unmistakably that the ledge or lode now in controversy was <the> real matter in issue ~~in that action~~. The several locations above named were pleaded, submitted <passed upon> and determined in that action.

The <Chollar company the> plaintiff, ~~in that action~~ sought to recover the <ground or> ledge on which the Potosi company were at work, by virtue of the locations set forth in its complaint. The Potosi Company simply claimed the ledge by virtue of its own location, and adversely to the several claims and locations set up by the Plff. The Plff denied in its Replication Def to ownership of the ledge. This presented the issue which was tried, and the judgment <in that action> determined the rights of the respective parties under all the claims pleaded. The Deft having set up claim to the ledge in controversy, as against all the claims of Plff, and the Plff having recovered only to a given line; the judgment must be understood as having determined the right of the Deft, as against the Plff, to all that portion of the ledge lying beyond the line or boundary fixed in the judgment.<sup>276</sup>

These several claims having been once litigated between the parties to this action, and fully passed upon and determined by the Court; the judgment in that action must be regarded as final; and a bar to any new litigation of the same ~~matters~~-titles between the same parties.

We think the evidence ruled out by the judge on the hearing was properly excluded; and that the proper order was made in each case.

The order, appealed from in each of the above causes is <hereby> affirmed.

JW NORTH, J.,  
PB LOCKE, J.

(The opinion was filed on May 5, 1864. The addendums below were filed on the same day as well).

It is unnecessary to express any opinion as to the merits of this cause both parties may be heard upon the trial as to what was and adjudicated in a former trial.

PB LOCKE, J.

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<sup>276</sup> The defendant in its answer in the present action, says that "in order to decide the direct issues raised by said pleadings (the pleadings in the former action) as to the portion of said lode of which defendant had then taken possession, it was necessary to litigate and determine the respective titles of the parties to the whole of said 1,400 feet in length upon said Comstock lode; that Deft has no other title to any portion of said lode except that which was litigated in said former action." We cannot differ from the defendant in the view here taken.

Opposing the whole doctrine in the former opinion I concur with Justice Locke in the views expressed in the latter clause to wit that "it is unnecessary to express any opinion as to the merits &c And that on the final trial before the court & jury both parties should be heard in Evidence as to what premises were adjudicated in the former trial these or others.

GEO TURNER, C.J.

Dissenting Opinion of CHIEF JUSTICE TURNER

FILED MAY 5, 1864  
Nevada Supreme Court

POTOSI G&S, M. CO            )  
vs.                                    )        ON APPEAL  
CHOLLAR G&S, M. CO        )

There was argued at this term of the Supreme Court two causes the Potosi G&S, M.Co vs. Chollar G&S, M. Co and the Chollar G&S, M. Co vs. Potosi G&S, M. Co from the decision rendered by said Court I respectfully dissent and will state as briefly & pointedly as possible the points upon which I think the Court has fatally erred. Each party in the Court below asked for an injunction, the judge granted one to the Potosi Co and refused one to the Chollar Co. ~~The former in~~ From these orders the Chollar Co appealed; they were orders at Chambers of an interlocutory character and the suits are not finally disposed of ♦♦♦♦ much await a trial by jury upon the merits. The action wherein Potosi Co are plaintiffs is Ejectment, Petition alleges Chollar Co to be "in possession of all of a quartz ledge East of the Stratton Survey &c" they ask for restitution & an injunction.

The suit of the Chollar Co is trespass & their Petition charges that the "Potosi Co are on a ledge East of the Stratton Survey, 1400 feet long, south of the Hale & Norcross &c" and they ask for an Injunction & Damages.

As I said before the application of Potosi Co was granted & Chollar denied.

The judge below heard the motion upon the Pleadings & the few Affidavits; the great mass of the Affidavits of the Chollar Co were "ruled out". The decision was based upon the doctrine that the former decision of another suit was a bar to any other recovery. ~~This~~ Either because it was

strictly an Estoppel in law or because from lapse of time and acquiescence of parties it is equitably so; or some such reason.

The decision in any aspect I regard as totally unfounded, contrary to the law of all the Books thence entirely erroneous, for the following reasons.

The Chollar Co it appears has three titles:

1st. The Webb & Kirby location made in June 1859 1400 feet long & 200 feet wide which was a surface location for quartz & surface mining.

2d. The Beech & Chandler location made in January 1860 which was the location of a ledge (now shown to be the Comstock ledge as all admitted on the argument).

3d. The Grass Valley location made in September 1859 also said to be the Comstock.

¶ The last of these they do not ar◊ in this suit, relying upon the two former.

In June 1860 one Stratton surveyed them 400 feet in width & 1,400 feet in length upon the surface on the two former locations. In March 1860 the Potosi Co located a ledge as they said in their Notice "East of the Webb & Kirby claims-"

The Chollar Co upon their two former locations went to work upon their claims, the Grass Valley Co did the same.

In January 1861 the Potosi Co ran a tunnel inside of the "Stratton Survey" and began to work therein, whereupon the Chollar Co sued them and recovered a judgment for the ground up to the Stratton line. This is the suit which it is said prevents them from recovering, or even suing for other ◊◊◊◊◊ and different premises, to wit, a ledge running far east of this line, and not included in the former suit. This is a grave error.

A glance at the former suit will show this. That was an action of ejectment, upon the surface claim which was invaded, it described in express words the Stratton survey and set up title to it & charged the Webb & Kirby location to have been entered. Defendant <Potosi Co> answered admitting ~~the Potosi~~ that they were in the Webb & Kirby claim, and denied plaintiffs right to it: The Jury found for the Plaintiff & the Supreme Court affirmed that judgment: they recovered all they sued for-

Now, in that suit the Beech & Chandler ledge location was not sued on or litigated; this is clearly shown by the complaint, the answer, the verdict, the judgment and the opinions of all the judges of the Supreme

Court. That is the record. The Beech and Chandler location was only introduced by way of rebuttal to show that they did not abandon the Webb and Kirby, but brought another claim.

The Chollar company recovered the Stratton Survey, and it appears that no one thought any part of this lode ran east of that line. Later developments have shown this, to the surprise of all. These developments show that the Potosi company are on the ~~Webb and Kirby location~~ Beech & Chandler ledge, as well as the one formed in the Webb and Kirby location.

The Beech and Chandler location above entitled the Chollar company to their injunction. What was that former judgment, which it is said bars this suit? It is as follows: “That plaintiff recover possession of all ground beginning at a stake, thence North 24 (degrees) seven hundred and twenty seven feet &c &c (following the lines of the Stratton survey and expressly naming the same.) It also includes the Comstock lead, and all leads and ledges within this boundary.”

This judgment gave all to the Chollar company and nothing to the Potosi. It is said that plaintiff sought to recover these premises also herein sued for, being the Comstock lode east of the Stratton survey, and only got the Stratton survey. It is further said that this judgment, failing to give them the ledge as a whole, gave them part and denied the balance.

Can it be said that a party recovering one piece of ground cannot afterward sue for a ledge distinct and apart from it?

Surely to make this a bar it must be shown that the Chollar Company sued for these premises also and they were adjudicated against them. A ready answer to this is that they only sued for the Stratton survey, and recovered all they sued for. Now let me look a little more in detail at the pleadings in the former suit. The complaint shows that they sued for the Stratton survey precisely. All it asks to recover is “within said <described> boundaries.” It describes the premises and then uses the following language: “and including the Comstock lead or lode with all its dips, spurs and angles” and claims all “within said boundaries” It is surely straining the meaning of this expression to say that it referred to a ledge not included in said boundaries, and the suit was for the Comstock lode, which is miles in length, I decline to argue this proposition.

To this complaint an answer was filed by the Potosi company. It “admits it is in possession of a part of said ground, ~~namely~~ viz: a ledge in the eastern part of the ground described.” The ground is the Webb and Kirby ground. The ledge may or may not have been the Comstock; the answer does not inform us.

Now, if this raises any issue as to the Comstock lode [sic], and particularly that part of it east of the Stratton survey, I cannot discover it. In the opinion of the Supreme Court it is said that the plaintiff “claims ~~the eastern part~~ a location called the Webb and Kirby location called the Webb and Kirby location, and sues for the eastern part of it.” This and the pleadings should settle the case, but in addition to this the briefs of counsel filed in that case aver the same.

If the Comstock lode was litigated then the Chollar company recovered it, as the jury gave them all they sued for. In first Kerman’s Reports, page 425 an analogous case occurs. A plaintiff owned 105 acres of ground, a defendant trespassed on some spot, no evidence was offered as to what spot, plaintiff recovered judgment; afterwards plaintiff sued for seven acres of ground, court held the former recovery was not an estoppel, as it is indefinite or if pertinent at all, it proves the plaintiff to be the owner of the 105 acres. The 58th Sec. of the Practice Act requires “the metes and bounds to be described in a complaint.” Such a description is found here. It is possible the suit was about something else?

It is said however that the pleadings claim the lead. If so the verdict was general, and gave it to the plaintiff. The Judge below says, however, that the judgment of the court limited the verdict, giving plaintiff only such part of the lead as lay within the Stratton survey. A ready answer to this is that ~~if it~~ the judge could do no such thing. In a suit at  $\diamond\diamond$  in ejectment the judge has no such power. The practice act provides in express terms “the judgment shall be entered in conformity to the verdict.” The judge may set it aside or enter judgment, and his power extends no farther. Can argument make anything clearer than this?

Again, if there was any doubt as to this matter, the grounds of the judgment must estop the party. Vide the following authorities

5 Condensed Reports, 213

Report of Referee will explain the judgment. – 15 Cal. 41. Judgment must be explained by the verdict.  $\diamond$  Peters, 301. Judgment on pleadings and pleas must be looked at. 16 Johnson, 136. Unless judgment be against a party, it is no bar. Greenleaf and the text books are full of this doctrine.

I will briefly allude to the opinion of the judge in the court below, in which he gives sundry reasons for his views upon this estoppel. And I will state them in substance and as briefly as I can. First reason is as follows: In the former suit four locations are sued on, and all they claim was litigated under them. I think I have shown that only one location was

sued on and it is fair to suppose that plaintiff knows best himself how much he claims. The issue and judgment must estop the party and not general descriptive expressions in a complaint, and again I say, if sued on, it was recovered.

Second reason, Complaint is more general than the judgment. I have shown this to be an error, and if true, is this the way to determine resadjudicata [sic].

Third reason, is the fact that judgment is more specific and guarded than complaint shows that court intended to settle definitely the controversy between the parties.

What controversy? The one in that case or the one in this? Passing this however, the error of the whole doctrine is that it flatly contradicts the practice act. The judge dare not change the verdict or issue

Fourth reason, Plaintiff did not object to this judgment, and it shows the Chollar company recovered all they thought they were entitled to.

The record does not show whether they objected or not, and they could not well do so, as they recovered all they sued for, and as to how much they claimed, they are the best judge themselves. But I protest here and now against the doctrine that a plaintiff owning Whiteacre and recovering it in a suit, and afterwards suing for Blackacre being estopped because he did not include it in the former suit.

I have known costs to be taxed against a party <because he did not join his claims> but I never heard that he was compelled to lose his farm, for any such reason. <Even where it is in actions on contracts.>

Fifth reason: the location was merged in the judgment.

This is a new idea, and I presume I do not understand it. Indeed I cannot conceive how any such doctrine can be law & I will not discuss it.

Sixth reason. The entire 1,400 feet was litigated. This I have shown to be a mistake.

The seventh reason is the same in substance. Now if the Chollar title ~~was~~ to the Comstock ledge was litigated, then the superiority of their title cannot be denied by the Potosi Company. 5 Conn. 550 – 3 East. 174. 4 Phillips, 9.

The verdict in favor of the Chollar company was conclusive. 3 Cowen 276 Gardner vs. Buckner – 8 Kendall pages 9, Wood vs Jackson.

In conclusion I may say that the Grass Valley <claim> never was litigated.

The Beech & Chandler claim never was litigated. The Webb and Kirby claim was litigated as to their rights within the Stratton survey, but whether they can follow the lead without its limits or not never has been decided. So say the Supreme judges in their opinions, and the Gold Hill claims and many others of the most value in our Territory being square locations, and the question being of such vast and vital moment to all our people <as to their right to follow their lead> I protest against its being frittered away by a whiff of a pen and the utterance of a single word – “estoppel.”

In that question is decided by the Supreme Court of this Territory, I would like the owners of square locations <or the advocates of this Estoppel> to tell me how it was decided, as I have failed to learn myself, although a party to every cognizant of every decision the Supreme Court has rendered up to this day since the Territory was organized.

Wherever an estoppel is doubtful it is to be resolved against the rule and in favor of a trial. Surely it is doubtful here at least.

Upon so plain a doctrine I find in Poindiers Law Dictionary all the law which is necessary in my judgment to decide the case.

I will quote the following definition from this authority.

“An Estoppel is a conclusion in law which prevents a man from alleging or denying a fact &c,” Lord Coke says “An estoppel is when a man is concluded by his own act to say the truth.” Blackstone says “An Estoppel occurs where some act or deed precludes a party from averring the contrary. In 1 Serð & R 444 it is said “Estoppels are adððs in law”. On page 442 it is said “Estoppels are not admitted in equity against the truth.”

The reasons <why> I have thus fully discussed this case are as follows:

- 1st. The decision in my judgment is erroneous, flagrantly so, and works a fatal wrong unless redress is offered by a court and jury hereafter.
- 2nd. The doctrine applied prevents a fair trial, strikes out material testimony and perverts the administration of justice in this case.
- 3d. In all doubtful cases, the doubt should be resolved in favor of a party being heard, at least once in the trial of his case.



4th. It was my fortune to be one of the Supreme Judges who tried the former case and I know as they do that there is no estoppel, that decision has no such effect and as their survivor and in their name I protest against our decisions being passed and conjugated to mean precisely the reverse of what they do mean, as explained even by their very letter, as well as by the judges who rendered them.

My opinion is that this order should be promptly reversed.

GEO. TURNER, C.J.

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SUPREME COURT

POTOSI GOLD & SILVER MINING COMPANY, Respondents,  
V.  
CHOLLAR GOLD & SILVER MINING COMPANY, Appellant.

CHOLLAR GOLD AND SILVER MINING COMPANY, Appellant,  
V.  
POTOSI GOLD AND SILVER MINING COMPANY, Respondent.

To the Clerk of the Supreme Court,

You are directed to strike from the files in your office, any addendum or qualification to the opinion delivered by North, Judge, and concurred in by me. Said addendum or qualification is hereby revoked by me, and rendered null and void and to be of no legal effect.

Given under my hand this the thirteenth day of MAY AD 1864

P.B. LOCKE JUDGE.

SUPREME COURT OF NEVADA  
TERRITORY

RUSSELL MCDONALD PAPERS

Territorial Judiciary Box 4  
Folder XI-F – Transcript No. 70

WM. ALFORD ET AL.            )  
v.                                    )  
N. DEWING ET AL.            )

This is a case in which plaintiffs sued in the Court below in an action of Ejectment to recover possession of certain lands therein described.—It appears that Plaintiffs heretofore brought suit setting up title to this same land and against the same defendants in an action of trespass in which suit he prevailed before a jury & the case being carried to the Supreme Court the Judgment was affirmed.—In that suit about all the questions raised in this cause were decided and it will not be necessary to discuss them at so great length as would be proper were the matters for the first time presented.

That suit being trespass although it affirmed Plaintiffs title, no writ of restitution could issue and the local Court not having granted Injunctions to protect Plaintiffs title he sues in this action in Ejectment to secure said writ.

It appears that Plaintiffs at a very early day had said land surveyed under the Utah possessory act, he also had it surveyed under the Nevada act, he marked boundaries blazed trees, built mills & made other improvements worth over twenty thousand dollars upon the land & that they were of such a character as were held sufficient by a jury of the vicinage, a District Court & also the Supreme Court hence his possessory right is not an open question.

I will briefly allude to the points of error.

It is said the Court erred in refusing the 4", 5", 9" and 10" Instruction.

The 4" was properly refused as it had been given in the 3d substantially.

The 5<sup>th</sup> was properly refused as it is “in presenti” and refers to titles at the trial alone.

The 9<sup>th</sup> is clearly erroneous.

The 10<sup>th</sup> is also clearly so.

The 2d assignment of error is not well taken.

As to the other points made that the verdict is against law, the possession was not proven sufficiently, the Notice was insufficient, the Survey was not complete, the plaintiffs holding a tenancy in common could not sue; &c:&c: as to all these propositions a sufficient answer is presented by the Record, the judgment in the former suit, the decision in the Supreme Court, these furnish a clear and satisfactory answer & for the reason first stated we will not further dwell on them.

Let the judgment be affirmed.

TURNER, C.J.,  
P.B. LOCKE, J.

SUPREME COURT OF NEVADA  
TERRITORY

OPINION

FILED MAY 5, 1864

THE PEOPLE, Respondents,	)
v.	)
F.W.H. JOHNSON, Appellant.	)

The appellant in this cause was indicted by the Grand Jury of Storey County, for murder in the second degree, for the killing of Horace Smith on the 28th day of October 1863; and on the trial was convicted of the crime of manslaughter.

This appeal is brought for error alleged to have been committed by the Court below, in the admission of irrelevant testimony, which was evidently offered for the purpose of proving malice on the part of the Deft.

The jury having found a verdict of manslaughter, which ignores malice, could not have given weight to the testimony. Though a portion of the evidence might be regarded as irrelevant, if it did the appellant no harm, and was disregarded by the jury, it affords no ground for a reversal of the judgment.

The judgment of the Court below is affirmed.

GEO. TURNER, C.J.,  
J.W. NORTH, J.,  
P.B. LOCKE, J.

# Appendix B

## Newspaper Articles: 1859-1860

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# TERRITORIAL ENTERPRISE

January 1, 1859

## Mass Meeting

Pursuant to a call published in the Territorial Enterprise, for a Mass Meeting of the citizens of Carson county, to be held at Genoa, on the  $\diamond\diamond$  day of December 1858, John S. Child was elected President, and J.J. Coddington was elected Secretary.

The object of the meeting was briefly stated by the President.

The meeting was ably addressed by Mr. Lehigh, setting forth the policy of the Federal Government, and in favor of its extending its jurisdiction over this portion of Utah Territory.

The following resolutions were adopted:

*Resolved*, That we are cognizant of the facts set forth in the preamble, and we cordially endorse, the sentiments expressed in the resolutions of the meeting of the citizens of Genoa on last evening; and that we are firmly of the belief that they are the views and sentiments of a large majority of the conservative portions of the citizens of Carson county.

*Resolved further*, That  $\diamond\diamond\diamond$  (we will)  $\diamond\diamond\diamond$  as practicable take such steps as may be necessary to secure to us the protection of the laws of this Territory.

*Resolved*, That the proceeding of this meeting be published in the Territorial Enterprise.

After the reading of the resolutions, they were unanimously adopted.

J.S. CHILD, President.

J.J. CODDINGTON, Secretary.

# TERRITORIAL ENTERPRISE

January 1, 1859

## Correspondence

Editors Territorial Enterprise:—In my last I spoke briefly of our valleys as a farming county, and now I shall notice some of our advantages for stock growing, and I think I can safely venture the broad assertion, that they cannot be surpassed, in any country.

California is acknowledged to be one of the best grazing countries in the world, but we possess advantages over her. In the spring and early summer stock does well enough in California, but the stock of all kinds suffer for nutriment the remainder of the year. Not so here, however, for throughout the entire summer our valleys are green with the richest pasturage, our mountains and hills in many places are covered with the best bunch grass, and it will not be long, in my humble opinion, till California will look to the eastern slope for a supply of beef, for while fat cattle in California are plentiful only at certain seasons of the year ours are always fat enough to make good beef, and although our agricultural and mineral resources are none the worst, yet it is to stock raising that we must look for our greatest wealth. Many men of experience, who have lived on the other side of the mountains see, and appreciate our superior advantages and are now extensively engaged here in raising stock. Our valleys are beginning to attract attention abroad and must and will soon settle up. When we look at the changes which have taken place for the better within the last three years, what must be our position in the next three, if Congress grants us a separate Territorial organization; our beautiful valleys that are now laying waste would be teeming with wealth and animation, our mineral and agricultural resources would be developed, and in a few years we would be praying Congress for admission in the sisterhood of states. More next week.

Yours,  
ALABAMA



## TERRITORIAL ENTERPRISE

January 8, 1859

In Mooney's Flosom and Placerville *Express* of Dec. 25th, we find the following in connection with an article headed "Another New State:" "They have got a special judge (Child) appointed over them by President Buchanan, and for weal or for woe they are determined to be bound neither by California on one side, nor the Mormons on the other."

We are anxious for an independent Territorial organization, but for the present we are within the bounds of Utah and are legally under her jurisdiction. Judge Child received his appointment from Gov. Cumming.

# TERRITORIAL ENTERPRISE

January 29, 1859

## **Territorial**

The 13th day of December last, was the day set by Congress for the investigation of our claims to a Territorial organization, together with those of Arizona, Dacota and Laramie. A bill for the establishment of a Territorial Government for Dacota and Arizona was presented in the Senate by Mr. Rice, but our latest newspaper dates give no account of any action in behalf of Nevada. We are not at all discouraged, however, and from the action taken in the premises heretofore, we firmly believe, that ere the adjournment of the present session of Congress, a bill will have passed for our Territorial organization.

Of the four proposed new Territories now applicants before Congress for the establishment of Territorial Governments we cannot but believe that Nevada is best entitled to favorable consideration. We cannot claim as large a population perhaps as Dacota or Arizona, but our isolation and remote position from the seat of Government of Utah, aside from the many objectionable features of the legislative enactments of the Territory by which we are to be governed, with the impossibility of a remedy while the Mormon population are in the majority, should at least entitle us to as much Congressional consideration and attention as is shown to either of the present applicants for Territorial organization.

It is entirely impossible for the peculiar characteristics of the Mormon faith to affiliate with our views of civil and religious propriety, and so long as the Mormon population of Utah are in the ascendancy, and for a long time after the Gentiles shall have gained a majority, the exercise of civil authority and the execution of the laws in accordance with our notions of the genius and spirit of the law which should prevail throughout the entire territory of the United States, will be attended with much difficulty. Utah as a whole cannot prosper under the present condition of affairs, and without a separation as a branch we must suffer the decay of the parent trunk. The inhabitants of the proposed Territory [missing text caused by damage to original] and under her jurisdiction; we must suffer the consequences of the distracted condition of the Territory.

We sincerely sympathize with unfortunate Utah in her present deplorable condition, but cannot see any tangible reason why we should be bound to her jurisdiction and compelled to suffer the ill effects of a continual and disgraceful civil war. It is natural for us to feel solicitous for the prosperity of the country in which we live, and we feel secure that, situated as we now are—destitute of any kind of protection whatever,

either civil or military, we cannot prosper. The laws of Utah have thus far proved an entire dead letter with us, and recent events at Salt Lake lead us to believe that the efforts of the courts to enforce the laws in that portion of the Territory will be thwarted for some time to come. True, military force is in waiting at that place to maintain the supremacy of the law, but juries for the hearing of cases are necessarily composed of persons whose religion and principals are so antagonistic as to render it impossible for them to unite on unprejudiced and equitable verdicts. The laws of Utah then, so long as they remain ineffectual, are equivalent to no law at all.

Arizona and Dacota have good and efficient Territorial laws, with the power to enforce them, and on which they can confidently rely for protection; but not so with us. The presence in our Territory of a military force is absolutely necessary to prevent an open rebellion. When peace is restored to Utah, and all her citizens manifest a willful obedience to the laws and cheerfully assist in executing them, our argument in favor of a separate and independent organization will have lost much of its force.

We are seven hundred miles from the nucleus of Mormonism and the scene of disloyalty, and as a community, were not a party to the difficulties which have proven such a deadly enemy to our progress; and we, therefore, earnestly desire to be relieved from further connection with Utah Territory, and from the odium which justly rests upon any who would claim citizenship in the United States, and yet require the presence of an army to enforce obedience to her laws.

## TERRITORIAL ENTERPRISE

February 5, 1859

It is thought that Judge Sinclare will adjourn his Court on tomorrow morning, *sine die*, having disposed of all the U.S. business. The Court will not sit for the trial of Territorial cases, although there are several indictments against persons, for robbery, larceny, ect., for the simple reason that the Legislature, as yet, have made no provision for the payment of expenses in the trial of such cases or the confinement of prisoners convicted.

# TERRITORIAL ENTERPRISE

February 5, 1859

## **Legislative**

We lay before our readers the proceedings of the Legislative Assembly, as we receive them, and regret that we are unable to publish them in their regular order.

It will be seen that among the acts passed interesting to this community is one re-organizing Carson County. Genoa is made the County Seat.

His Excellency, the Governor, re-appointed John S. Child Probate Judge, which appointment has been confirmed by the Legislature. He appointed J.A. Thompson Notary Public, which appointment was also confirmed. Carson, Humboldt, and St. Marys counties from the 3d Judicial District over which—as we are informed by private letter — Judge Cradlebaugh will preside. The Legislature adjourned *sine die* on Friday, Jan. 21st.

# TERRITORIAL ENTERPRISE

March 19, 1859

## **Distressing Casualty**

On Tuesday morning last our little community were thrown into the utmost consternation by the intelligence that a murder had been committed upon the body of Elzy H. Knott, the son of T. Knott, the worthy proprietor of the saw and grist mill in this place, by a young man named John Hern. Rushing to the scene of the sad disaster, we beheld an awful and shocking sight. The mutilated body of the unfortunate victim lay in one corner of the room in the house occupied by Mrs. Hern, the mother of the perpetrator of the terrible homicide, surrounded by the shrieking inmates and the distracted wife and father of the deceased. The wound was a terrible one—made by a shotgun at a very short distance—having struck the jaw bone on the right side, and the whole charge coming out upwards through the brain, a little above the left ear. Mr. Knott lived but a few minutes after receiving the wound. Hern fled after firing the shot and was immediately pursued by the citizens, one of whom had to fire twice before he surrendered. We have no comments to make upon the occasion of this sad calamity, except to deplore the evils of carrying and using weapons upon the occurrence of every trifling dispute where, if men, living in a community like ours, would only exercise the same forbearance they were taught in the land of their birth, no such horrible affairs would ever be chronicled—no necessity would arise for them to be loaded down like Italian brigands or Mexican bravos with weapons for the destruction of their fellow man, for a single unkind remark. Young as we are in the editorial career, never having seen aught but the amenities of life, our feelings upon this occasion have been harrowed to such an extent, that we trust that we never may have to record or look upon its like again. By this event a wife has lost the friend of her bosom, her solace in affliction and adversity—one on whom she had learnt to rely upon during life's weary pilgrimage, as father, husband, friend—not by the slow and insidious disease incident to the human life—but cut off in the prime of manhood, on the high road to a justly earned competency, that would have been won had he lived his allotted time. And the father—who had watched with that tender solicitude that none but a father could the growth of his son from infancy to manhood; arriving after a weary pilgrimage, from Iowa but a short time ago, intending to send for his family and make Carson Valley his permanent home; contented to see in his old age those he held most dear enjoy a happy future—at one fell blow saw all his pleasing anticipations vanish, and himself plunged into irretrievable woe. 'Tis a sad disaster, and sincerely do we condole with the bereaved relatives.

## TERRITORIAL ENTERPRISE

March 19, 1859

WEDNESDAY, March 8th, 1859

THE PEOPLE

vs. } MURDER

JOHN HERN

At a meeting of the citizens of Carson Valley, begun and held on the 9th day of March 1859, to take into consideration the proper steps to pursue in relation to the murder of Elzy H. Knott, by John Hern, A.S. Dorsey was called to the Chair, and W.W. Smith appointed Secretary.

The following remarks were made by John S. Child: Fellow Citizens:—In August, 1858, I received the appointment of Probate Judge of Carson county from His Excellency, Governor Cumming, of the Territory of Utah, which appointment was confirmed by the last Legislative Assembly of Utah, but owing to there not being properly qualified officers to act with me in the case now under consideration, I respectfully refer this matter to the citizens of the Valley for their action through a People's Jury. Not having yet received my commission as Judge under the reorganization of the County, I will do as much as any man to see justice done by the people of this Valley, and maintain our character as a law abiding people.

A motion was made by Wm. Cary that one Judge and two Associate Judges be appointed.

On motion of Wm. M. Ormsby, a committee of ◊◊◊ was selected to appoint said Judges.

The Chair appointed John S. Child, Wm. M. Ormsby, Wm. Cary, Richard Sides and John K. Trumbo said committee.

By a vote of the meeting said appointments were confirmed.

The Committee retired and selected the following named gentlemen:

John S. Child, Chief Judge, Hiram Mott, Sen., and F.M. Proctor. Associates and B. Abernathy, Sheriff.

The appointments were ratified by the meeting.





W.M. CARY,  
C. N. NOTEWARE,  
Attornies [sic] for the People.

Prisoner pleaded *Not Guilty*.

The Court adjourned until 1 o'clock.

#### AFTERNOON SESSION

Court met pursuant to adjournment.

A large number of Jurors were summoned. Some were excused by the Court, or peremptorily challenged by counsel for prosecution or defense, when the following persons were chosen:

R. Adams, A.L. Dorsey, P. Vasickle, I. Farwell, M. Wheeler, J. Walters, A Benway, Jas. McMarlin, W.H. Carey, J. A. Colburn, A.G. Hammack, and L. Miles.

The Jury having been empanelled, the charge was read by Wm. Cary. The defence [sic] pleaded justifiable homicide. Court adjourned until Friday morning, 9 o'clock.

FRIDAY, March 11th, 1858

Court met pursuant to adjournment.

One of the jurymen, A.G. Hammack desired to be excused, and was peremptorily challenged by the prosecution.

David Corser was called and qualified as a juror.

Thos. Yancy, J. Noyes, W. Francis, M. Gage, Oliver Yancy, A James, T. Knott, A.J. Herrington and M. Gage were called and sworn on the part of the prosecution.

*T. Yancy* called.—Reside at Genoa. Was present when Elzy H. Knott was shot—was an eye witness. My boy, O. Yancy told me that prisoner had taken a bridle belonging to deceased. Elzy went to the house of defendant. I went to prevent a fuss between Elzy and prisoner, the father, T. Knott following. Elzy went in, his father following. The defendant was in the back room with a gun. Saw the defendant fire the gun. Dec'd fell alongside the back partition of the front room. The defendant was in the back room when witness came in. Dec'd was

standing facing the partition door. Defendant held the gun in a position pointing it towards deceased long enough to shoot a duck. Deceased had his hand upon his hip at the time of firing. No weapon was exhibited or shown by Elzy at the time defendant fired. Heard remark made by Elzy that he did not want a fuss but the bridle. The front door was open when I went in. Did not see Elzy enter the back room. Knows the bridle – it is the same bridle that caused the difficulty. The last time I saw bridle is was in the hands of my son. My son was working for Elzy. The bridle was lying upon the floor when I came to defendant's house. The difficulty occurred about 8 o'clock on Tuesday morning. Was hitching up the cattle when informed by my son about the bridle. Elzy was standing near the stable at the time my son informed me. The stable is about four rods from Elzy's house. Elzy started off for the bridle, saying he would have it. Elzy's wife asked me to go with him. Know not what occasioned Mrs. Knott asking me to go with Elzy. My dwelling is about 9 or 10 yards from Elzy's house. My wife and Mrs. Knott were standing together. Mr. T. Knott said to me "come on and let us settle this fuss." I said I will go up and have the bridle. My son told Elzy who had taken the bridle. Was ten steps off when Elzy made the exclamation. I thought that Elzy would have no fuss. The defendant's step-father came once before for the bridle, and Elzy gave up the bridle to him. Elzy  $\diamond\diamond$  the bridle from defendant. T. Knott and myself were about 15 or 20 steps behind Elzy when he got to defendant's house. Saw Elzy stoop down in front of the house—did not see him pick up any thing [sic]. Elzy was about a minute at the door before he went in. Mrs. Herns, the prisoner, the two children and Elzy only were present. The size of the room is about 14 feet. Elzy was about 5 or 6 feet from the front door. Heard the report of the gun while I was in the room. T. Knott was present with me. Saw the shot fired by defendant. Was standing at the right side of Elzy, and T. Knott was on the left at the time of firing. Defendant's mother was present at the same time. Mr. T. Knott and I requested defendant not to shoot. (Position of room shown to jury.) Elzy generally carried a pistol. I saw the reins of the bridle upon the floor when I went into the house.

*T. Knott called.* – Reside in Genoa. I am the deceased's father. I was present and saw the whole difficulty. On Tuesday morning, about 8 o'clock, I was sitting at the table in my house when Elzy and his wife came in. Elzy said he was going to Hern's house after a bridle. Elzy said he would have the bridle or whip the whole family. Elzy's wife requested him not to go. I told Yancy to go and stop the fuss, and went with Yancy to Hern's house. I was 2 or 3 rods from the house when Elzy got to the gate. I saw Elzy stoop down and then go into the house. I ran into the house and saw prisoner have a gun in his hand. My son was standing near the centre [sic] of the room. I think I asked defendant not to shoot. Defendant held the gun raised a long time. I did not think from that he would shoot. Defendant fired: I caught Elzy in my arms and laid him on

the floor. I took the gun, it was unloaded. Mrs. Hern's was not near to Elzy. She exclaimed, "O, Mr. Knott, Mr. Knott!" Was very much agitated. Elzy did not show any attitude towards Mrs. Hern to cause fear. As I entered the door my son was fronting the door, perfectly still. Although he had a pistol about him he made no attempt to draw it. My son was fronting prisoner. Mrs. Hern was upon the right hand. I heard not a word when I entered the door. I was 4 or 5 rods off when I heard a scream. It was not half a minute after I heard the scream before I entered the house. I halted when I saw my son enter the door. His pistol was not in a belt but inside of his clothes. When the boy came up to the stable Elzy's wife was there milking. My son brought the bridle with him when I saw him at Placerville. I knew my son came by the bridle.

*J. D. Noyes* called. – I know the bridle. The first time I saw it defendant brought it to the Station to sell it or play it off. There was only the bridle and bit. The bridle was not put up at that time. In the evening Elzy Knott and J. Thornton came in while defendant was there. I was not in the Station when the prisoner came. I was there when Elzy took away the bridle. Elzy said he had played for that bridle once—it was his. I advised him not to take it. In the evening Elzy took away the bridle. The prisoner was coming out of the house when Elzy took the bridle away. The reins was not connected to the bridle at the time. The reins were brought to the house by Allen.

*John Franks* called. – Reside at Genoa. I know the bridle – it was brought to the Station to play "freeze out" for. There was no reins to it. Elzy came in the evening with J. Thornton. I asked them if they wanted to "freeze out" for the bridle. I showed the bridle to them and they asked who the bridle belonged to. I told them John Hern. Elzy went away but returned in the evening and claimed the bridle. Prisoner was there. They played for a bridle rein. Prisoner left, saying, "I'll see you will not get that bridle—I'll get even with you." After prisoner had left C. Hern came in, and Elzy took the bridle away. C. Hern called me one side and claimed the bridle as his, saying he would have it. I never spoke to Elzy about it since. I thought it was all over. On Tuesday I saw Mrs. Knott going to the house of prisoner and heard a gun fired. I saw T. Knott come out of prisoner's house and come to Elzy's wife. Saw prisoner running and Kentuck [sic] fire twice at him. I went into the house and found that Elzy was dead. I then went after prisoner and assisted in catching him. When the reins were played for they were not attached to the bridle. The bridle was left first about 3 or 4 weeks ago at the Station. When Elzy came into the station and claimed the bridle, I advised him not to take it until John Hern came.

*James M. Herring* called. – Reside at Genoa. I know prisoner and deceased, Elzy Knott. I saw Elzy going from his house to the house of

defendant, and T. Knott and T. Yancy behind him. The last time I saw Elzy he was dead—from the nature of the wound, I believe it was from a gun loaded with 7 bullets or buck shot. On Tuesday looked out of the window of the mill and saw Elzy start towards prisoner's house. I asked Mrs. Yancy where Elzy was going. She said after a while, at prisoner's house. I started after the parties, Elzy's wife ahead. I saw prisoner start from the house. T. Knott had a shot gun in his hand—he raised it to his shoulder, when the mother of prisoner took the gun from him. I shot at prisoner. Prisoner ran back and got the gun, but it was taken by his mother and thrown over the fence, when he was about 100 feet off I fired again. Prisoner was running when I first saw him. I started in pursuit of prisoner and assisted in catching him. I know the bridle—think it belonged to Elzy—the reins were his property. I was not armed at first but went to my room, armed myself, saying, if there is a fuss I will have a hand in it. After Elzy had taken the bridle the second time, said he had taken it away from prisoner. At the time Elzy gave up the bridle to C. Hern, I heard of the circumstances. I heard no threats made by Elzy. Elzy said prisoner had given up the bridle once, and he had given it back to C. Hern, and as prisoner had afterwards brought it to the Station to play it off again, he would have it. I have known prisoner about 5 months. He carries a small dirk knife all the time, though I never saw him use it. His knife is carried in a case or sheath.

The court adjourned to 1 o'clock.

#### AFTERNOON SESSION

Court met pursuant to adjournment.

*Elisha Allen* sworn.—I made the reins and bridle. I was present when defendant brought the bridle to the Station to be played for. Elzy said, "I won the bridle before, and it is mine and I mean to have it." Defendant said, "It is not my bridle." Afterwards defendant said to me that he had not got the bridle from Elzy, but would have it or kill Elzy for it.

*Orrin Gray* sworn. — I know the head stall. Last fall defendant and E. Knott played cards. Elzy won \$15 from defendant, and proposed to defendant take the bridle for the \$15. Defendant said he would let Elzy have the bridle, and I saw Elzy have it a day or two afterwards. I understood that C. Hern claimed the bridle, and Elzy gave it up.

*John Franks* recalled. — Defendant told me he had the bit of the bridle made by a blacksmith for \$6. Defendant told me he shut the back door of his house and bolted it when he saw Elzy coming, and placed a box against it. That he could not get out, and either had to take a whaling

or shoot Elzy. I have talked about the matter since my previous examination—in presence of at least one juror.

*Oliver Yancy* called. – (He is about 9 years old, and answering satisfactorily in regard to the nature of an oath, was qualified.)—John Hern came to me out to the pasture about half a mile from town, and demanded the bridle, threatening to shoot me. He pulled me off the horse, took the bridle off the horse, and put on the horse an old rope, and then put me on the horse again, saying if I or anybody else came after the bridle he would shoot us. John Hern had a pistol and knife around his body—had on no coat, but a white shirt. I was riding E. Knott's horse at the time, and John was walking. The bridle here is the same.

*B. W. Cherry* sworn. – After I came from over the mountains C. Hern said to me that Elzy Knott had taken a bridle of his and he would have it. I told Hern that Elzy had won it from prisoner, and Hern said if John lost it Elzy could have it. This was before Elzy got the bridle the second time.

*M. M. Gage* called. – I know the bridle. It was won from defendant by Elzy Knott at the store of John S. Child. Elzy won \$15, and prisoner gave him the bridle for the debt. I did not see it delivered, but heard Elzy say he got the bridle. I know it is the custom here for owners to take their property wherever it can be found.

*James M. Herring* recalled. – It is the custom of Elzy Knott to carry weapons. I became acquainted with him in September, 1854.

Here the evidence for the prosecution closed.

*Statement of prisoner.* – I and E. Knott was playing cards—first played for two bits worth of candy. We played on until it amounted to \$5, when we played for the \$5. We were 6 and 6 and did not finish the game. Next day Elzy took the bridle from my brother saying he had won it for \$12. I wished to get it but mother would not let me, and told me to wait until uncle came home. I took the bridle to the Station, with the permission of my uncle, to play it off for \$12. Elzy was there and claimed it. I never had an opportunity before to get the bridle until Tuesday. When I took it from the boy, I put a rope on the horse, and the boy rode away. I only had a knife with me at the time, and generally use it for a pocket knife. The boy rode home and told Elzy, who came to my house. I was taking off the reins when he came. Mother made me go into the house. I shut the back door and put a box against it. Elzy ran in under my mother's arms and advanced toward me. I had a gun in my hand at the time. My mother when he asked for me, said if he wanted anything to talk to her.

*Clayton Hern* sworn. – My name is Clayton Hern. I am 28 years old, and reside at Genoa; have lived here since last fall. I know the prisoner, he is my brother's son, and is my step-son, I having married my brother's widow about 9 months ago. The boy is under my control and guardianship. I know the bridle. When I came over the mountains my wife told me about the bridle. I went to Childs and saw Cherry, who said Elzy Knott had my bridle. I thought he had taken it for some ♦♦♦ I owed him for. I went to Elzy and asked him for it, and he said if I would lease it to him he would return it when he came from over the mountains. I consented and he gave it to me afterwards. I let prisoner have the bridle to play off for \$12. Elzy ♦♦♦

# TERRITORIAL ENTERPRISE

March 19, 1859

## Great Salt Lake City February 28, 1859

Messrs. Editors: –In the “Enterprise” of Jan. 29th, under the head of “Territorial,” in which various reasons are set forth for the organization of the new Territory of Nevada, I was much surprised at the tenor of the article. In the commencement of your editorial labors in Carson, there was a fairness, liberality and candor which gave your paper popularity and character with the majority of citizens here. The change was sudden and uncalled for. No one will question your rights to apply for a Territorial government of your own. But I cannot see the propriety or policy of connecting with such an application a stigmatizing attack upon the character of your fellow-citizens.

Your complaints concerning the condition of affairs in Utah are numerous and varied, but you have failed to particularize. You “sincerely sympathize with unfortunate Utah in her deplorable condition:” have neglected to inform us wherein her condition is deplorable. I could have given you the items, the facts, and the only origin of her deplorableness. I could have told you how she was happy and prosperous—an universal scene of industry and content; until contractors and settlers made the medium for them to rob the public treasury, and editors of public journals prostituted their talents to their wicked intentions. I could have told you that our citizens here were loyal and true to our Government; that they were law abiding and patriotic; that they ever condescended to honor and respect the ermine that was dishonored and rendered contemptible by Federal rulers. I could have told you how they enhanced the greatness and glory of our nation, distributing bloom and fruitfulness over her most barren deserts. Then, after I had given you the history of her wrongs, and how she rose and flourished unpatronized [sic] and unprotected, a bright pure star in the desert, extending hope and hospitality to the pilgrim traveler, I would have told how she was dragged into what has deed called her rebellion by the unconstitutional despotism of a misguided Administration. I would go on and tell how she has been for nearly two years made the victim of legalized robbers; how the Federal bayonets have been lent to the protection of gamblers and the extension of a very questionable civilization; how swarms of army horses and mules mowed down the grass around our settlements, and thus robbed our little ones of milk. I would ask you to inform your American readers *why* I myself was indicted by the hangers-on of an army and tried before a Jury of whom a portion were homeless wanderers or Sutler’s clerks; and why to complete

the persecution against me the federal judge lent himself to be my persecutor and aided in his own court to bring about my conviction.

But why, gentlemen, should you twit ◇◇◇ to term a Mormon, and I am an honest man. I am as good and virtuous and patriotic as either of you. I shall not ridicule your Methodism, your Presbyterianism or your Catholicism. Your religious sentiments were not canvassed when we welcomed your paper and hailed it as a champion of the rights of Utah.

Wherein have the rights of Carson been compromised in any way by our Legislature? It is true that when your County was supposed to be in a great measure depopulated your rights of representation were merged in another County; but your full franchise was restored as soon as your true position was known. You have failed to show any partiality or injustice in the laws, and you cannot surely complain when you have juries of your own easte [sic], and a Judge who, very probably, hates us all. You have had your Vigilance Committees and done your own lynchings [sic] and hangings, and we neither interfered with you nor twitted you of being anarchists or rebels.

You ask for a separate government. Where are your territory and population? Why should you seek to divide and alienate? If there are errors and deficiencies in our laws, point them out and they shall be amended. Your Representative shall have a free voice and untrammelled vote. We will join you in any enterprise for the public weal, and assist you in making Utah one of the first and most patriotic States in the Republic. We will help you lay the wires of the Telegraph, and aid in the construction of the great Pacific Railroad. We will give you our heart and hand in any good undertaking, and neither ask you to adopt our faith, nor ridicule the sacred altars of your own.

You are mistaken in saying that the condition of the Territory is distracted. It is true that we have had during the past winter sojourners from the gambling hells of the Pacific, and a few of the outlaws of Kansas have furnished employment to our police, but they will not stay long; they will seek a more congenial climate among better Christians.

Very respectfully,

ERIN.



# TERRITORIAL ENTERPRISE

March 26, 1859

## Erin

I [sic] reviewing an article which appeared in our last week's issue over the above signature, although written by an acknowledged champion, in point of intelligence, in the Mormon church, and done too in a style and manner which does him credit, we are not convinced that we have wronged either him or his church people by placing them in a false position before the public, and we are therefore unwilling to retract our argument in favor of a separate Territorial organization, which seems to have touched Erin in a sensitive spot. In the article which has so offended him, we made no allusion to the Mormon religion or the church, but simply referred to the distracted condition of public affairs brought about by the disobedience of the Mormons as a people, to laws of the United States.

If the Federal officers in Utah disgraced their positions and invaded with impunity the rights of Erin and his people, why did they not apply to the parent source and seek to obtain redress from the halls of the Federal capitol instead of open rebellion?

Erin says that we have failed to particularize, and to tell wherein the condition of Utah is deplorable.

We ask, why are the courts, Federal or Territorial, powerless in this Territory? Why cannot juries be found to indict criminals unless parties arraigned are adjudged guilty by the peculiar notions entertained by Erin and his religious associates? Why has provision not been made for the adequate payment of judges, for the conviction and punishment of criminals? We might go on and particularize, and give reasons almost "ad infinitum" why we regard her condition as deplorable and show what has caused this condition, but a brief glance at the history of the origin of what is properly know throughout the United States as the Utah rebellion, will furnish sufficient data from which any unprejudiced mind can arrive at a correct conclusion as to the causes of the difficulties which brought the army of the United States into this Territory.

Again, he says "I could have told you that our citizens here were loyal and true to our government." We would inform him that we are not ignorant of the nature of that loyalty, and we have not forgotten that Provo canyon was fortified against the military authority of the United States, and that the cannon's mouth was prepared a long time since to speak in tones of thunder loyalty of the Saints to the General Government.

Erin complains of the existence among them—the accompaniement [sic] of the army—of robbers and gamblers, and in treasonable language says they are legalized. We ask, what American citizen who is a lover of our country with its glorious institutions of liberty and equality, could intimate that the General Government or any of its branches had legalized and sustained a band of marauders and gamblers to rob and plunder their fellow-citizens.

We acknowledge that gamblers and plunderers often accompany an army, but we have too much respect for our laws, and too much confidence in the honest and integrity of our ministers of law to charge them with being, under Federal authority, participators in the crime of robbery and plunder.

We are asked to inform our American readers—in his own language — “why I myself was indicted by the hangers-on of an army, and tried before a jury of whom a portion were homeless wanderers or suttler’s [sic] clerks, and why to complete the persecution against me, the Federal judge lent himself to be my persecutor, and aided in his own court to bring about my own conviction.”

We will inform our American readers—if we are properly informed and we believe we are—that Erin’s own misconduct led to his indictment, and that the Federal judge lent himself, not to be his persecutor but to mete unto him retributive justice—that he did not prostitute himself to a grovelling [sic] desire to persecute, and that if the jury for the hearing of his case had not been composed of congenial spirits, he would now be suffering the just penalty for his crime. There are portions of Erin’s article to which we have not replied for the want of space.

# TERRITORIAL ENTERPRISE

April 9, 1859

## **Territorial Bill Defeated**

By the last mail we received the following letter from Judge Crane announcing the defeat of the Territorial bill, a bit of intelligence which by anticipation we were prepared to receive with no very great disappointment. As we had expressed ourselves before, however, so long as the matter was shrouded in uncertainty we did entertain a faint hope that the bill would pass.

We are not of that class who, in their own downfall or misfortune, delight and find consolation in the calamities and miseries of others; but in the wholesale slaughter of all the Territorial bills, we find consolation in the fact that our bill received much more attention and less opposition than did any of the Territorial bills. The entire Virginia delegation favored the bill.

We have no reason to be despondent, but with the flattering encouragement we have already received we should urge our claims before the next Congress with renewed hope and energy, which we can now do with almost a certainty that our organization will be effected with but little opposition.

WASHINGTON, March 2d, 1859

GENTLEMEN—It is with very considerable pain that I announce to you the impossibility of getting our bill through this session. The opposition of the Speaker to the bill, and to Geo. Smith who had charge of it, prevented him from taking it up. When it was too late, the Speaker discovered the false position in which he had placed himself and he then tried to save the bill. He has been greatly censured for his conduct and he will never recover from the general condemnation. All other territorial bills, viz: Arizona, Dacohtah [sic], Jefferson, and others were defeated by an overwhelming vote. Indeed, to judge from the action of the House, the members were glad of the opportunity to kill them. I was sorry to see the spirit manifested. No such feeling however has ever been exhibited towards Nevada. All desired to see it pass.

Congress has been so distracted by the Slavery question—such as the re-opening of the slave-trade; the purchase of Cuba; Walker; Nicaragua and Central America; the right of search; the tariff; Kansas; the Utah war, ect., ect., that no time and consideration has been given to any other business except the appropriation bills during the whole of the past

and present session. Indeed such confusion has Congress been thrown into by these disturbing questions, that it may be said that the President is not only without a party in either House, but that all party fealty and fidelity seems to have ceased to exist. The Southern Democrats are very frequently found voting side by side with the Republicans.

All the bills which have been introduced into Congress for the benefit of the organized Territories, viz: Utah, New Mexico, Washington, Kansas and Nebraska, have been defeated, both in the past and the present session. A great deal of sympathy has been expressed for the loss of our bill and for my own losses and unrequited labors. They tell me if I return next winter they will carry our bill through at a very early day. I have no doubt of my success then. The whole Virginia delegation backed me in my efforts; indeed I had a powerful support in both Houses. Our people should never forget Gov. William Smith. He became an early friend of our cause and he exerted all of his energy and ability to carry our Territory. He feels the loss of the bill with as much regret almost as I do. Let us not despair. I have lost much time, money and health, but I will not give up. "Pick the flint and fire again."

JAMES M. CRANE

# TERRITORIAL ENTERPRISE

April 9, 1859

## Charge

*Orally delivered by Hon. John Cradlebaugh to the grand Jury, Provo, Utah, Tuesday March 8th, 1859.*

I will say to you, Gentlemen of the Grand Jury, that, from what I learn, it has been some time since a court, having judicial cognizance in your district, was held. No person has been brought to punishment for some two years; and from what I have learned I am satisfied that crime after crime has been committed.

There is no such effectual way of stopping crime, no means has been found so effectual and sure as the speedy punishment of the offender; therefore so far as you are concerned, and your community, it is a very important matter, if you desire innocent and unoffending persons to be protected, that you vigilantly and diligently prosecute all persons who are violators of the law.

I will, before I close the remarks that I intend to make, make mention of certain crimes that have been committed. I will make mention of certain offences that I am certain have been committed; vigilance is therefore necessary.

In consequence of the Legislature not having provided proper means, there is not that aid given that is desired to enable the judiciary to prosecute its duties, but I will say that the Legislature, in my opinion, have legislated to prevent the judiciary from brining such offenders to justice.

I believe that outside of this Territory, where they have a Legislature at all, there is no place but what has a provision of law that persons found committing crimes can be arrested, brought before tribunals, committed to prison and detained until the court having jurisdiction can try them. Such provision does not seem to be made here. There is no legislative enactment that seems to authorize a justice of the peace to commit a person accused of crime to prison. I find that a party may be arrested, brought before a justice of the peace, tried over, but if it is a crime of case that he cannot try, there is a provision that he can be taken to the court having jurisdiction, and be tried immediately.

From the nature of the District Courts, and they are the only courts having criminal jurisdiction, they are designed to investigate and try all

criminal cases, but the officer has no authority to detain a person in his custody, but he is immediately to take him before a court and try him. But a District Court cannot always be in session. This legislation was perhaps to take away their criminal jurisdiction; to prevent those cases getting into that court, which is the only court that has jurisdiction.

They have provided the Probate Courts with criminal jurisdiction, and it would seem that the whole machinery was made so that they should be brought before that court and tried, and that the fact that there is no additional legislation to provide for bringing them before this court proves that it was done to prevent.

I will say that the Probate Court can have no criminal jurisdiction. Under the Organic Act that court is confined. That Organic Act provides for Supreme, District and Probate courts, and for justices of the peace. The Organic Act operates upon the legislation of the Territory. The Legislature are bound by that Organic Act, in their legislation. That Organic Act also says that these courts shall be as limited by law; but it is not to be presumed, because it says that the jurisdiction of these courts shall be as limited by law, that the Legislature shall extend it. When the Organic Act says there shall be a Probate Court with certain powers, it is not reasonable to suppose that the Legislature shall go and extend those powers; they might as well give Probate jurisdiction to the District Courts as to give criminal jurisdiction to the Probate Courts.

When the Organic Act says the jurisdiction of the Probate Court shall be as limited by law, it means that it shall be, as it is understood, as limited by the laws of the United States. It seems that the legislature has vested them with criminal jurisdiction to prevent the District Court from having anything of this kind to do. The reasons for this legislation it is not my object to speak of at present. We say they have no power to do so.

The fact of a person having been before that court is no bar to his coming before this; it is no bar than it would be if he had been brought before a vigilance committee in California. Any person suing in that court, would be liable in a civil action for damages.

I do this to impress upon you the necessity of the District Court carrying out its jurisdiction and punishing criminals. At the last session of the Legislature I understand that a code commission was appointed to revise the laws, and I hope that they will take this subject into consideration, and make such provision as will enable the court to do its duty.

There is another general matter to which I wish to call your attention. There has been another attempt to destroy this court, to destroy

its usefulness, to bring the judge and the business of the court into disrepute before the people, even to bring the jurors into disrepute. There is no question about this; I read it in the *Deseret News*, the organ of the church. In that the judges and the members of the bar are abused in all kinds of language, in a manner that is calculated to injure them before the people. And in that organ also the jurors are abused and spoken of in language that is calculated to influence their minds. I say these things are in that paper, the only one published at the time in the Territory, and I say it is proper for me to mention these things.

These things were enforced by one who was at that time the Governor, the Executive of this Territory. When you see a person of that kind who is bound to enforce law, using language of that abusive character, the court thinks it is within its province to repel such insinuations as are there cast upon it. So far as the attorneys are concerned I feel compelled to say that such assertions as are there made are not true.

With regard to the jurors who are selected from the community for their good moral character, I say it is proper for you to disregard all outside influences. I understand that the person who was then the Executive had a suit in the court, and because he could not get the control of the minds of the jurors he made those remarks. I speak of it because it was an effort which was made to ◊◊ of the jurors, and to destroy the efficiency of the court. These having been made to destroy your efficiency, you should manifest that you are not to be governed by these outside influences that are brought to bear and operate upon the minds of the community.

I said to you in the outset that a great number of cases had come to my knowledge of crimes having been committed through the country, and I shall take the liberty of naming a few of them. The persons committing those offences have not been prosecuted, the reasons why I cannot tell, but it strikes me that those outside influences have prevented it. If you do your duty you will not neglect to inquire into those matters, or allow the offenders to go unpunished. I may mention the Mountain Meadow murder, where a whole train was cut off, except a few children who were too young to give evidence in court. It has been claimed that this offence was committed by Indians, but there is evidence that there were others who were engaged in it besides.

When the Indians commit crimes they are not so discriminate as to save children; they would not be so particular as to save the children and kill the rest. I say you may look at all the crimes that have been committed in the Western country by the Indians, and there is no case where they have been so careful as to save the innocent children. But if

this be not enough, we have evidence to prove that there were others there engaged in it.

A large body of persons leaving Cedar City, armed, and after getting away were organized, and went and returned with spoil. Now there are persons who know that there were others engaged in the crime; I brought a young man with me who saw persons go out in wagons with arms, others on horseback, were away a day or two and came back with the spoil. The Indians complain that in the distribution of the property they did not get their share, they seem to think the parties engaged with them kept the best and gave them the worst. The chief there (Kanosh) is equally amenable to law, and liable to be punished, and I suppose it is well known that he was engaged in assisting to exterminate the hundred persons that were in that train. I might name to you persons that were there; a great number of them I have had named to me. And yet notwithstanding this crime has been committed, there has been no effort made to punish those individuals. I say then gentlemen, it is your duty to look after that, and if it is a fact that they have been guilty of that offence, indict them, send for them and have them brought before this court.

I might bring your attention to another case, near here, at Springville; that is the case of the Parrishes and Potter. Springville is a village of several hundred inhabitants. There is one young man whom it was intended to kill. He ran to his uncle's, and was followed to his uncle's house. Here are three persons killed and the criminal goes unpunished.

There can be no doubt but by the testimony of young Parrish that you will be able to identify those persons who were connected with it. He can tell you who was engaged in it, and who followed him to the house of his uncle. Here are three persons that were butchered in a most inhuman manner, and the offenders have not been brought to justice. This is sufficient to show that there has been an effort to cover up instead of to bring to light and punish.

At the same place there was another person killed, Henry Fobbs, who came in from California and was going to the States, but got in here when the difficulties arose between this community and the General Government, and was detained. When Henry Fobbs was here, he made his home at Partial Perry's staid [sic] there a few weeks; during that time his horse and revolver were stolen; he made his escape, tried to get to Bridger, was caught, brought back and murdered; and that is the last of Henry Fobbs. No investigation has been made; his body has been removed several times, so that now, perhaps, it could not be found. Shortly afterwards his horse was traded off by Terry. Here is a man said to be killed by the Indians, and then his horse is taken by Mr. Terry and



traded for sheep. It seems to me that these are matters that you ought to investigate. Fobbs, I believe, lived in the State of Illinois; he had a wife and children, and was very anxious to get back; and I suppose his wife is still anxious about him; but as to what has become of him she cannot tell. I say this case ♦♦♦ investigated, and the offenders punished; don't let them go unpunished.

Then there was Henry Jones that was murdered up here; I believe he was first castrated up in the city, then went to Payson, was chased to Pond Town and was shot there. It is said that he committed some offence. But if persons do commit offences, the public have no right to take the law into their own hands; they have no right to take persons and punish them. I understand that he was castrated; that he came down here, that he was killed, and the house in which he and his mother had lived was pulled down.

There is another matter to which I wish to call your attention. A few days before the matter of the murder of the Parrishes and Potter, the stable of Parish was broken into and his carriage and horses were taken out; this was done at night. These horses have never been returned. That woman, the wife of Mr. Parrish, told me that, since then, at times, she has lived on bread and water, and still there are persons in this community riding about with those horses. Mr. Lysander Gee has those horses; he says they were given to him, and that he was directed to give them to no person whatever.

Now it is a strange kind of matter that persons should go to Parrish's, break open his stable and rob him, and then take the horses to Mr. Lysander Gee and tell him to keep them. It does not look reasonable. It would look more reasonable to suppose that Mr. Lysander Gee was engaged in it himself. And it is an outrageous thing that this woman, one of whose children was killed with her husband, has been obliged to live in the very dregs of poverty. I say bring that man up and compel him to restore those horses, and give the property back to her, and do not allow her to live in poverty while others are riding about the country here with her husband's property.

Young Mr. Parrish is here, if the Grand Jury desire to have him they can use him as a witness.

It is not pleasant to talk about these things but the crimes have been committed, and if you desire you can investigate them. My desire is that the responsibility shall be with the Grand Jury and not with the Court; all the responsibility shall be with you, and the question is with you whether you will bring those persons to trial.

I have hereby named those few things; there has been a great deal of crime committed, and there is a way to punish those who have committed them.

I hear every day of cases of larceny, and an officer is now after a number who are engaged in committing depredations. A great many cases have been committed near Camp Floyd, such as I shall call the attention of the Territorial Attorney to, such as buying soldiers' clothes. Unless you faithfully discharge your duty I cannot see how you are to escape from the influence of these cases of larceny that have been committed. I therefore present these for the purpose of having you promptly discharge your duty.

When you retire you will elect your clerk; and it is the desire of the court to expedite business, you will therefore be permitted to meet upon your own adjournment. If time is required, the court will adjourn from time to time to give it to you.

To allow these things to pass over gives a color as if they were done by authority. The very fact of such a case as that of the Mountain Meadows shows that there was some person high in the estimation of the people, and it was done by that authority; and this case of the Parrishes shows the same, and unless you do your duty, such will be the view that will be taken of it.

You can know no law but the laws of the United States and the laws you have here. No person can commit crimes and say they are authorized by higher authorities, and if they have any such notions they will have to dispel them.

I saw something said in that paper of some higher law. It is, perhaps, not proper to mention that, but such teachings will have their influence upon the public mind.

Gentlemen, I have nothing further to say to you. The Marshal will find you a room, and the court will afford you every facility in its power. The District Attorney will be with you, and the court will not object to his being present at the examination of witnesses, but it will afford you all the aid that may be required by you.

# TERRITORIAL ENTERPRISE

April 9, 1859

## **Judge Cradlebaugh's Charge**

Judge Cradlebaugh's charge to the Grand Jury, at Provo, which we clipped from the *Valley Tan*, will be found on our first page. We admire the charge for its bold fearlessness, and value the information we have gained from this plain, reliable and official exposition of some of the horrible features of Mormonism.

It casts a just rebuke upon the Legislature of this Territory for legislating against the Judiciary bringing criminals to punishment; it shows that it has not only been the aim of the Mormon people to persecute and punish Gentiles for no offence, and to license members of their own church to commit the most revolting crimes without punishment, but that that aim has been carried out; it shows to the world that in accordance with an edict of the Mormon church in many instances the punishment of castration has been inflicted—a punishment so horrible and revolting to humanity; so barbarous and of such criminal enormity that the blackest pages of the history of the most barbarous nations on the globe cannot produce a parallel. It shows that the power of the Judiciary in this territory is perfectly paralyzed; that courts of justice exist only in name, and that the whole Judicial arrangement in this Territory is a perfect farce.

The document is said to be highly characteristic of Judge Cradlebaugh, and we are therefore prepossessed in his favor, and congratulate ourselves that a man of his stamp is to preside over our Judicial District.

# TERRITORIAL ENTERPRISE

April 9, 1859

## Special Notice to Lawyers

A small law library for sale, cheap.

Blackstone's Commentaries, 3 volumes;  
 Kent's Commentaries, 4 vols;  
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# TERRITORIAL ENTERPRISE

April 16, 1859

## Letter from Washington

We are permitted to publish the following letter, which gives some information regarding the manner in which our Territorial ~~was~~ managed and how it was defeated.

WASHINGTON '59

MY DEAR ~~friend~~ I have written you two ~~times~~ letters, but have received none in return; yet, I am not disposed on that account to neglect writing to you, whenever I have good reason to believe that the interests of Nevada will be promoted thereby. This is my object at this time. Nevada is not dead, she only sleepeth. It is true, that through a certain influence, beyond the control of one delegate, (Judge Crane,) he has not succeeded in effecting an organization at the present session. It seems that Speaker Orr had conceived a prejudice against the Bill; and more than that, he had no kind feelings towards the distinguished gentleman (Gov. Smith) who had the Bill in charge, and he *studiously* avoided to recognize Gov. Smith on any and every day when it might be proper, under the rules, to take up the Territorial matters. The Bill for Nevada occupied a different position on the calendar from all others, having been reported from the Committee last session, and passed to its second reading at the same time and referred to the Committee of the Whole House; it stood upon the calendar as unfinished business, and could only be taken up when it could be reached in its regular order, except upon a suspension of the rules, which requires a two-third vote, and as it was apparent to Gov. Smith that it would be difficult to reach it in its regular order, he tried on each day set apart for such motion to get the floor for that purpose, but the Speaker would not recognize him.

In fact the whole proceeding of the present session of Congress has been *filibustering* in its character, and no good has been accomplished for the people or the country. But Nevada has lost no ground, her friends are numerous and increasing, and could she have been reached so that the question upon her merits could have been taken or tested, she would have passed with an overwhelming majority. All the rest of the Territorial bills were voted upon and defeated, but they did not make a record against Nevada. You may ask how they could get a vote on other Territorial bills and not on ours; ours having been reported before; I will tell you, there are certain days for the report of the several committees, the Committee on Territories having agreed this session to report favorably for Arizona,

Jefferson and Dacotah [sic], agreed at the same time to put each bill upon its passage at the time they were reported; they ventured to do this; it was a great risk; *they run it* and were defeated.

Now, my good friend, I wish to say to you that no blame can possibly attach to Judge Crane for the failure to get Nevada through at this session; in fact, his exertions have been almost superhuman, his zeal and ardor on behalf of Nevada has been untiring, and I have no hesitation in saying that no man could have done more. He has a knowledge of that country, its wants and its resources, that few possess, and his intimate acquaintance with men and things, his thorough knowledge of politics, and his personal acquaintance with most of the members of Congress, and with the most distinguished politicians of the whole country, render him eminently qualified to represent fully the wants and interests of the people of Nevada. Great sympathy exists for him here. He has labored long and hard, and at a great expense to accomplish his object, and he has shouldered every responsibility and restored to every means in his power to bring about the organization. Humanity and justice to him, and gratitude for his past services and sacrifices demand that he should be returned; should that be that case, I have no doubt but what Nevada will be organized at a very early period in the next session. He will be with you, it is expected, as early as possible, and I now expect to be there myself during the spring, at any rate my heart will be with Nevada all the time.

I am, very respectfully, your ob't serv't

GEO. P. STILES

# TERRITORIAL ENTERPRISE

April 16, 1859

## **Mormon Loyalty**

Ever since the entrance of the United States army into the Valley of the Saints and the adoption of the peace policy by the administration, and the offer of a free pardon by the President to all Mormons, though traitors and rebels they might be, who would declare their loyalty to the government of the United States, the Mormons have feigned obedience to the laws of our country, but right in the face of such pretention [sic] they continue in a rebellious attitude towards the government of the United States, thwarting the efforts of the federal Judiciary on every hand in the administration of justice; rendering the whole judicial arrangement in this territory a ridiculous [sic] farce. A fair example of Mormon affection for our institutions may be found in the late Court proceedings at Provo City. Let us sum up the whole matter in a few words. A Court is convened by his honor Judge Cradlebaugh, to effect a peaceable [sic] organization of which, and for the safe detention of prisoners, the Judge is compelled to ask the assistance of a military force. The Commander of the Garrison at Camp Floyd, seeing the necessity of such assistance, immediately dispatches a military force to Provo, whereupon the Judge's cars are saluted on every side with the cry of *tyrant*. A Grand Jury is empaneled [sic], before which the Judge makes a most comprehensive charge, pointing out clearly and unmistakably some of the most revolting and damnable crimes ever perpetrated, and even designating some of the known perpetrators; the jury sit in grave deliberation for the space of two weeks, find no indictments and are discharged. The military and federal officers return to their quarters, and thus ends a session of the District Court in Utah. When such a belligerent disposition is manifested by the Mormons toward the federal Judiciary in the discharge of their duty, what might be expected of them were the military removed from the territory?

It is a fact now thoroughly established that the government of the United States has no power whatever in this Territory outside the military. The Mormons so far as their loyalty or obedience to our government is concerned, are simply a band of outlaws, who doubtless thought that when they sought a location in this Territory that their isolated position would be a safe retreat, at least for a long time, from the restraints of our laws; where congenial spirits might indulge at will and without the fear of reproach, in the peculiarities of their faith. The peace policy of the administration has proved a failure, and the execution of the laws of the United States, according to their true intent and spirit, attended with as much difficulty now as when the troops first landed in the Territory. So

long as the federal courts are unable to meet the ends of justice, we are virtually without law and without government, which is highly disagreeable to American citizens on their own soil. Such a state of affairs is not only destructive to the prosperity of Utah, but the failure on the part of the general government to establish clearly, the pre-eminence of its power over its own Territory, and to secure to the residents of the Territory the common rights and privileges of American citizens, may give rise to doubts of its efficiency. If the government cannot adopt some measure by which peace and harmony can be restored and that reliable civil protection extended over us in which we can feel that life and property is secure, we shall feel inclined to advocate the policy of a repeal of the organic act, in order that retributive justice may be meted out to such as now commit with impunity, crime and treason against the government and find not only protection but encouragement, in the Judicial farce which has so long been enacted in this Territory.



# TERRITORIAL ENTERPRISE

May 28, 1859

## Law Necessary

From a time in the history of the world at which the memory of man runeth [sic] not to the contrary, it has been found necessary to the protection of society and the advancement of civilization to adopt and abide by some rule of action, some law through which private wrongs may be redressed and public offenders brought to justice.

The absence of all manner of governmental protection, and consequent woeful condition of the social and political condition of affairs in this portion of Utah, has caused us to feel and appreciate the full force of the above remarks. Until recently we had always felt a full confidence in the efficiency of our government, and never did the thought enter our mind that while we were within the dominions of the United States, however remote and isolated our position, we should be entirely without government protection, either civil or military; dependent alone upon our own chivalry and physical strength. As a citizen of the United States, the institutions of which we enthusiastically admire, and which from our childhood we have been taught to cherish and revere, we are ashamed to acknowledge the lamentable fact – a fact well known by every resident of western Utah – that the law of might is the only law which has heretofore prevailed in this portion of the Territory.

The *modus operandi* heretofore, when one party held a debt or civil claim against another, has been to gather his friendly hosts around him, enter upon and by force take possession of his premises. In the absence of any and all law whatever, we have no reflections to offer concerning this summary method of procedure, only simply to express our regret that circumstances should clothe such proceedings in the garb of justice.

It is true that even in other and more favored portions of the Union, where the government machinery is operative in all its parts, the law of the land has become almost entirely subservient to public opinion, and the ministers of justice can only execute the law in conformity with the will of the people, which might lead to the conclusion that the ends of justice could infalibly [sic] and without inconvenience be reached by a direct appeal to the people.

It is extremely annoying to our citizens to say the least, to be convened *en masse* every few days to settle some question in litigation;

besides, in a community like ours, without any guide or legal restraint, the voice of the majority is oft [sic] times far from being the voice of justice.

We all feel the necessity of, and should without delay unite our efforts in adopting some law for our mutual protection, and creating an authority by which we are willing to be governed. Judge Child, has with some propriety deferred the formation of his court, from time to time, in the hope that Judge Cradlebaugh would convene a term of the United States District Court in this county, whose presence might aid him in the legal and peaceable organization of his court. We have no suggestions to offer to his honor, Judge Child, concerning the convneing [sic] of his court, but since the arrival of Judge Cradlebaugh and the speedy organization of the District Court is a matter of doubt, we would suggest to the people of Carson County the propriety of adopting some measures by which the perplexing questions which are almost every day arising [sic] to the continual annoyance of the public, may be properly and satisfactorily adjusted. The miners on Walker's River have adopted a code of laws for their guidance, which were published in our last week's issue, they are concise and equitable, and if we are to be deprived of any judicial organization under the Territorial laws, we would suggest a similar movement on the part of the citizens of this county.

# TERRITORIAL ENTERPRISE

June 4, 1859

## **Terrible Homicide**

At the hands of violence another of our fellow-citizens has come to an untimely death; has been cut down in the prime of manhood and early dawn of life's Summer, and has passed forever from the haunts of earth to the realms of eternity. The matter has yet to undergo an investigation, and we therefore reserve for the present any comments upon this dreadful occurrence, and can only lay before our readers a condensed statement concerning the matter, but will publish the full proceedings of the Court investigation in our next issue.

The homicide was committed at the New Diggings, on Gold Canyon, by Wm Sides, on Saturday evening last, the 28th day of May. Deceased was a young man by the name of John Jessup, aged about 20 years.

We have oft times remarked that in nine cases out of every ten of the many bloody deeds which checker the annals of crime, the result is from the use of cards and whisky [sic], and the case we are now called upon to record is not an exception to this general rule. On the day above mentioned a dispute arose between Sides and deceased; some hard words passed when Sides drew a dirk knife, with which he stabbed Jessup two or three times, causing his death in a few minutes. The miners immediately arrested Sides and brought him to Carson City, where the citizens organized a Court for the investigation of the case.

The following gentlemen were chosen officers of the Court: C.N. Noteware, Presiding Judge; J. A. Osborn and A. G. Hammock, Associates; John K. Trumbo, Clerk. Sammuell Tyler was appointed by the Court to prosecute the case, and J.J. Musser was chosen in behalf of the defendant. Mr. A. Curry was chosen Sheriff, and the following named gentlemen chosen as Jurors: I. Mott, Geo. Hill, Taos. Boyd, J. Adams, P. Brown, T. Yancey, J. Gatewood, W. Stendevant, W. H. Boyd, H. Mott, J. Howe, John Cosser.

A number of witnesses were examined and the case eloquently and ably argued by the attorneys, both for the defense and prosecution, when the Jury retired, and were out about three hours, when they returned to following verdict: "We agree to disagree." They stood eight for conviction and four for acquittal. The prisoner was released on bail of \$1,500, and the Court adjourned *sine die*.

## TERRITORIAL ENTERPRISE

June 11, 1859

**Citizens' Court**

The following are the final proceedings of the Citizens' Court, assembled at Carson City, to investigate the case of the People vs. William Sides, charged with murder of John Jessup. We promised a publication of the full proceedings of the trial this week, but our reasons for not doing so are satisfactorily explained in a resolution contained in the following proceedings:

June 7th, 9 o'clock A.M.—Court opened. J. A. Osborn presiding; H. F. Pierce and G. W. Hepperly, Associates; J. K. Trumbo Clerk.

*Resolved*, by the people, that we hold Wm. Sides to bail in the sum of \$2,500, to appear for trial on the first Monday in September next. Adopted.

*Resolved*, That publication of the evidence already elicited in the trial would be prejudicial to the ends of justice in a future examination of the case and that, therefore, the TERRITORIAL ENTERPRISE is requested not to publish said evidence. Adopted.

*Resolved*, That the bond of \$1,500, heretofore executed by Sides, be and the same is hereby cancelled. Adopted.

Court adjourned.

The new bond of \$2,500 was executed and placed in the hands of J. A. Osborn, presiding Judge.

# TERRITORIAL ENTERPRISE

June 11, 1859

## **Territorial Convention**

It will be seen by the proceedings of a convention held at Carson City, on the 6th day of this month, published in today's issue, that the initiatory step has been taken towards the formation of an independent Territorial organization, and as the move seems unanimously to accord with the views of the people, a brief glance at a few of the principal causes which have driven the citizens of western Utah to take this step, may not be uninteresting to our readers. The necessity [sic] of a separation from Utah, and the formation of a separate organization, began to press upon the people of this portion of the Territory as early as the Spring of 1856, and as the fertile valleys and rich gold fields situated on the eastern slope of the Sierras began to attract general public attention and rapidly to settle up with an enterprising and industrious people, the matter became of more pressing importance, the citizens began to feel that the public weal, and the safety of their own lives and property, absolutely demanded a more reliable and substantial [sic] governmental protection than that extended over them by the Territory of Utah. At that period in the history of the country, a great majority of the settlers were of the Mormon faith, whose ideas of social propriety were obnoxious to the Gentiles, and whose religious bigotry lead them to invade that sanctity of the natural relations between the sexes which those who had been reared and nurtured under the influences of the Christian religion had been taught to regard as sacred, and who under the pretense of religious faith, claimed as a right under the federal constitution, the privilege of overstepping [sic] the ordinary bounds of common decency—of desecrating the sacred alters of female chastity, and of running riot in the paradise of female innocence. The legislative enactments of the Territory made no provision for the suppression of such abominations, but rather encouraged them. The laws of the Territory were not imbued with that Jeffersonian spirit which pervades the Statutes of other Territories and States. They were not congenial to the minor portion of the citizens who had once, under the genuine banner of American freedom, felt secure in all the rights of American citizens. The laws were made for the benefit of the church and afforded no protection to the Gentiles—as those out of the church are called by the Mormons—but left them to the mercy of the fanatical bigotry of a people whose destroying angels stood in waiting for their blood at a moments [sic] warning. It was not, however, until the fall of 1857, after the Mormons had raised in their might, in open rebellion against the government, (having driven Surveyor General Burr precipitately from the Territory and violently invaded the room of the U.S. District Court, armed with pistols and other weapons,

compelling the Judge to adjourn his court *sine die*), that the people of this portion of the Territory felt that they were entirely without the protection of even a shadow of government.

Organized bands of thieves and murderers roamed the country *ad libitum*, preying upon the inhabitants and defenseless emigrants [sic], and crime ran riot throughout the land. No security was felt in the possession of property, and many an industrious pioneer was led to fear for the safety of his wife and little ones.

In view of this uncertain and deplorable condition of affairs, the citizens of western Utah felt called upon in duty to themselves, to implore the general government to extend over them that governmental protection which they had a right to claim as the birth-right of every American citizen. Accordingly the people, previous to the meeting of Congress in the fall of 1857, delegated to Judge Crane the authority to represent their claims before our national assembly. From the time of his arrival in Washington, up to the present day, the presence of an army in the vicinity of Salt Lake has been necessary to hold in check the belligerent and rebellious disposition of the Mormons. The federal judiciary have tried in vain to meet the ends of justice and to prosecute the functions of their offices.

In vain have they tried for the past two years to bring to punishment the murderers, the bones of whose almost countless victims may be found bleaching [sic] on mountain, hill and desert.

The general government has made every effort to restore quiet and establish its supremacy in this Territory, but such endeavors have been thwarted in every particular. The federal courts in the Territory have been, and are now, entirely divested of their power to act; and though our proposed Territory is a portion of the dominions of the United States, the inhabitants thereof are without any kind of government protection whatever, as much so as if they were the inhabitants of an unknown island in mid-ocean.

It was thought by the citizens of this portion of the Territory that this unsettled and peculiar condition of affairs would be a sufficient argument alone to secure without delay our Territorial organization but to our utter astonishment and deep regret the matter has been indefinitely [sic] postponed. Crimes of a horrible and revolting character are of frequent occurrence in our midst, the perpetrators of which, in the absence of of [sic] any legally constituted authority, are permitted to go unpunished. This condition of affairs has led the people of Western Utah to feel an unusual [sic] solicitude for the success of their Territorial project, and past necessities, together with the convulsions of this community, created by a

number of recent tragical [sic] occurrences have—we may say with propriety—driven the people to the immediate necessity of some kind of legal organization for their own protection. Whether the movement now on foot for a temporary Territorial government is consistent with our present condition, we leave the public to judge. The movement here, is a popular one, and whether it will ultimately result in the public weal remains to be seen. We are certain, however, that the inhabitants of no portion of the territory of the United States have ever been so much neglected by the general government, or ever been in greater want of some reliable government organization, than now are the inhabitants of the proposed Territory of Nevada.

# TERRITORIAL ENTERPRISE

June 11, 1859

## To The People of Nevada Territory

FELLOW CITIZENS ! On the 2d of July ensuing, the people will be called upon to elect a Delegate to Congress. For the last two years, I have has the honor of representing you in Washington as a Delegate, and I now announce myself a candidate for re-election. I think I can say that I have served you with all the ability, fidelity and zeal that I could command and exert.

The bill to organize the Territory of Nevada was the first to pass the Committee on Territories in the House of Representatives. At the close of Congress, it stood first on the calendar. Indeed, it led all the bills reported by the committee on Territories and had it not been for the conduct of the Speaker, and the sectional irritation and excitement which prevailed in both Houses, the bill could not have failed to pass. Although I did not succeed in carrying it the last session, still we have the satisfaction of knowing that our bill led everything concerning Territories, and that we have the warmest and most devoted friends to our cause in Washington.

I had the good fortune, so far as I know, of making no enemies but hosts of friends. So far as I know, also, I have committed no blunders; and although you might have selected an abler man as Delegate, still I think you could not have chosen one more true to you and our Territory. As I have sacrificed much for the cause—succeeded while in Washington in placing our Territorial bills the highest on the calendar; have the confidence of our friends in Washington, and as my conduct, public and private, while in your service escaped all censure, I desire to be returned to Congress, that I may continue my service and complete the work which I was ♦♦♦ of the first to espouse, and sacrifice more for, perhaps, than any man in the Territory.

With these desultory remarks, I leave myself with those who alone have the power to condemn or endorse my public service in Washington.

Very truly yours,

JAMES M. CRANE

JUNE 10, 1859



# TERRITORIAL ENTERPRISE

July 16, 1859

## **The Convention**

On Monday next, The territorial Convention will convene in this place, and in view of the importance which may attach to its action both in the present and future results, but with full confidence in the honesty, integrity and intelligence of the delegates who have been chosen to the Convention, we feel constrained to offer a few reflections pertaining to the subject.

This is the first instance in our progressive history in which the citizens of the prospective Territory of Nevada have been called together to council on the matters directly pertaining to her future progress and the general welfare of the public, in view of which the members of the Convention will readily perceive that their individual and collective action will in the future be subjected to the utmost scrutiny, and through this action may they merit both the private and political esteem of their fellow-citizens, or work their own private disgrace and political ruin.

As a matter of primary importance, we hope and trust that each and every member of the Convention will feel it solemnly incumbent upon him to discharge the grave duties which may devolve upon him with strict honesty, fidelity and integrity, and with an eye single to the welfare of Nevada and her citizens. All selfish motive, jealousies, dissentions, prejudices, personal party and political strife, should be evaded and excluded from their deliberations.

From the general and inexplicit terms of the call under which the Convention will meet; we do not fully comprehend the business which will come before it, but whatever may be done will bear more or less upon our future efforts in behalf of our Territorial organization. Great care should, therefore, be taken to avoid any movement which may hereafter in any way paralyze our efforts in this important matter.

We presume that about the first and most important action on the part of the Convention will be to canvass the vote for Delegate to Congress, and the matter will doubtless be subjected to a future investigation and exposition. We sincerely hope that in this primary movement the Convention will be characterized by honesty and a determination to crush the foul monster—fraud—whenever and wherever he may show his hydra-head in their midst.

# TERRITORIAL ENTERPRISE

October 8, 1859

## United States District Court

Judge Cradlebaugh has returned from his trip to California in excellent health, and opens his Court on Monday; a large number of cases are on the docket, more than can be passed upon in our term of the Court. As to the opening of the Court let us say a few words, our previous article on this subject having been misunderstood in some quarters.

To Judge Cradlebaugh personally or officially, we have not the slightest objection; on the contrary, as a man and gentleman, we respect him; in his official capacity, we honor him; his course at Salt Lake we admire; but we have the utmost repugnance; the most hearty aversion to anything which places us within the pale of Mormon Law; anything which acknowledges on our part even the semblances of Mormon jurisdiction.

We are well aware that with that people Judge Cradlebaugh has not the slightest sympathy, that his determination to bring before the bar of justice the scoundrels who have so long outraged our very name, and mete out to them the punishment they so richly deserve, brought down on his head all the vials of their wrath, and set all the hounds and  $\diamond\diamond$  of Mormondom [sic] barking at his heels; we are well aware of all this, and yet we feel in duty bound to oppose the establishment of his Court. The people of this Territory have never acknowledged the jurisdiction of Utah—never offered allegiance to Brigham. They now have petitioned Congress to give them a separated organization. They have formed a Constitution for their government, that Constitution has been carried by a large majority. We will not take the back track and stultify ourselves, by now submitting to the laws of Utah. Such a course would be fatal to our hopes of obtaining a separate organization from Congress, fatal to our cause and fatal to the very best interests of the people. These are our reasons for opposing the establishment of this Court. We are aware that many persons believe that we can receive Judge Cradlebaugh and acknowledge his jurisdiction as a United States officer, without at all compromising ourselves or acknowledging any connection with Utah. We think differently. One step taken in this direction, others will follow; indeed, the second step has already been taken. Mr. Child has already been issued his proclamation as Judge of Probate ordering an election today. The next step will be a Sheriff collecting taxes to swell the revenues of the Mormon church. Our people will not submit, then follows a United States force to enforce these laws.

Does any person in this Territory desire this condition of things? If they do, they have only to follow the programme [sic] laid down by the enemies of this Territory of Nevada. Elect the officers indicated by Child, and submit to his sacred majesty Brigham Young.

We depreciate such action, we will oppose it to the “bitter end.” Much as we desire the protection of Law—we do not want the laws of the Utah Legislature, they are not enforced at Salt Lake, why attempts to enforce them here? To the U.S. Laws we yield cheerful obedience; further we will not go; others may; in all communities some individuals can always be found who for the sake of a petty office of some kind would serve any power, whether his “Satanic Majesty” or “Brigham;” such, we have no doubt, can be found here, this Probate affair indicates the fact.

Let them beware!

# TERRITORIAL ENTERPRISE

October 8, 1859

## **The Future**

The unexpected death of Judge Crane leaves the office of Territorial Delegate to Congress vacant. But a short time intervenes before the meeting of the next Congress, we therefore deem it our duty to thus early advert to this subject, and remind the people that it becomes their duty to elect another Delegate. There is no time to lose; for before an election can be held, it will be time for the new Delegate to leave for Washington.

Short, however, as the time is, it is necessary to move with caution. Too much care cannot be displayed in the selection of a candidate, devoted wholly to the interests of this territory; we will forego all personal preferences in the matter; it is the duty of every true friend of the Territory to do so.

Our first desire is to see this Territory recognized by act of Congress; the laws of these United States extended over us; our rights and property protected; to be free from all connection with an ignorant, besotted and priest-ridden community, with whom we have not one feeling in common – from the tyrannical enactments of the Utah Legislature –under which we will never live –from the bigoted, mind-enslaving despotism of the Mormon theocracy. In this we but echo the universal sentiment of the community.

To effect this, we must select a man of commanding abilities, who is well known to the country at large, and who ◇◇◇

# TERRITORIAL ENTERPRISE

November 26, 1859

## Meeting of the Citizens of Carson City

An adjourned meeting of the citizens of Carson City and vicinity, U. T., was held at the City Exchange, Carson City, on Monday evening, Nov. 21st, 1859. This meeting was held for the purpose of receiving and acting upon the Report of Committee of Three, appointed as a meeting held on Saturday evening, Nov. 19th, to draft resolutions expressive of the sentiments of this community in regard to the refusal of Alfred James, Clerk of the District Court, to canvass the votes case for Delegate to congress, on Nov. 12th.

On motion of DR. O.H. PIERSON,

Wm. M. Ormsby was called to the chair, and Jerome T. Totten appointed Secretary. Dr. O.H. Pierson, from the Committee on Resolutions, reported the following preamble and resolutions, which were adopted and the committee discharged:

WHEREAS, an election for Delegate to Congress, to fill the vacancy occasioned by the decease of the Hon. James M. Crane, was held at the various precincts in this Territory, on Saturday, Nov. 12th, A.D. 1850, pursuant to a call of citizen's committee, in a manner and form, to-wit:

ELECTION NOTICE.—The people of Nevada Territory are requested to hold an election on Saturday, Nov. 12th, 1859, for Delegate to Congress. The usual forms of holding elections and making returns to be complied with as near as practicable. Returns to be sent to the Clerk of the District Court, at Genoa, to be canvassed by him in the presence of W. T. C. Elliott, Shep. McFadden, J. F. Long, C. N. Noteware and Isaac Farewell, on the 20th day of Nov., 1859. By order of Committee.

GENOA, CARSON VALLEY, NOVEMBER 2D, 1859.

And whereas, at said election, a larger vote was polled than at any previous election held in this Territory, thus showing conclusively that the people rendered and sustained the action of said committee in the premises; and whereas, the Clerk of the U.S. District Court has in direct antagonism to the expressed wishes of the people of this Territory refused to canvass the returns of the late election, for Delegate to Congress, or give a certificate of the party elected, thus making it necessary for the

Board of Canvassers appointed to act in concert with said District court to appoint a Clerk pro tem to perform the duty; therefore,

*Resolved*, That the said Alfred James, by refusing to canvass the votes at the late election, has offered a direct insult to the citizens of this Territory.

*Resolved*, That we do fully endorse and approve of the course pursued by the said board of Canvassers.

*Resolved*, That in our Delegate elect, Col. J. J. Musser, we have an able and efficient representative of our interests, and a true exponent of the real sentiments of the people of Nevada Territory.

*Resolved*, That we, as a people, fully endorse the sentiments embodied in the Memorial to Congress drafted by the late Constitutional Convention of this Territory.

All of which is respectfully submitted,

[Signed]

O.H. PIERSON, Chairman

F. M. PROCTOR,

WM. P. HARRINGTON.

On motion, a committee of three was appointed by the Chair to call upon Col. J. J. Musser, Delegate elect, and request him to address the meeting.

During the absence of the committee, Mr. Spear addressed the meeting in a few brief and pertinent remarks.

Col. Musser, upon his appearance, called for [sic] the reading of the resolutions, after which, he addressed the meeting in an able and eloquent manner. He defined his motives in coming to the Territory as personal, not political; had not anticipated the honor conferred upon him by the people, in electing him to represent their views and interests at Washington. He pronounced a brief eulogium upon the character of the late James M. Crane, and recapitulated the history of the election of that gentleman as Delegate to Congress. He censured the action of the Clerk of the District Court, of 2d Judicial District, in refusing to canvass the votes given on the 12<sup>th</sup> inst. But thought that the certificate of the chosen agents of the people quite as good, and quite as honorable, as the certificate of any clerk of any court in this Territory. He felt honored, beyond expression, by the trust reposed in him by the people, and pledges himself never to betray it. Adverted to the want of jurisdiction under

Mormon rule; the entire absence of any protection to the rights of property or the security of human life; thought the times propitious for advocating the claims of the proposed new Territory. The reasons for such organization being more cogent than ever. He referred to the Mountain Meadow Massacre. Judge Cradlebaugh, with all his energy of purpose, had been unable to bring the murderers to justice. Referred to our isolated condition, and the onerous nature of the laws which compel the parties appealing to travel impassable deserts to Salt Lake, there to find the utter inability of obtaining anything like justice. After further remarks of similar tenor, he retired amid much applause.

Able addresses were afterwards delivered by Judge Gilcrist, Dr. Pierson, Messrs. Williams, Purkitt and Goodrich.

*Resolved*, That the Chair appoint a committee of five, whose duty it shall to draft a Memorial to Congress and present it to an adjourned meeting, to be held on Wednesday evening, the 23d inst.. The Chair appointed upon the committee Messrs. Proctor, Long, Spear, Williams and Pierson.

On motion of MR. SPEAR,

*Resolved*, That we recognize in the *Territorial Enterprise* a paper devoted to the best interests of the people of Nevada Territory.

*Resolved*, That the proceedings of this meeting be published in that paper, and an engrossed copy of the proceedings of this meeting furnished our Delegate elect, Col. J. J. Musser, signed by the President and Secretary of the meeting.

On motion of F. M. PROCTOR,

*Resolved*, That the Chair appoint a committee of two from each district to present the Memorial for signatures, and that the Chair publish their names in the next number of the *Enterprise*.

Adjourned to meet on Wednesday evening the 23d inst.

W. M. ORMSBY, President.  
J. T. TORRES, Secretary.

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WEDNESDAY, NOV. 23D, 1859.

The meeting pursuant to the adjournment. W.M. Ormsby in the Chair.

## TERRITORIAL ENTERPRISE

November 26, 1859

GENOA U.T., Nov. 19th 1859

Messrs. Jno. F. Long and others: – Gents: – Believing, as I do, that in the contest for Delegate to Congress from Nevada, between J.M. Crane and Major F. Dodge, the result was largely in favor of the latter, and that he is therefore by choice of the people of Nevada their legitimate representative at Washington, I decline taking any part whatever in canvassing the votes cast for Delegate on the 12th inst.

ALFRED JAMES, Clerk District court, 2d Judicial District, U.T.

This action of his caused a very enthusiastic meeting to be held at Carson City, on the 21<sup>st</sup> inst., the proceedings of which we present in another column, at which a series of resolutions were passed, fully endorsing the action of the committee in canvassing the votes, and bestowing quite as much attention upon the clerk as he deserves. For persons of his character, like “Mark Meddle” in the play, are envious of a kick.

Nevada Territory will soon be organized, and those who contend against it, are “kicking against the pricks.”



## TERRITORIAL ENTERPRISE

December 17, 1859

**Departure of Col. Musser**

Col. J. J. Musser, our recently elected Delegate to Congress, left for Washington, on business connected with the interests of Nevada Territory, on Monday morning last. Col. Musser bears with him the confidence, respect and hearty good will of our people. His abilities are undoubted, and his opportunities for earning a just fame are as fair as any now presented. He has reasons numerous and cogent to urge upon Congress in favor of Nevada Territory. He possesses the requisite ability to present them properly; and if Congress fails to give us what we so much need, a separate organization, it will not be for want of energetic representation of our interests. We say, God speed! to Col. Musser. It will be a proud day for him, and for the residents of these Valleys, when he shall return with the Bill organizing the Territory of Nevada. And it will be a no less proud day for our fellow-citizens of the different States.

The material and *moral* interests of our whole country will be subserved [sic], by the withdrawal from under the accursed Mormon *misrule* of the agricultural and mining regions lying within our proposed boundaries,—regions destined to attract an immense immigration of good citizens next Summer, all of whose interests, pecuniary and otherwise, will lie at the mercy of a fanatic and irresponsible governments at Salt Lake.

Gentlemen of the press, everywhere, give us your support in our effort to secure a fair and honest government within the boundaries which Nature herself has established for the future STATE OF NEVADA.

# TERRITORIAL ENTERPRISE

December 17, 1859

## Public Meeting

Per notice, a meeting of the citizens of Carson City and the adjoining towns was held at the City Exchange, on Saturday evening, Dec. 10th, 1859. The meeting was a very full one.

On motion of J. F. Long, W. Stewart was called to the Chair, and a Secretary appointed.

The Chair addressed the meeting at considerable length. He stated the particular object of the meeting to be listen to a farewell address from Col. J.J. Musser, previous to his departure for Washington. After the close of his remarks, the following was offered by Mr. Goodridge in the name of Maj. W. M. Ormsby, and unanimously adopted:

WHEREAS, The interests of Nevada Territory require that a systematic correspondence should be maintained between the people of this Territory and Col. J. J. Musser, our Delegate elect to Congress, during his proposed residence at Washington, therefore,

*Resolved*, That a committee of three be appointed by this meeting to serve as a Corresponding Committee, whose duty it shall be to furnish early and reliable information to Col. Musser of all matters transpiring in this Territory, or having any direct bearing upon its real interests.

Mr. Milne entertained the meeting with some pertinent remarks, previous to the arrival of Col. Musser.

Col. J. J. Musser was then introduced, amid loud plaudits. He prefaced his remarks with a brief and modest allusion to his want of legislative experience, ect., and proceeded at once to the discussion of the Territorial question. It would be in vain to attempt even a synopsis of his address. He reviewed the whole subject in its physical, political and moral bearings in a way which carried conviction with it. He was listened to with marked attention, and was frequently interrupted with applause. If any man present had ever doubted the Col.'s ability and information, his doubts must have been dispelled by that speech. At its close, the applause was long and loud. Six rousing cheers followed Col. Musser, as he took his leave of the meeting.

Mr. Purkitt, of San Francisco, followed in an unpretending and sensible speech, sustaining the views and policy of Col Musser.

On motion.

*Resolved*, That we the citizens of Nevada Territory, in mass meeting assembled, do pledge ourselves to use all honorable means to sustain our Delegate elect to Congress Col. J. J. Musser, and we respectfully ask that his representations to congress in our behalf may be favorably received.

On motion, meeting adjourned *sine die*.

# TERRITORIAL ENTERPRISE

December 17, 1859

## **Proclamation**

### **To The People of Western Utah, included within the boundaries of the proposed Territory of Nevada:**

Having been duly elected by you as executive of the Provisional Territorial Government of Nevada Territory, and deeming it my duty to address you upon the subject of our separation from the curse of Mormon Legislation, I present to you my reasons why an organization of the Provisional Government, would, at the present time, be unpolitic.

At the time we were compelled to assemble, in our sovereign capacity, to endeavor to rid ourselves of the Theocratic rule of Mormonism, we had no protection for life, limb or property. We had in vain petitioned Congress for relief against the unjust and illegal attempts of Mormons to force upon us laws and customs obnoxious to every American. We had no Courts, no County organizations, save those controlled by the sworn satellites of the Salt Lake Oligarchy. Our political rights were entirely at the will of a certain clique, composed of those who were opposed to the first principle of our Constitution, "the freedom of the ballot-box."

Under these circumstances, we endeavored to relieve ourselves from these impositions, and believing that a Provisional Territorial Government would best assure us protection to life, limb and property, we held our election and made all necessary arrangements for the formation of a temporary Government, until Congress should give us justice and protection.

Since our election, we have been deprived, by a dispensation of Providence, of our esteemed Delegate to Congress, James M. Crane, whose whole energies were devoted to the best interests of our people, and who carried with him to the grave the kindest wishes of us all, and who should have inscribed upon his tomb stone, "An honest man, the noblest work of God."

Within the past few months an attempt has been made by Judge Cradlebaugh, to establish the U.S. District Court in this District. Coming among us as he did, with the prestige of his noble stand against Salt Lake Legislation, we at once yielded to him and his Court all the respect ever accorded in any community. But notwithstanding all his endeavors,

backed by the good wishes of the people, the so-called laws of Utah Territory have proved to him an insurmountable barrier.

We have now *en route* to Washington, as Delegate to Congress, to represent us and our wishes, John J. Musser, unanimously elected by the people to fill the vacancy occasioned by the decease of the lamented Crane, and in whom we all place the most implicit confidence.

The recent discoveries of Gold, Silver, Copper and Lead Mines, have caused an influx of population totally unexpected at the time of our late Convention. The new immigration is composed of the bone and sinew of California, of men who are disposed to pay all due obedience to Laws which extend to them a reasonable protection.

Under the circumstances, but few members of the Council and House of Delegates have assembled, in accordance with the call for their election.

Now, therefore, I, Isaac Roop, Governor, of the Provisional Territorial Government of Nevada Territory, believing it to be the wish of the People still to rely upon the sense of Justice of Congress, and that it will this session relieve us from the numerous evils to which we have been subjected, do proclaim the session of the Legislature adjourned until the first Monday of July, 1860, and call upon all good citizens to support, with all their energies, the Laws and Government of the United States.

Done at Genoa,, December 15th, A.D., one thousand eight hundred and fifty-nine.

ISAAC ROOP,  
Governor.

# TERRITORIAL ENTERPRISE

January 14, 1860

## **Nevada Territory**

The question of general discussion among the people of Western Utah, is the importance of a separate Territorial Government. Every consideration of convenience and justice demands at the hands of the Federal Congress that the present session should not be permitted to expire without the passage of an act, organizing a form of government adapted to the wants of our people.

A glance at the map of our country presents to the eye a vast territory under the name of Utah, extending from the Rocky Mountains to the summit of the Sierra Nevadas, and from the thirty-seventh to the forty-second degree of N. latitude, comprising an area of about 250,000 square miles. At the time this wide domain was constituted, and a government established, Congress evidently contemplated its future division into more convenient limits, for by the first section of the Organic Act of 1850 it is

*Provided*, That nothing in this Act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper.

Has the time thus forseen [sic] and provided for arrived?

The settlement of this Territory forms an anomaly in the history of our country. Hitherto the population of a new country has progressed directly from a single boundary on the east or west, towards the opposite. Here, more than a decade has passed since the Eastern border received the fugitive followers of the modern Mahomet, who have multiplied in numbers and moved slowly westward, covering the more fertile portions of the east.

The enterprising population of California has, during the same period, sent across the mountains numbers of hardy men, seeking for new homes, who now occupy almost every fertile spot on the Western border, from Oregon to New Mexico.

The recent discovery of mineral wealth has already brought into the rugged hills and canyons hundreds of miners, in quest of the "golden fleece," while thousands and ten of thousands of others are preparing for an exodus into this new region in the approaching Spring. Between these respective swarms, moving like two opposing phalauxes, from the east and

the west, wild tracts of land, “antres vast and deserts idle” intervene, inhabited by numerous Indian tribes.

More than five hundred miles away lies the Capital of the Territory, the transit to which is impracticable, on account of the distance for all useful purposes at the most favorable season, and which is rendered wholly impassible for nearly one-half of each year, by impenetrable snows. Still more widely separated are these people, in a moral sense, in their habits, manners and education; in their religious and political sentiments. No homilies on universal toleration, no evangelical platitudes in which the most cathartic [sic] spirit may indulge, can reconcile the conflicting feelings of two people so radically heterogeneous. These natural obstacles, to which we have alluded, cannot but commend themselves to the attention of the government at Washington, entrusted with the sovereign power over the erection of Territorial governments. It cannot be that the Federal Congress will expose us during the next two years to the evils of anarchy. Far better would it be for us, in that event, were we unlikely without the jurisdiction of any Territory whatever. Then, indeed, referring to the great law of necessity, the sovereign right of every people to provide such government as might be calculated to preserve them from disorders; they could assemble by their representatives, adopt a constitution and clothe their agents with powers sufficient to answer the ends of a political society. But what, under the existing legislation of Congress, is the condition of our people?

We are unquestionably subject to the laws of the Mormon Legislature passed and to be passed. They are in force throughout all the boundaries of the existing Territory. The Courts are bound to respect them, and given them effect. Yet those laws are in many of their features odious, profoundly odious to the people who in the midst of the newly reclaimed wilderness, still cherish a stern reverence for social laws and institutions, universally recognized over all Christendom. But aside from the consideration that these laws are repugnant to the moral sense of the thousands who will inhabit this portion of the Territory so soon as the snows of winter have disappeared, we conceive that no argument could so effectually enforce our demand for a separate Legislature, as to furnish to each member of the National Congress a full compilation of the laws enacted during the past ten years. With the innumerable models offered in the Statute books of the States and Territories of the Union, the Mormon Legislature seems to have studiously avoided the adoption of any code or system ade-[sic] to the due administration of justice in the Courts. While some pains have been taken to provide for the protection of the “peculiar institution of Mormonism,” and to carry out the obligations incident to polygamy; and also by charters to give imaginary importance and grandeur to cities which exist only in the speculations of the chosen of the saints, a few meagre pages betraying the grossest ignorance of the

rudiments of legislation, is all that has been devoted to the great scheme of private rights. To take the Mormon statues [sic] as they stand in print, no more beggarly account of empty, uncertain and ambiguous literature is to be imagined.

To add to our embarrassments, we have no Judicial officers within perhaps five hundred miles of the populous districts bordering on California. Crime has no tribunal before which it may be arraigned. No one possessing the powers, of even an examining magistrate, is to be found in the absence of the U.S. District Judges. Under these circumstances what may we not anticipate of evil from the sudden influx of the thousands, who shall come in the wild hunt for gold, incited with the passion of avarice. Disorder, confusion and violence must inevitably reign, with no possible alternative but to resort to such government as the people may see fit to institute for themselves, subject in the meantime, to the horrors of Lynch law, Vigilance committees and that sort of extempore justice which every prudent man would seek to escape.

Looking to our present lawless condition, and the evil fruits which are likely to ensue, the people of this region, under the name of the people of Nevada Territory, have sent to the Federal metropolis a man in whom they confide asking his admission to the councils of the nation, and the organization of an efficient government for their protection. Their duty as citizens has thus been fully discharged, and their solicitude for peace and good order been fully manifested. For whatever of evil may arise in the future, from a denial of their just and reasonable demands, the responsibility must rest with those who turn a deaf ear to the entreaties addressed to them by the people of Nevada Territory.



# TERRITORIAL ENTERPRISE

January 28, 1860

## Nevada Territory—Mormon Legislation

Some weeks since we took occasion to indulge in some reflections on the urgent necessity of a separate Territorial organization for the people of Western Utah. The importance of the subject warrants our further allusion to it. Should the present session of Congress expire, without providing for such Territory, by no possible promptitude on the part of the next, can we be successfully in operation with a Government in less than two years. The Congress assembles in December next. A bill of this nature involving the whole controversy in regard to “Federal power” and “Popular sovereignty” must needs be seized upon to “air the vocabulary” of windy pragmatics, who piously cherish those disorders and agitations to which they are indebted for all their consequence. We shall be fortunate therefore in obtaining a passage of the desired measure by the end of February, 1861. Then must follow several months before the official notification can reach us, and the election of a Legislature can take place. Several months more for the Legislature to assemble and pass a whole system of laws adequate to the peculiar wants of our people. These two years, considering the lawless condition of the country will be a *generation* of evils in which we must be exposed to the law of the strongest.

We have said that the most impressive argument which could be addressed to the wisdom of Congress in order to enforce the fitness of a demand of a separate Legislature, would be to furnish to the representatives of the States and people, a copy of the “lame and impotent” laws enacted in nine years by the Solons of Salt Lake—laws which “stand like forfeits in a barber-shop. As much for *mock* as mark.” The precious casket which contain the treasures of Mormon light and literature, are, however, too rare to afford the requisite number; we therefore propose to verify from the record the imputation of chicanery and folly in the councils of Utah, which has given birth to this brood of unmeaning Legislation.

In doing so it is proper to declare that it is far from our purpose to excite undue prejudices against a people, because of their religious tenets, or to arouse a sentiment of hostility towards the deluded victims of imposture and credulity. Our complaint rests upon a more rational foundation than that of prejudice; and however much we may abhor the teachings and practices of Mormonism, it is with the political aspect of the question alone that we now have to do.

In 1850, among the series of measures passed by Congress, to allay the fierceness of political strife, was, “An Act to establish a Territorial Government for Utah.” It provided a fundamental law, superior in authority to all local enactments; for a subordinate Territorial Legislature, with power extending “to all rightful subjects, consistent with the Constitution of the United States, and the provisions of this act;” for Executive and Judicial officers—all to be supported and paid for at the National Treasury. It was surely the design of Congress in the institution of these three departments, to organize an efficient system analogous to the Federal, and the State Government—for throughout our Union, those features in regard to the Legislative, the Executive and the Judiciary, are everywhere to be found—the only difference being, that the Executive and the Judiciary in the Territories are appointed by the President, with the advice and consent of the Senate, instead of by the people themselves. The highest authority, that of enacting laws, however, was entrusted to the citizens of the Territory, with a reservation in section 6th, that,

All laws passed by the Legislative Assembly and Governor should be submitted to Congress, and if *disapproved*, should be null and of no effect.

To the Legislative Assembly therefore we are to look for the *enactment* of all proper laws—to the Judiciary to *declare* them when made—to the Executive to enforce them. By this system the Executive and the Judiciary are dependent upon, and must be controlled by the Legislature. If laws are not made, none can either be declared or executed—if imperfectly made they cannot be changed—if enacted in conflict with the Constitution of the United States, or the Organic Act they are not made because they are not law.

Let us now examine into the manner in which the people of Utah have exercised the legislative power entrusted to them, and we venture in advance to assert that, it will obviously appear, that the aim of their enactment has been to embarrass the Judiciary provided by Congress, by investing their own creatures with unlimited political powers; to withhold all wise and salutary provisions of law; to wrap in ambiguous phrase and shroud in mystery and darkness profound the few pages of legislation provided; and to weave a labarynth [sic] of inconsistencies through which the mind should grope its way in confusion worse confounded,—thus, in effect, nullifying the purpose for which the Territory was created, and refusing to perform the proper functions of a Legislature, namely, the protection of life, liberty and property. It is scarcely possible, in contemplation of the ample stores of information open to all, – doubtless provided in the library furnished by Congress at the Territorial Capital; the examples to be found in the Statute books of every State of the Union, it is scarcely possible that this legislative stultification is the result alone of

ignorance and stupidity. We can ascribe it only to a jealous fear and hatred of the "Gentile" race, and the dictate of that policy which teaches them to discourage the emigration and settlement of the "Gentile" within the borders of their wide dominion.

# TERRITORIAL ENTERPRISE

January 28, 1860

## The Judiciary

The ninth section of the Organic Act provides for the Judicial department. It declares that this power shall be vested in a Supreme court, District Court, Probate Court and Justices of the Peace—the District Judges (who compose the Supreme Court) under this act, are appointed by the President. It leaves the Probate Judge and Justice of the Peace, to the appointment of the Territorial Legislature.

It limits the jurisdiction of the Justices of the Peace to matters in controversy of \$100 and under, and prohibits them from taking cognizance of title to lands.

The Supreme Court, the District Court and the Probate Courts are to exercise such jurisdiction as may be prescribed by law to the Legislature. It might be said that this gave to the Legislature plenary power over the jurisdiction of the Courts. The same section of the Organic Act, however, provides that,

Writs of error, bills of exceptions and appeals shall be allowed in all cases from the final decisions of said District Court to the Supreme Court.

But in no place does it provide for any appeal from the Probate Court, thus ignoring the idea that the Probate Court was to possess any jurisdiction in matters, save and except those which legitimately belong to and are exercised by Courts of that denomination; to wit, over estates of deceased persons, lunatics, minors, &c. It is absurd to suppose that Congress designed these inferior Judges of Probate were to be entrusted with unlimited jurisdiction, without guaranteeing an appeal to some superior tribunal. Doubtless it was intended that where the jurisdiction of Justices of Peace ended, there, that of the District Court should commence. The first Territorial legislature made the Judiciary the subject of its first act. This act declares,

That the District Courts shall exercise jurisdiction, both in civil and criminal cases, when not otherwise provided by law.

In this vague language it defines the power of these Courts.

By Section 29 it declares,

The several Probate Courts in their respective counties, have power to exercise original jurisdiction both civil and criminal, as well in Chancery as at Common law, when not prohibited by legislative enactment.

By the first it will be seen it only confers on the District Courts such jurisdiction not “otherwise *provided* by law.” On the Probate Courts it confers all jurisdiction not actually *prohibited* by law. Making the powers of the Probate Judge, who holds his appointment from the Legislature far more ample than those of the District Judges. The next section 30, makes an insidious showing of subordination to the District Court; but its language is too studiously evasive not to strike even the most superficial. It reads thus,

Appeals are allowed from all decrees and decisions of the probate to the District Courts, *except when otherwise expressed on the merit of any matter affecting the right or interests of individuals.*

The exception as fully abrogating all right of appeal as language construed by a Mormon judge can make it.

It was obviously thus the intention by this species of legislation, to pervert the administration of the laws, from the tribunals constituted by Congress to the ministers and creatures of Mormon power. In every county of the Territory of the Probate Judge ranges over the whole domain of the law, with the scales of justice and the sword of retribution. No crime so vast; no charge involving life or liberty he may not punish; no rights of property so important that intricate he may not weigh; and from his angust decrees “*Appeals are allowed except on the merit of any matter affecting the rights or interests of individuals.*” It is just to presume, the term *individuals*, applies to the “Gentiles,” whether to the “Saints,” we can express no opinion. So much for the judiciary as molded by the hands of Brigham Young. In the day when he presided over the Territory and his myrmidons [sic] filled the Legislature, it was with due form placed upon the statue book. Gov. Cummings and all the army of the Untied States cannot repeal it, so long as this people shall maintain control of the Legislature. In another we shall review more generally the statutes of Utah.

# TERRITORIAL ENTERPRISE

February 18, 1860

## Correspondence

As the question of the adoption of the Statutes of the Utah Legislature among us is just now attracting attention, we insert the following communication upon the subject:

CARSON CITY, February 16, 1860

EDITOR. ENTERPRISE:—In a late issue of your paper, I find an article under the head of “Mormon Officers,” and being informed that it was written by a member of the legal fraternity, I take the liberty of answering. He is decidedly opposed to enforcing any acts of the Legislature of this Territory. Consequently opposed to all Courts that has ever been established, or ever will be under the Organic Act, organizing the same.

Courts in this Territory would be powerless, or without jurisdiction unless the Legislature gives it to them. In the Organic Act, Sec. 9, I find, after stating what kind of Courts shall be established, it says:

The jurisdiction of the several Courts herein provided for, both appellate and original, and that of the Probate Courts and of Justices of the Peace, shall be as limited by law.

What power or what jurisdiction would our Courts have, unless it be defined by law. No one can deny that all of the Courts in the Territory, from Chief Justice Eckles down to most inferior Courts ever  $\diamond\diamond$ , all have acted under and by virtue of the law given to them by the Legislature, except such as is considered unconstitutional.

It is also true that many of the acts of the Legislature are new, novel and unconstitutional, but the whole of the criminal code and a large part of the civil, is a perfect copy of the California and New York Statutes. The crime of treason, murder, larceny, robbery, etc., are punished just the same as in other States or Territories. The collection of debts and the *modus operandi* are the same as elsewhere.

The jurisdiction of the various courts by the Organic Act, was left entirely to the Legislature, and they have given all the Courts equity jurisdiction as well as law. The 1st section of the 3d chapter reads as follows: “That all the Courts of this Territory shall have law and equity jurisdiction in civil cases, and the mode of procedure shall be uniform in

said Courts.” Many of the States have emerged both law and equity together, and the distinction is only keeping up an old practice adopted in the English courts.

I am as much opposed to Mormon Theocracy, or Mormon diction, as the gentleman who wrote the article refered [sic] to, or any one else can be, but we as rational men must take things as they are, and do the best we can under the circumstances. This Territory has been organized by Congress, and the power in that act given to the Legislature to make laws by which the people in the Territory should be governed, I see no reason why not as loyal subjects to our great Confederacy, can do otherwise than abide and live up to such of those acts as are reasonable [sic] consistent and constitutional, until we can make a change for the better, not for the worse. Or would it be better to follow the course of the gentleman pointed out in his article. He says:

Let us, then set about the matter calmly and quietly, but with a firm determination never to obey a single mandate or writ issued by these parties, whether Mormons or semi-Mormons; let us be united and we must succeed in preventing even the semblance of Salt Lake Law among us.

Does he not know that all the Judicial proceedings of his Hon. Judge Cradlebaugh, at the September term of the District Court, was done by virtue and in accordance with the power and authority given him by the Legislature. Is he aware that twenty-four good and lawful citizens of our Territory, under oath, presented thirty-four true bills of indictments against supposed violators of this law, he says he is going calmly and quietly to put down. What does he mean by the language quoted? Is it that he intends to calmly and quietly, and with a firm determination, now to obey a single writ or mandate in preventing even the semblance of the Salt Lake Law. Those men were indicted under and in strict accordance to that law. It was all, and the best they had to govern them in their deliberations; they were instructed by the Court that the criminal code under which they had been sworn, was legal, and that it was almost *verbatim adlitteraum* to the criminal code in other States and Territories.

If the gentleman means that going “calmly and quietly” and in opposition to the action, will and wish of the Court, and the noble Grand Jury who worked so faithfully in the discharge of their sworn duty, in presenting and bringing to justice the offenders of this “Salt Lake Law,” and in despite of the authority of the Court and power of its Marshals, and say to offenders, you were all indicted under this Salt Lake Law, “arise, shake off thy fetters and go scott free;” I am determined to put down even the “semblance of Salt Lake Law among us.”

I will call the gentleman to another fact, and that is the advertisement of each legal gentleman in the Territory, and see what they say. First is that of Col. J.J. Musser, he says that “he will practice law in the Supreme and Probate Courts in Utah.”

The gentleman’s own card says “he will practice in all the Courts of Utah Territory.” Still he feels himself bound to put down even the semblance of law emanating [sic] from the Legislature.

S.



# TERRITORIAL ENTERPRISE

March 10, 1860

## **Nevada Territory**

Hon J.J. Musser, our Delegate to Congress, upon his arrival there found that Maj. F. Dodge, formerly Indian Agent here, was professing to be the Delegate of Nevada, his claims, of course, were not recognized. Many of the leading Senators there express themselves favorably disposed towards our movement. In the House, Grow, of Pennsylvania, is chairman of the Committee on Territories. He has always we believe been disposed to acknowledge our claims. The chances of getting a new Territory this winter are certainly favorable. Our Delegate, Col. Musser, will do all that man can do for us, but now is the time for all our citizens to contribute there mite [sic] of influence to aid him. Let them do so by writing statements of facts to any parties at Washington—whom they have any knowledge of—urging our claims to their support, detailing our immense agricultural and mineral resources, and the certainty of our having 50,000 inhabitants before the Next Congress assembles. Let us bestir ourselves; private letters to influential persons at Washington will effect more for our cause than any parade of memorials and resolutions.

# TERRITORIAL ENTERPRISE

March 10, 1860

## Probate Courts

As some appointments have lately been made, and some exclusive grants given, by John L. Childs, lately elected by the Utah Legislature Probate Judge, of Carson County, we cannot refrain from alluding to the validity of the source from whence these grants and appointments emanated [sic].

In the first place it is a fact well known to all the Gentile population of Utah Territory, that the special powers of the Probate Court is what may be termed a creature of the Mormon legislature of Utah, manufactured for the sole and exclusive purpose of adjudicating cases which might occur between "the chosen of God," *i.e.* the Mormons and the Gentiles; and for the purpose of conferring [sic] unusual privileges upon the initiated members of the Mormon church. It is merely an institution gotten up by the Mormon leaders for a blind for their plundering acts, disguised, however, by enough legal tinsel to mislead the unwary or superficial seeker after redress.

In the organic act creating the Territory of Utah no such powers are conferred upon the Probate Courts, as have been exercised by them. In Section ninth of that act it is expressly declared that the jurisdiction of the several courts shall be as limited by law. Dare the advocates of the adoption of the Mormon statutes in the legal practice of Utah assert, that, the extraordinary powers conferred [sic] upon the Probate Court should be dignified by admitting that they are within the limits of the law? Are they not aware that any Legislative enactment which is contrary to the Constitution of the United States, and the tenor of the organic act, is null and void? Did not Judge Cradlebaugh but a few months since, in his charge to the Grand Jury, expressly enjoin upon them the importance of discarding much that was incorporated in the Utah Statutes as it had no legal precedent? Did he not in all his rulings ignore all provisions of the statutes which were in contradiction of the fundamental principle of common law? Did not the entire bar at that time acknowledge the validity of the argument? Are not all these facts patent? If the Probate Court is the great tribunal that some pretend it is why did it not transact some business while Cradlebaugh was here? Simply because some of its pretended powers were in danger of being ventilated and stripped of their extraneous adornings [sic].

The Probate Courts of Utah are very cunning devices. Yield obedience to their mandates and an arbitrary and domineering tone is assumed. Resist their pretensions and they soon subside to their original insignificance. For instance, during the sitting of the U.S. Supreme and District Courts in Salt Lake Valley, the Probate Courts there were suppliants at the throne of grace. After the departure of Judges Sinclair and Cradlebaugh, the associates of Judge Eckles, knowing that no appeal to the Supreme Court could be acted on for some time, owing to their absence; the Probate Courts thought that a fine opportunity for changing their tactics; and in the case of Brigham Young vs Chas. A. Perry & Co. rendered judgment in the case, ordered execution and sale of Perry & Co's store, refusing an appeal to the U.S. District Court. Arrogating to itself the sole right to decide upon the case. Should not such usurpations of the Probate Court where its authors have a numerical strength, warn us of Western Utah, where they have not, to beware of its insidious workings.

The Probate Court of Carson county, when all the surroundings were favorable, and the Mormon population more numerous than it is now, was never able to transact even a legitimate Probate business. If the people now submit tamely to the special privileges claimed for it, they certainly deserve to wear a "Brass collar," inscribed thereon, sold to the Mormon Probate court.

As certain grants of water privileges, timber privileges, etc., have lately been made by Mr. Childs, we think it no more than a duty we owe the public to state, that he went beyond even the very liberal powers granted by the Mormon Statutes in so doing. In section 27th of an act in relation to the Judiciary, passed Feb. 4th 1852, by the Utah Legislature, the duties proper of a Probate Judge are defined. It says that "The Judge of Probate has jurisdiction of the Probate of Wills, the administration of the estates of deceased persons, and of the guardianship of minors, idiots and insane persons." This is in accordance with Probate jurisdiction in all countries. In Sec. 34 of the same act it is stated that, "The Probate Court in connection with the selectmen, shall be known as the County Court." Sec. 38 says "The County Court has control of all timber, water privileges, or any water course or creeks; to grant mill sites, and exercise such powers as in their judgment shall best preserve the timber."

We cannot find any authority in the statutes, even admitting their validity, giving the Probate Judge, power to make such grants in his individual capacity, neither has he the power to appoint selectmen to act with him. Now it is well known that no selectmen were elected last fall; hence, any parties who presume on grants from such a source, will find that their titles will not bear investigation. Again, we cannot find any authority vested in the Probate Judge to appoint a County surveyor, yet

such an appointment has lately been made without the concurrence of selectmen.

Want of space compels us to defer further comment, but we hope that before people render blind obedience to the behests of Probate Courts, they will rigidly investigate how far their authority extends.

# TERRITORIAL ENTERPRISE

April 14, 1860

## Arrival of the PONY EXPRESS!!

### 8 Days and 20 Hours

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FROM ST. JOSEPH, MISSOURI.

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DATES FROM ST. JOSEPH, MO.,  
TO APRIL 3D, 6 P.M.

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THE RUBICON IS PASSED!

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THE PONY EXPRESS IS A  
SUCCESS!!

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NO FEARS FOR THE FUTURE!

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We are indebted to Mr. Finney, Agent of the Overland Pony Express, for a copy of the Pony Express edition of the *St. Joseph Daily Gazette*. By it we have Washington dates to March 30th. We give a synopsis of the Senate Bill for the formation of a separate Territory in Utah, with other Items of interest.

### Nevada Bill

A bill amendatory of the act organizing the Territory of Utah—by which the seat of Government is removed from Salt Lake City to Carson Valley, and the name of the Territory changed from Utah to Nevada. The bill also makes the male population the sole basis of apportionment, and confines the elective franchise to citizens of the United States, thus excluding the previous large vote of unaturalized [sic] foreigners. The Committee hope by this policy to pass the political power of the Territory from Salt Lake to Carson Valley—from the hands of the Mormons to those of the Gentiles. The removal of the seat of government to Carson Valley, in connection with the rich mines lately discovered there, it is believed will soon attract a large population, while the change in the basis of apportionment will reduce the representation from the Salt Lake region in the Legislature.

The amendments proposed in the organic act will not, as represented in the “Herald,” interfere with the present delegate in Congress, or the present political statue of the Territory. The changes proposed are all prospective, and will be brought about by a steady operation of the proposed polley [sic]. The change of the name of the Territory is designed to break the charm which “Utah” seems to have

acquired over a certain portion of the degraded population of Europe, and arrest, if possible, at least in some degree, the immigration of foreign Mormons. The Senate's committee have taken a large amount of testimony on the subject—brought before them during the consideration of this last bill—and if published, this testimony would be highly interesting to the country, but the proceedings of a committee being confidential, these facts will not be made public. Capt. Hooper was not consulted as to the policy proper to be pursued relative to Utah, but he was before the committee several times giving information, and by his ready and clear responses, and gentlemanly and ingenious manner, the Utah delegate made a most favorable impression on every member of the Committee.

The fate of the application of Kansas for admission into the Union is doubtful in the Senate though likely to be endorsed by the House a large majority, nor is the Territorial policy of the Senate likely to be endorsed by the House. The motto of many democrats being no more new territory. Mr. Branch, of North Carolina, will it is said propose a change in the organic act of Utah, so as to give to the President power to appoint members of the Territorial Legislature as was the rule up to 1836.

# TERRITORIAL ENTERPRISE

April 14, 1860

## Over-Hasty

The spirit of disorder seems to be on the increase as our population is augmented by fresh arrivals. Men who in California had the reputation of being good law abiding citizens after a few months residence on the eastern slope, finding that there is no law here, give full scope to the very worse passions which can animate the human breast. The spirit of cupidity seems immediately to seize on all who come here: men who under a less exciting state of affairs have conducted themselves half-way decent, now openly and unblushingly say that they have come here to make money and that they intend to do it at all hazards, *ergo*, if they cannot obtain it honestly, they will obtain it by other means; they will be very good rascals for the sake of a few dollars. Men of this class are to be watched, and although such persons may attain temporary prosperity, yet nor surer is the unerring law by which the "sparks fly upward," than the fact that those who gain wealth by dishonorable means will sooner or later be the losers thereby. Men who have at times in their lives conducted business upon apparently honorable upright principles and failed, now show by their acts here that their misfortunes in other places was owing to their dishonorable practices. No person can permanently sustain a business unless they are governed by the general principles of right. Here is a new country, a wide and ample field for almost any kind of business is presenting itself, thousands whose pecuniary circumstances have been impaired by either their own imprudences [sic], or others, are proposing to make the eastern slope their future homes. Let such commence whatever business they expect to engage in, in a proper manner and conduct it fairly and they will have no cause to regret their adhesion to principle.

# TERRITORIAL ENTERPRISE

April 21, 1860

## **Nevada Territory**

Col. J. J. Musser, our Delegate to Congress, writing under the late of March 2nd, says, that the Senate as well as the House Committees on Territories, will report the bill favorably. The House has been very tardy in its action, in session three months and a printer not yet elected. He says Congress entertains the plan to some extent of repealing the organic act of Utah, and dividing that Territory between Jefferson and Nevada. Still another plan proposed to erect the Territory of Nevada with its original boundaries, to repeal the organic act of Utah and annex it to Nevada for Territorial purposes. This last proposition, he says is looked upon with considerable favor. All parties there seem disposed to do something for us, and if a bill of some description can be brought to a vote no fears need be entertained of its passage.



# TERRITORIAL ENTERPRISE

May 19, 1860

During the excitement of the past two weeks, every imaginable kind of organization has been proposed for mutual protection. States have favored a Provisional Government on a large scale—some District organization—others, the declaration of martial law. A meeting of many citizens united in requesting Judge Cradlebaugh to open his Court. Others again advocated Vigilance Committees, but nothing definite has yet been agreed upon. As Judge Cradlebaugh is the only federal officer here, we feel satisfied that the entire community will sustain him in that course, and Congress, taking the exigencies of the case into consideration, will no doubt endorse any decisive action on his part. He, at Salt Lake, gained a noble prestige—he can now add to that reputation by acting with promptness. It is to be hoped that Congress, ere it adjourns, will grant a remedy for all the ills of Nevada Territory.

# TERRITORIAL ENTERPRISE

June 3, 1860

## **Nevada Territory**

We notice that Senator Gwin has introduced a bill into the Senate to organize the "Territory of Nevada." While we believe the interests of the people of Western Utah require a separate Territorial government, we trust that the bill introduced by Senator Gwin will be defeated, unless the proposed name for the new Territory is changed. Nevada county, in population and wealth, is one of the most important in California, and adjoining as it does, Western Utah, it is much to be regretted that the residents of the latter country should so persistently insist upon affixing the same name to the proposed Territory. The inconvenience and trouble that must necessarily result from this confusion of names are so readily foreseen, it is surprising that that [sic] the people of Western Utah have not, for their own sake, adopted a name more appropriate. Should the name be finally adopted, it will be found that thousands of letters, designed for Nevada Territory, will annually first sent into Nevada county, after which, by a round about [sic] way, they may find their proper destination; and the residents of this county will be subject to the like inconvenience of having their letters "missent" [sic] into Nevada Territory. The people of Nevada county should take some action in this matter, and endeavor, if possible, to defeat the project of applying the name of their county to the Territory adjoining. A petition on the subject, stating the bare fact that Nevada county, in California, is located upon the borders of Western Utah, would have much influence upon members of Congress, and we believe would have the effect, wither to defeat the bill, or else compel those who have it in charge to substitute some more appropriate name.

*-NEVADA DEMOCRAT*

There is much of your argument, friend Rolfe, that we endorse. The name of Nevada is liable to create interminable confusion, not only in the Post Offices of the country, but also in the transportation of goods. The name of the Territory could very easily be changed in the Organic Act. We want a Territory here too bad to have it defeated, even if the name is objectional [sic], to some California journalists.

# TERRITORIAL ENTERPRISE

August 4, 1860

## **Shall We Have Law or Anarchy—Order or Confusion?**

Monday next is the day designated by the Statutes of Utah Territory for the legally qualified voters of Carson County to meet in their several precincts and elect a member of the Legislature, together with the various county and precinct officers provided for by law. This election, or act of voting for officers to fill these various stations has generally been spoken of as a proceeding to organize the county – a palpable misnomer, inasmuch as the county is already organized, having its limits fixed, its offices created, and all other acts done, necessary to constitute it, within its own sphere, a separate and independent member of the body politic – a perfect government in the management of its own local affairs. This being the case, all we are called upon to do, at this time is, to attend the regular annual election fixed by law, and vote for men who will qualify and serve if duly chosen to fill the various offices mentioned in the notice of the Probate Judge, or as may seem to be vacant.

And now, as unprejudiced law-seeking and law-approving men, let it be inquired, why should we not on the day pointed out, attend to the business of choosing our local and legislative officers from those entertaining like views and sentiments with ourselves, and thus, by discharging the first duty of good citizens, secure the punishment of crime, the protection of property and the due administration of justice? Because, answer those who opposed the election—among whom, candor constrains us to admit, are many of our best men—because, by doing so we shall subject ourselves to taxation—disincline Congress to grant us a separate Territorial government—expose ourselves to be preyed upon by incompetent and corrupt county officials, and finally, set the machinery of Mormon oppression in motion, by vitalizing the now lifeless forms of Mormon legislation.

These, with some minor objections, looking to the inconsistency [sic] of doing this year what we declined to do last—the dread of Mormon exultation, etc., constitute the chief arguments of those who are averse to choosing candidates who will qualify and discharge the functions of their respective offices. Now, admitting there is some weight in much that is here urged against an election, what can be said in answer to these reasons and objections? In regard to the first, it may be said, the statutes of Utah—as has been stated often enough to be generally understood—do not allow any greater taxation than one per cent for all purposes, local and Territorial—the amount for county uses alone, being restricted to one-half

this sum—a rate, in view of our large and increasing taxable property, more than sufficient for all our wants.

Not only in the matter of taxation do the statutes of Utah exhibit this desire for economy, but every other branch of public expenditure is guarded with equal care; the fee bills, salaries, and pay of public officers being graduated on a very low scale. We will venture the assertion that there is not a State nor another Territory in the Union, in which the cost of administering the law and conducting public affairs, has been fixed at so low a figure as in Utah. Where in California, dollars are paid for this kind of service, dimes and even cents, answer the purpose here.

As for a provisional government, or in other words, inducing Congress to grant this portion of Utah a separate territorial organization, it seems to be out of the question, as all our former experience and the opinion of our present Delegate in that body, tend to show. The latter even expresses a doubt if Congress ever will erect another Territory from any portion of the public domain; and therefore advises that we prepare for admission in the Union as a State, as speedily as possible. To talk of any other kind of government than that of a State or Territory, is to talk of something foreign to our system, and can, practically, mean nothing more or less than an organized mob or vigilance committee.

The objection that by going into an election, our county affairs will be likely to fall into the hands of bad men, would have no more force here than elsewhere, if citizens would only do their duty.—We have plenty of honest and competent men from whom to choose our officers, and who, if elected, would serve. All we have to do to insure us against this threatened evil, is to elect our officials from this class.

As to the statutes of Utah, they are no doubt, objectionable in some minor particulars, going more to their form than merit. Those best acquainted with them, complain of their ambiguity, uncertainty, and other imperfections, rather than of anything manifestly unjust.—Both the practice and criminal code are copied from those of New York, admitted by all jurists to be the most equitable and perfect system ever framed. That the statutes of Utah can contain nothing very obnoxious to good morals or government, is apparent from the fact that every law passed by the legislature is subject to the negative approval of Congress. The truth seems to be, that, although the tenets and practices of the Mormon Church are bad enough, there is very little in their legal enactments of which we can reasonably complain; and certainly we should not allow our opposition to their religion, however well founded, to deprive us of the benefits of that law and order which is necessary to the welfare of every community.

In advocating an election, and the proper enforcement of law in this county, it is not to be understood that we have abated anything of our long and well known hostility to the doctrines of the Mormon church; nor do we intend to permit any one to so charge upon us.—Whoever asserts that we have relaxed anything of our former zeal against that hated institution, or that we have joined hands with the Mormon, is in the most literal and odious sense of the term, a liar. Nothing would have suited us better than to see the brave men whose hands were tied, by an imbecile administration, inflict upon these high priests of lust a merited chastisement.

Want of space deters us from pursuing the theme, but we hope our position is understood.

# Appendix C

## Newspaper Articles: 1861-1864

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## SILVER AGE

July 20, 1861

**A PROCLAMATION**  
**BY**  
**JAMES W. NYE**  
**GOVERNOR OF NEVADA**

---

*To all whom it may Concern:*

WHEREAS, It is provided by the 9th section of the Act of Congress creating the Territory of Nevada, that "said Territory shall be divided into three Judicial Districts, and a District court shall be held in each of said Districts by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law," and by the 15th section of the same act it is further provided, "that temporarily and until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the Judges who may be appointed for said Territory to the several Districts, and also appoint the times and places for holding Courts in the several counties or subdivision in each of said Judicial Districts by proclamation to be issued by him:"

Now by virtue of the aforesaid enactment, I do hereby order and direct, that until otherwise provided the Territory shall be districted the Judges assigned, and the Courts held as follows, to wit:

The County of Carson, including all that portion of Nevada lying west of the 118th degree of longitude West from Greenwich, shall constitute the First Judicial District.

All that portion of said Territory, being between the 118° and the 117° of Longitude, West from Greenwich, shall constitute the Second Judicial District; and

All that portion of said Territory, being East of the 117° of Longitude, West from Greenwich, shall constitute the Third Judicial District.

The HON GORDON N. MOTT, is hereby assigned to the First Judicial District, and will hold the courts therein.

The HON GEORGE TURNER, is hereby assigned to the Second Judicial District, and will hold the courts therein.

The HON HORATIO JONES, is hereby assigned to the Third Judicial District, and will hold the courts therein.

In the First Judicial District, a District Court of the United States, for said District shall be held at Virginia City, commencing on the 23rd day of July inst., and to continue two weeks, and a second term of said court shall be held at Carson City commencing on the 12th of August next, and to continue two weeks, and a third term of the Court, shall be held at Virginia City, commencing on the 2d day of December next, and to continue two weeks.

The times and places for the holding terms of the District Courts in the second and third Districts, will be designated in a subsequent proclamation.

Given under my hand and Seal of the said Territory, at Carson City, this seventeenth day of July, A.D. 1861, and of the Independence of the United States of America the eighty-fifth.

JAMES W. NYE,  
Governor of Nevada Territory.

## SILVER AGE

July 20, 1861

**A PROCLAMATION**

BY

**JAMES W. NYE****GOVERNOR OF TERRITORY OF NEVADA**

---

*To all whom it may Concern:*

WHEREAS, By an Act of Congress of the United States of America entitled "An Act to organize the Territory of Nevada," approved March 2d, 1861, a true copy of which is hereto annexed, a Government was created over all the country, described in said act, to be called the "Territory of Nevada," and

WHEREAS, The following named officers have been duly appointed and commissioned under said act, as officers of said Government, viz:

JAMES W. NYE, Governor of said Territory, Commander-in-Chief of the Militia thereof, and Superintendent of Indian Affairs therein. ORRIN CLEMENS, Secretary of said Territory; GEORGE TURNER, Chief Justice, and H. HORATIO JONES and GORDON N. MOTT Associate Justices of the Supreme Court of said Territory, and to act as Judges of the District Court for said Territory; BENJAMIN B. BUNKER, Attorney of the United States for said Territory; D. BATES, Marshal of the United States for said Territory, and JOHN W. NORTH, Surveyor-General for said Territory, and the said Governor and other officers having assumed the duties of their said offices, according to law, said Territorial Government is hereby declared to be organized and established and all persons enjoined to conform to, respect and obey the laws thereof accordingly.

Given under my hand and Seal of the said Territory, at Carson City, this 12th day of July, A.D. 1861, and of the Independence of the United States of America the eighty-fifth.

JAMES W. NYE,  
Governor of Nevada Territory.

## HUMBOLDT REGISTER

May 2, 1863

TERRITORIAL SUPREME COURT was in session in Carson, Judge Turner and Jones present, Mott absent-in Atlantic States. Speaking of Judge Mott, of incompetency of one Judge because of previous action in Courts below on mining cases up, Gen. Allen, of The Washoe Times, soothingly remarks:

“It was therefore ordered that the Court stand adjourned until the fourth Monday of the present month. The good Lord deliver us if we are to wait for justice until the return of judge Mott; for no one knows whether he intends ever to return, and a great many entertain very serious doubts as to whether he will be very instrumental in administering *justice* if he does return.”

The General doesn't seem to regard the absent Judge as a *bon mot*.

# VIRGINIA EVENING BULLETIN

July 7, 1863

## **The Laws of Nevada Territory**

Why is it that the laws of the last session of the Legislature of this Territory are not published? A people should not be expected to obey laws which they have no means of learning. In what respects and how far they change those contained in the volume of 1861, is not known. One is compelled to wade through a whole file of the Territorial Enterprise to arrive at even slight glimpses of their provision. A Legislature which is so regardless of the interests of their constituents as not to make provisions for the proper publication of their laws is criminally negligent of their highest duties. A people who are ignorant of the laws upon their records, must necessarily, in a great measure, act in the dark and by mere guess, in all their transactions. At the present time in this Territory property of immense value is rapidly passing from hand to hand, contracts are being made of great importance, and business of all kinds is being transacted, upon whose legitimacy and legality, in great degree, depend on the permanent prosperity of the community. And yet, all these things are being done in ignorance of the laws by which they are governed. We should suppose that the public authorities of the Territory would take some measures to remedy this evil, or are they too asleep and careless of the convenience and interests of the people over whom they rule?

## VIRGINIA EVENING BULLETIN

July 14, 1863

DIVORCES. – Our Courts are beginning to get as notorious for divorce cases as the California tribunals. Ladies and gentlemen, keep your tempers and remain with your better-halves, and thus save our climate from a bad name. There were only four divorce cases acted upon in the County Court yesterday.

## VIRGINIA EVENING BULLETIN

July 21, 1863

SETTLED. – The judicial dispute which has been pending during the past few days in relation to the office of the District Court Clerk, has been finally brought to a termination, the result being to reinstate Mr. Hanson, the former occupant. Judge Mott also took hold of his office as District Judge, and transacted some business yesterday afternoon. Peace once more reigns in the District Court of the First Judicial District.



## VIRGINIA EVENING BULLETIN

August 1, 1863

RESIGNED. — We learn upon general authority that Judge Horatio M. Jones to-day mailed his resignation to the President of the United States as Associate Justice of the Supreme Court of Nevada Territory.

## VIRGINIA EVENING BULLETIN

August 17, 1863

SUPREME COURT. – This Court sits to-day at Carson – Judges  
Turner and Mott presiding.

## VIRGINIA EVENING BULLETIN

September 5, 1863

COULD NOT AGREE. – There was an adjourned meeting of the Members of the Bar last night in reference to memorializing the President to appoint some of their number to the seats vacated by Judges Mott and Jones. There was considerable “speechifying;” but there was a slight conflicting of interests, no satisfactory result could be arrived at. The Committee which had been instructed at a previous meeting to telegraph to the President ◇◇

## VIRGINIA EVENING BULLETIN

September 7, 1863

THE NEW JUDGES OF THE FIRST DISTRICT OF NEVADA. — J. W. North, former Surveyor General of the Territory, has received from the President the appointment of Associate Justice of the Supreme Court of Nevada Territory, vice. Mott resigned. Under these circumstances we cannot see how, Judge Mott, can legally preside over the present term of the District Court. His resignation having been accepted and his successor appointed, we cannot understand by what authority he can give a decision in any case brought before him.

## VIRGINIA EVENING BULLETIN

September 22, 1863

RECEIVED HIS COMMISSION. – Judge North this morning received his commission as Judge of the First Judicial District of this Territory. He was on the bench, fulfilling the duties of the office, at the time of its receipt.

# VIRGINIA EVENING BULLETIN

October 2, 1863

## Interregnum of Laws

In a case just decided by the Supreme Court of this Territory, Chief Justice Turner delivering the opinion of the Court, it is held that the laws of Utah were in force in this Territory after the passage of the Organic Act by which Nevada Territory was created, until supplanted by the laws of the new Territory. The Act of Congress being silent on the subject, the question was left to be determined by the general principles of law. The general principle is, that when a certain law or system of laws has attached to a country, it still continues until directly abrogated, or until some other system has been adopted in its stead by competent authority. Thus, for instance, the laws of Mexico continued in force over all those portions of territory acquired by the United States from that Republic, until supplanted by others enacted by the new inhabitants and sovereign. This is a settled rule of the law. If one nation conquers another, the laws of the vanquished nation are not abrogated  $\diamond\diamond$  facta by the conquest, but only by the substitution of a new code for its government. There is no question, therefore, of the correctness of the decision in this respect. But in the same case (we refer to *LUCE VS. GRIER*.) it is further decided, that a judgment by default in a Justice's Court sufficiently shows jurisdiction in the Court by the recital that due service was had on the defendant by his attorney. Now, it is an admitted principle that nothing is presumed in favor of the jurisdiction of inferior tribunals but that all the facts which show jurisdiction must appear affirmatively. Here no fact as to their service of process appears at all, but simply a conclusion of law drawn by the Justice. The statement that the defendant was duly served is not the statement of a fact, but of a conclusion from facts. With all due respect, we think that the facts showing the manner of service should have appeared. And then again it is stated that this due service was made upon, not the defendant personally, but his attorney. Here the question arises, can an original writ be served upon the attorney instead of the defendant himself, without showing that the latter is inaccessible? It is not customary for men to employ attorneys for suits before they have been sued and service made on them. The writ should have appeared in evidence with the officer's return upon it, or its loss accounted for. This was a case in which judgment went by default, and in such cases the very closest scrutiny out [sic] to be required and the letter of the law exacted. If we take the simple statement of the Justice upon his docket that this, that, or the other thing, necessary to give jurisdiction, was duly done, without requiring the facts to be shown which constitute this regularity and sufficiency, we open a wide door for infinite error and confusion.

## THE EVENING NEWS

GOLD HILL, N.T.

November 2, 1863

A SURE INDICATION. – The Sacramento *Union* of last Saturday has a long article about matters and things in this Territory, from which we give the following:

It would appear from the report of cases tried and to be called for trial that nearly every valuable claim east of the mountains is involved in one or more lawsuits. At and about Virginia and Gold Hill, many of the leading claims are involved in lawsuits; in the Aurora region the production of the mines is almost suspended in consequence of the numerous suits which have caused companies to cease operations; in the Humboldt district legal controversies have been inaugurated, while at Reese River a plentiful crop of law cases are indicated by the signs of the times: Can no plan be devised which will put an end to so many vexatious and expensive lawsuits in the land of silver?

For the benefit of the *Union* and all those who contemplate investing in feet, we will give them a short piece of advice. Never buy at any price a foot of mining stock in a claim that is not involved in a lawsuit. If a claim is not so involved it is a certain sign that it is not worth having. The first question asked by the sagacious buyer is “Is the claim in litigation?” If answered in the negative the wise man scorns that stock and avoideth [sic] the same, even as pitch which defileth [sic] the fingers of him who toucheth [sic] the unclean thing.

# THE EVENING NEWS

GOLD HILL, N.T.

November 2, 1863

## The One Ledge Theory

The point over which so much discussion is being had and which is the basis of so many important mining suits now pending in the Courts, namely, whether or not there is in this mining region but one ledge, and that ledge the Comstock, is one in the ultimate decision of which our citizens are most vitally interested. We take the subjoined extract from an article on the subject from the last Saturday's *Sacramento Union*, premising that the views expressed therein strike us as most correct:

The 'one ledge theory,' to which the *Union* refers, we understand to be that the owners of the Comstock claim that there is but one ledge at Virginia, that those discovered for hundreds of feet above and below it are simply spurs of the mother ledge, and that in descending into the earth they will finally run into the parent stem and become one ledge. This theory is understood to be maintained by eminent geologists, while equally eminent professors in science deny the proposition. This theory, though, it is reported, has been fruitful in lawsuits. To a disinterested looker-on, such a theory sounds absurd. If ever established it will certainly and justly fix upon the companies which own the Comstock, or as claimed, the mother lead, the name of the 'Grab All' companies. At this distance it looks to us as if the legal establishment of the 'one ledge theory' would prove a public misfortune to the Virginia district. It would suspend work on all ledges within several hundred feet of the Comstock, and confine mining almost exclusively on what is termed the mother lead. When companies locate on a ledge they generally in their notice claim certain number of feet each way from the ledge. In Virginia, we believe, the court has fixed the distance at a hundred feet. Within that distance, common sense, as well as common justice, might give to the company such ledges as were included in the limits of its claim, but nothing beyond. But even were the 'one ledge theory' geologically correct, it could not be positively and practically established except by working the spur until it ran into the mother lead. Hence the rule should be that the owners of the spurs should work them until they were lost in the mother lead. Such a result would terminate all controversy, and establish as a fact that which was before a theory founded on the opinions of scientific men. It may be that the Comstock is a trunk while the ledges [sic] on each side for hundreds of feet are branches emanating from that trunk, but we cannot see how the fact can be proven in Court so clearly as to justify a jury in finding a verdict. But so deeply in the mining community interested in this question that it would seem to be the duty of the legislative power to close the controversy by an Act declaring that no mining company shall claim



ledges which are outside of the lines of the ground included in the recorded notice of location.

# THE EVENING NEWS

GOLD HILL, N.T.

November 4, 1863

## **The Ophir and Moscow Case**

We perceive that in the important case, to which the public attention has been directed with such deep interest, Judge North has granted an injunction against the Ophir, restricting the Ophir from further disturbing the mine claimed by the Burning Moscow. We have no means of determining as to the merits of this great controversy, save the general expression of the sentiment of the mining community and the finding of the Court, and both of these are decidedly adverse to the position assumed by the Ophir Company. The one-ledge theory meets with almost universal condemnation among those with whom we have conversed. Whether that theory be the correct one or not, is, and must remain for years, but a mere matter of the most vague conjecture. Its adherents have no basis for their idea save the mere opinion of self-styled "experts," and cannot by any possibility be established by actual demonstration. One thing is morally certain, and that is its endorsement by the Courts would have the most disastrous effect upon the interests and prosperity of the Territory. A general satisfaction is expressed by the community at the decision in the present case, and it is to be hoped that the precedent established will govern the future policy of the Courts.

# THE EVENING NEWS

GOLD HILL, N.T.

November 12, 1863

## Judicial System

The Judicial system proposed by the committee in the Convention is:

A Supreme Court, consisting of a Chief Justice and two Associates, to hold their offices six years; the senior in commission to be Chief Justice. Its jurisdiction to be appellate only.

Four District Courts of the State to be divided into four Judicial districts, as follows: First District, Storey county; Second District, Roop, Ormsby, Lyon and Churchill counties; Third District, Humboldt and Lander counties; Fourth District, Douglas and Esmeralda counties. These Courts to have original Jurisdiction, in law and equity, in all civil cases except where the amount in dispute does not exceed \$500 exclusive of interest; and in the trial of all criminal cases punishable with death.

A County Court in each county, which shall have jurisdiction in all civil cases where the title, possession or boundaries of land or mining claims are not involved, and the amount in dispute is over \$200, and does not exceed \$500, exclusive of interest; and all other criminal cases not otherwise provided for in the Constitution. The Grand Jury shall be empanelled to, and make their presentments and finding of indictments to the County Court, and indictments of which the County Court has no jurisdiction shall be transferred to the District Court for trial. The County Court shall also exercise probate jurisdiction.

The County Court shall have appellate jurisdiction in cases arising in Justice's Courts, and also such appellate jurisdiction from other inferior courts and tribunals as the Legislature may prescribe, but it shall have no original jurisdiction except as provided above. The County Judge to hold his office four years. The Legislature shall determine the number of Justices of the Peace to be elected, and fix by law their powers, duties and responsibilities; provided, that they shall have no jurisdiction in the trial of cases where the title or right of possession of real estate or mining claims is involved. It shall also determine in what cases appeals may be made from Justices' Courts to the County Courts.

No judicial officers except a Justice of the Peace shall receive to his own use any fees or perquisites of office.

# THE EVENING NEWS

GOLD HILL, N.T.

November 12, 1863

## **Pay for Judges**

We must heartily indorse the views expressed by our neighbor of the *Union* on the subject of liberal salaries for our Judges. It is poor economy in any country to cut down Judges' salaries to a figure that renders the position contemptible to Lawyers of ability, and as a consequence fills the Bench with a class of "Tombs lawyers," who are unable to make a decent living at the practice of their profession. Still more important is it for a new State like this, where all is new, where "precedent" is out of the question, and for many years there must of necessity be a vast amount of what is known as judicial legislation. Instead of following precedent, our Judges will have to *make* precedent, for the governance of Courts in future. Most vitally important is it, then, that our earlier tribunals shall be presided over by men of integrity and the highest order of legal talent. Such men we have among us; but their practice is extensive and highly remunerative. It is not to be expected that, for the mere honor, they will abandon their lucrative practice and assume the laborious and deeply studious duties of the bench, for any less inducement than that offered by a liberal salary; and that will in a measure, if not quite recompense them for the certain income which they will be compelled to abandon.

## THE EVENING NEWS

GOLD HILL, N.T.

November 12, 1863

SALARIES LIMITED. – The Committee on Judicial matters in the Convention have reported the following: “The Legislature shall provide for the election by the people of a Clerk of the Supreme Court, County Clerks, District Clerks, District Attorneys, Sheriffs, Coroners and other necessary officers, and fix by law their duties and compensation; provided, that in no case such compensation shall exceed, in the aggregate as salary and fees, in office, the sum of \$6,000 per annum to any one of such officers, exclusive of the necessary expenses attendant upon the discharge of the duties of the office.”

## THE EVENING NEWS

GOLD HILL, N.T.

January 11, 1864

A DANIEL COME TO JUDGMENT. — Since the defeat of Judge North in the Convention, he has become a sort of demi-god in the eyes and estimation of those who would not have scrupled to consign him to infamy had he received the nomination that he sought. The whole faction have since his failure lauded him to the skies as a perfect Solomon—the *beau ideal* of all that is great and good and wise. On Saturday evening last, at the meeting at Sutcliffe's Hall, they called him to the stand, and wrung a speech out of him. He made an exhibition of his wisdom and sense of right, which must have sounded anything but pleasant to those who forced him thither. He announced himself as in favor of the Constitution, and called upon his audience to vote for its adoption. Good for him! In this, Judge North is consistent, for he pledged himself to do so in the State Convention; and we are sorry that we cannot award similar credit to some of the other defeated candidates. Judge North's word is evidently as good as his bond.

THE EVENING NEWS  
GOLD HILL, N.T.

January 16, 1864

**Mass Meeting this Evening**

We call the attention of the people to the Mass Meeting which will be held this evening. Hon. William M. Stewart will reply to the attacks made upon him by Judge North while he was absent at San Francisco, and it is understood that he will go further and "carry the war into Africa." But the following correspondence will show that Mr. Stewart has shown no desire to take advantage of Judge North, whom he has invited to be present, and the Judge replies that he will accept the invitation:

VIRGINIA CITY, JANUARY 15, 1864

HON. J. W. NORTH — Sir: Herewith in-closed find notice of a public meeting which will be held at Maguire's Opera House, in this city, to-morrow (Saturday) night, at which time I shall take occasion to defend myself against charges made against me by yourself. If it suits your convenience, I shall be happy to meet you on that occasion.

Your obedient servant,  
WM. M. STEWART

WASHOE CITY, JANUARY 15, 1864

WM. M. STEWART, Esq. — Sir: Yours of this morning is just received, inviting me to meet you at Maguire's Opera House to-morrow evening. In compliance with your invitation, I will be present on that occasion.

Yours, very truly,  
J. W. NORTH

## THE EVENING NEWS

GOLD HILL, N.T.

January 18, 1864

A DEBATE. — The personal debate at Maguire's opera house last Saturday evening was listened to and enjoyed by a large audience—a larger one than usually attends that temple of Thespis [sic] to witness the legitimate drama. The meeting was gotten up by Mr. Wm. M. Stewart to vindicate his character against certain assaults made upon it by Judge J. W. North, while its owner was at San Francisco. Mr. Stewart made a speech of more than an hour's duration, wherein he shyly insinuated that North was in favor of allowing black men to vote, and that as a judicial officer he was not a whit more pure than he ought to be, and that his ownership of a quartz mill was a sort of dead weight to his integrity. The Judge replied to disprove the charges against him, and he was loudly cheered, as was also Mr. Stewart.



# THE EVENING NEWS

GOLD HILL, N.T.

May 11, 1864

## Judge Locke's Case

The gravest rumors that could possibly be conceived concerning Judge Locke, of the Supreme Court, are rife upon the streets; in the mouths of all men. The *Union* of this morning has an article upon the subject, and gives the following, as a common report in Virginia:

It is said that just before the late important decision in the case of the Chollar vs. the Potosi was made, a party of four gentlemen, one of whom was a well known lawyer of this city, and another, a well known capitalist, went into Locke's room and accused him of having been bribed by the holders of Potosi stock to decide against the Chollar. On his denial of the charge, one of the parties produced a pistol, and by threatening his life, compelled him to sign such a modification of his concurrence in the opinion of Judge North as they dictated; it is further alleged that one of the party then told him he must resign and leave the Territory, and that this was the reason why he failed to appear at the District Court room yesterday morning, according to argument with Judge North. How much of truth there may be in all this, or if the whole story be not the coinage of the brain of some disappointed litigant, we are unable to say. If there be no truth in it Judge Locke should immediately take measures to silence the calumny and punish its originators. If there be any truth in it Judge Locke should either explain the whole matter to the satisfaction of all concerned, or immediately resign his seat upon the bench. The character of all the Judges of the Supreme Court is of the very highest consequence to the people of Nevada. If the springs of justice be attainted or corrupted, the whole body politic must suffer immeasurably, and it is the duty of the bar and the press to see that grave imputations upon the purity of the judiciary be at once silenced or corrected.

The truth or falsity of these reports is a matter of the most vital interest to the people of the Territory, and it behooves citizens to thoroughly investigate the facts. We have the following story this morning, very directly and positively. We learn that within a few days one of the parties interested in the Chollar charged Judge Locke to his face with having received a direct bribe from the North Potosi Company, to render the decision against the Chollar Company, and declared his ability to produce the person who gave the bribe, and to name the amount of the stock which Locke received. Our informant says that Locke did not directly deny the accusation, but merely said that he wished to have no fuss with his accuser; that the latter denounced Locke as a perjured scoundrel, ect., and afterwards went upon the street and publicly reiterated his charges. Judge Locke owes it to the community, to the Government

which appointed him, and his own honor as a Judge and as a man, to explain this matter.

# DAILY ALTA CALIFORNIA

May 15, 1864

## Comments upon "Strange Boy" in the Union

PI-UTE, May 12, 1864

That Judge Mott received \$25,000 for resigning his position, we are not prepared to dispute, but to argue that he did it for Judge North's benefit, is to argue corruption upon the part of the president of the United States, who appointed, and the Senate that confirmed the appointment. We understand that Judge Locke was indiscreet enough, after the argument, and before the decision, in the Chollar case, to suffer himself to become the feted guest of the Chollar attorneys and stockholders. This intimacy argues against the charge of corruption upon the part of the Potosi Company, as they had no communication with the Judge between the argument and the decision.

As to the ride, the evening before the day of the decision, Locke started down to Carson in Company with one of the attorneys of the Chollar Company, and one of the Chollar owners. Before starting, the Judge had, as we understand, imbibed freely. He drove. At the Texas Saloon, Devil's Gate, he ran into a team, got upset and injured.

On the night the argument elapsed, Judge North was invited by Baron Stech, who was in no way connected in interest with either of the litigant parties, (but probably his sympathies were with the Chollar Company,) to take a ride to the Glenbrook House, and requested him, North, to invite some two friends to accompany them in their pleasure excursion. Judge North invited Judges Turner and Locke. Judge Turner could not, owing to business go, but Judge Locke accepted the proffer, and, in company with North and a lawyer of Washoe City, the party of four gentlemen, in a double seated carriage, made the journey, and were immediately followed by the attorneys of the Chollar Company, Messrs. Stewart and Baldwin, Mr. Tozer, a stockholder in the Chollar Company, and Attorney General Edwards.

Now, we argue, if there was corruption, it looks as though the Chollar rather had the advantage. After the rendition of the judgment by North and Locke, Turner dissenting, we believe that it is an admitted fact that Mr. G. D. Roberts, who, we understand, is the President of the Chollar Company, Mr. Tozer, a stockholder, Mr. Baldwin and Mr. G.D. Hall, attorneys for the Chollar, went to the room of Judge Locke, in the Ormsby House at Carson, and finding that gentleman confined by his injuries, occasioned by his upset, Mr. Roberts proceeded to accuse Judge Locke of

having been bribed by the Potosi Company, denouncing him as a thief and a perjured villain: that he, the Judge, had robbed him, Roberts, of \$25,000, and that he, Roberts, was a fighting man, and that he understood the Judge was, and for him to fix himself, as he calculated to insult him everywhere he met him for the next five years. We understand that a few minutes after, Judge Locke proceeded to the chambers, at the Court-house, and whilst there, Judge Turner, in company with Stanley Baldwin, came to Judge Locke's chambers, and while there Mr. Roberts stated to a gentleman that he calculated to insult the judge wherever he met him, and was then waiting for him to come out of the Court-house to denounce him on the street. A gentleman went up to Judge Locke's chambers on business and found Sandy Baldwin and Judge Turner in the chamber with Judge Locke, and in the hall leading to the chambers, was a gentleman named Adams, the foreman of the Chollar: Humphreys, a Grass Valley Company man, and another man or two were pacing backwards and forwards in front of the door as though in waiting for Judge Locke to come out. Under these circumstances, Judge Locke signed the modification. As soon as it was signed, Mr. Baldwin rushed down stairs, into the saloon, and seizing Roberts by the hand exclaimed, "It is done!" Upon hearing this Judge Reardon and C.E. DeLong, Esq., attorneys for the Potosi went to Carson and learned these facts, as substantially before stated. They returned that afternoon to Virginia, and Mr. DeLong and Commodore Childs returned in the evening to Carson, and on their arrival they proceeded to Judge Locke's room, and informed him that if any violence was offered him he would be defended. No guard was placed by the Potosi Company on Judge Locke's door, nor was he approached after the argument for any purpose until this time, and then simply to assure him of protection: but the Potosi Company freely admit that, after that time, they did keep armed men at Carson for the openly-avowed purpose of protecting the person of the Judge against violence from any quarter, if it should again be attempted by any person or persons, as they feared it was the intention of the Chollar Company to coerce Judge Locke into signing a petition for rehearing. During that day both parties were there in force. That evening, Sandy Baldwin, in company with a lady, went and procured Judge Locke to attend a dinner party, the lady being an owner in the Chollar. He was further invited by the lady to attend a party the same evening, at which Judge Turner was to be in attendance. He accepted the invitation, but subsequently changed his mind, and went to Washoe.

The counsel for the Potosi Company declare the following facts to be true: That they attended the session of the Supreme Court, argued and submitted the case in the regular way, and returned to their homes and businesses: at no time preceding the rendition of the judgment, did they, or any of the gentlemen they represented, associate intimately or otherwise, with any of the Judges, and they, challenge and defy the Chollar

Company, and the whole world, to full and free investigation of this matter.

## THE EVENING NEWS

GOLD HILL, N.T.

May 16, 1864

**Judge Locke**

The Washoe *Star* says that Judge Locke will in the next issue of that paper, on Saturday next, make an explanation setting himself right with the public, in regard to the tremendous charges of corruption which are so rife in the community. We sincerely hope that the Judge may be able to show that he is not what he is so boldly charged with being. It is a fearful state of things, when the people are forced to look upon the Supreme Bench as the throne of perjury, bribery and crime. The *Star* requests for the Judge a suspension of public opinion until his explanations are published. At the same time that we earnestly desire to see the stain removed from his name, we must inform Judge Locke that his already too long silence, has served to fix public suspicion very deeply, if not indelibly. Many days have now elapsed since the heavy charges were first made against his honor in the columns of the public journals. Instead of hiding himself from the gaze of men, in an adjoining, but still secluded locality, he should have boldly faced his accusers and openly and promptly denounced the charges as false, if false they were. Furthermore, with all due deference and respect to the *Star*, it suggests itself to us, and will to a majority of the community, that a weekly paper of limited circulation published in Washoe city is not the proper medium for the promulgation of Judge Locke's defense. The charges were made in the principal city of the Territory, in the midst of the great mass of, not only parties litigant, but of the people of the Territory. In that city are published several dailies, which reach every reading man and woman in the community. It was through those columns his character as a judge and as a man was assailed. Those columns are open to him, and it is through that medium that his defense should be laid before all the people. The matter is one in which every citizen is deeply interested, and we await, with much anxiety, the promised explanation.

## THE EVENING NEWS

GOLD HILL, N.T.

May 23, 1864

DISTRICT COURT. – The District Court, on account of the ill-health of Judge North, has been necessarily adjourned until Monday, June 6th. His friends are apprehensive that that length of time will not sufficiently recuperate the Judge's seriously impaired health to enable him to resume his seat upon the bench. The calendar is crowded to an extent that would require three years of ordinary court routine to clear, and some measures for a very general reference of cases must be adopted or the business of the territory must suffer beyond computation.

## THE EVENING NEWS

GOLD HILL, N.T.

May 23, 1864

**Judge Locke**

More than two weeks ago, Judge Locke, of the Supreme Court, was charged through the columns of the press, with acts of fraud and corruption of character calculated to make the popular hair stand. The people are not willing to believe charges of so terrible a nature against one whose character has thus far stood unimpeached, and the public judgment was suspended for a time, hoping that the injustice of the allegations would be speedily shown. Day after day passed by without a word of denial or explanation from Judge Locke, who, so far from boldly confronting his accusers, remains hidden in some unknown retreat. This silence seemed to virtually admit his guilt, and the public murmuring became more general and outspoken. A week ago last Saturday, the *Washoe Star* announced that the Judge was in that town, and would in the next number of that paper publish a full explanation of the charges made against him, and asked for a suspension of the public opinion until such published explanation could be made. The people awaited the forthcoming of that paper with interest. The *Washoe Star* was published last Saturday, as usual; but there was in its columns no allusion to Judge Locke. Judge Locke has vanished from the gaze of the people of Nevada Territory; the place of his whereabouts none may conjecture. It looks, however, to the speculative eye as though, overwhelmed with the shame of detected guilt, he had fled the country forever. If we wrong the man by this publicly expressed suspicion of the truth of the charges made against him, we are sorry for it ; but the fault is his own. The suspicion is the natural sequence of every act of the man since the charges were made.



## THE EVENING NEWS

GOLD HILL, N.T.

May 25, 1864

**Judge Locke**

We are informed by the *Piute*, (which has four separate articles upon the subject), that Judge Locke is, or was, yesterday in Virginia, and that he will at "a proper time and place" answer the charges which have been made against him through the columns of the press of the Territory. What the proper place and when the proper time will be, we are left to conjecture. The Judge will use his own discretion in the matter, of course, and the people must be content to await his pleasure in the premises. It is a subject upon which the public mind is deeply agitated, and the sooner it is explained to the exculpation of the Judge, the better the people will be satisfied. The cavalier, nonchalant talk about the proper time and place ill becomes Judge Locke, if such is his manner of treating the matter. His judicial position makes him naturally and object of public scrutiny, and doubts as to his moral integrity a matter of the deepest public concern. Such doubts have been created by articles in the columns of those journals to which the public look for information upon topics relating to their welfare. Instead of having promptly answered these charges, Judge Locke has (perhaps through and overestimate of the peculiar dignity of his position) seen fit to adopt a totally opposite policy. He, perhaps, entertains so profound a contempt for those who have assailed his character that he deems their attacks unworthy of his notice. Judge Locke is but a stranger to this people, and it may, perhaps, not be considered impertinent in us to suggest to him, that he is mistaken in his estimate of them. This people (and we speak advisedly, for it is a subject of much public comment) regard this silence on his part, with great dissatisfaction. Many consider it as a tacit admission of his guilt; while others, less prone to jump at conclusions and condemn hastily, consider it as at least a most contemptuous course towards those to whom the question of his innocence or his corruption is a matter of such vital import. We will further say to Judge Locke, and we say it from the bottom of our heart, that we would rejoice most heartily at a perfect clearing up of the heavy charges now laying at his door, and in so speaking we know that we are uttering the sentiment of every honest citizen in the community.

## THE EVENING NEWS

GOLD HILL, N.T.

May 27, 1864

JUDGE LOCKE. – In the *Piute* of last evening, we find the following card from Judge Locke, which we hope may prove satisfactory to the public:

TO THE PUBLIC. – Concerning the Chollar and Potosi cases that were determined at the last term of the Supreme Court, I will state that I had no knowledge of such cases until they were called upon the Supreme Court calendar; that the Potosi Company, nor any of its members, nor any person connected with it directly or indirectly, ever conversed with me about the case or mentioned it in my presence, except as argued in the Supreme Court. That I ever had any complicity with the Potosi Company is without foundation, and those who circulate such reports are guilty of willful and deliberate falsehood and slander.

Respectfully,

P. B. LOCKE.

VIRGINIA CITY, May 26, 2854

*“Multum in parvo !!!”*

# THE DAILY UNION

VIRGINIA, N.T.

July 17, 1864

## **Judge North**

The above named gentleman arrived at his home in this place yesterday morning, after an absence of more than a month. Judge North, when he left this place for California, did not expect to remain away more than [sic] ten days. It will be remembered that at about the end of that time he started upon his return, but was taken sick at Placerville, on the road here, and was compelled to return to the sea shore to improve his health, which had been seriously impaired by his unremitting attention to the duties of his office. Notwithstanding the Judge had never before, since his appointment, failed to be in attendance in all the counties in his district at the time appointed by law for holding courts therein, his retuning from the above place and necessary and unavoidable failure to hold the last term of his court in Virginia, was made the occasion by the Old Piute of that city, for the most uncalled for abuse that was ever heaped upon any honorable official and against one who had always discharged every duty required of him by law. And what makes this abuse more strange and ridiculous is, that it comes from an individual who, six months ago, when publishing a newspaper in this place, and when charges of a serious nature were being made by a dirty and contemptible set of pettifoggers, known as Stewart & Co., whose ill will the Judge had engendered by the earnest and faithful discharge of his duties, was the first to come out openly and boldly in his defense, and is also the man who took advantage of his short absence from his District, to bring up all these old charges, which had been forgotten by every sensible man in the Territory, and which had at the time been taken back publicly through the columns of every newspaper in the Territory, by the originators. We have but a very slight acquaintance with the Judge, but the bold and defiant manner which characterizes his course in defending himself against these charges when they were first made, make us believe that he has been incorruptible in the discharge of his judicial duties. We are unwilling, so long as we are a public journalist, to have anything to do with giving publicity to charges made by unscrupulous litigants, reflecting upon the good name and character of any of our judicial officials.

*—Washoe Star, July 16th.*

# THE EVENING NEWS

GOLD HILL, N.T.

July 19, 1864

## **Thunder in the Sky**

As dark clouds hanging in the distant horizon and the low rumbling of the thunder afar off betoken the coming of the storm, so do the gloom that darkens the brows of our citizens and the deep murmurings of popular discontent portend the approach of a fierce storm of public indignation which must ere long burst upon the heads of those to whom the evil conditions of affairs in this Territory is most distinctly traceable. As has, time and again, been said by ourselves and our contemporaries, the dead and ruinous stagnation of all the leading business interests of the Territory is, more than to anything else, attributable to the condition of matters in what are ironically termed our "Courts of Justice." It is not alone that from vexations, inexcusable, if not culpable delay is the disposition of hundreds of important mining suits, vast numbers of mines which would now be in active operation, employing hundreds upon hundreds of now idle men, are to-day tied up with injunctions or occupying an uncertainty of tenure that renders the risk of working them too great, until some decision has been made upon the conflicting titles. It is not alone that the utter hopelessness of obtaining a decision for years to come, under the present condition of the calendar, deters citizens from applying to the Courts for relief in causes of difference that are daily arising. It is not alone that the doors of our court houses are shut; and our judges wandering hither and thither in search of health or pleasure or in the transaction of their own private business, while that of the people is neglected and ruined by delay. It is neither of these that is the chief cause of gloom and evil foreboding, the reason why the name of "Court" is mentioned with disgust, of "Judge" with loathing and scorn, and those of "Law and Justice" have become a by-word and a mocking. It is because the impression has been forced upon the unwilling minds of the people, has spread abroad through the whole mass of the community, and has taken a deep hold upon their conviction, that is ineradicable, that from the highest to the lowest, in every department, the Judiciary of this Territory is CORRUPT. Be that impression true, or be it false; be it just or unjust, that such an impression prevails in the breast of nine citizens out of every ten who give the subject a thought, let any man who doubts ask the first ten of his neighbors that he meets. The existence of such a conviction in the public mind, is a calamity equally terrible to the interests of the country whether it be true or false. Has this universal conviction been a spontaneous generation, without any shadow of creating cause? We apprehend that such a thing were impossible. The seed of this suspicion

has been planted, harrowed and watered into a vigorous growth by a thousand acts and circumstances and conditions, capable, perhaps, of satisfactory explanation by those upon who the suspicion rests; but with cool, insulting, exasperating contempt of public opinion, left unexplained. Charges, direct in their nature and most direct in their application accompanied by a minuteness of detail, which, uncontradicted [sic] as circumstantially and minutely, necessarily carry conviction of their truth, have either been passed silently by, or answered (?) by a paltry, that, simple denial, such as is filed by a pettifogger “for delay” when his defense has no merit. These Judges, thus accused, have flouted the people in the face, laughed to scorn their demands for explanation, and treated with cold derision their complainings [sic]. They defy the people, whose dearest rights are charged to have been spit upon and trampled under foot, and dare to “produce their proofs before the United States Senate, to whom alone the Judiciary are amenable.” Proofs indeed! The crimes with which the Judiciary of this Territory are charged, are not like those of the fearless and unmasked highwaymen, who bids the traveler “stand and deliver;” or the murderer, who strikes down his foe in the light of day and before the gaze of the multitude and who trusts to the fleetness of his steed and trustiness of his weapon for his immunity from punishment. Their crime, if they are guilty at all, is like that of the masked midnight thief, or the stealthy adulterer, whose guilt must be shown by the multitude of connected circumstances, which, when no link is missing, constitute proof irrefragible [sic], satisfactory and indubitable. Such proof is said to exist in this Territory to-day. Its outlines are in our hands, and in justice to the people among whom we dwell, of whom we are a unit, bound by the ties of a common interest, we have it in our mind to lay before the public, facts susceptible of proof, circumstances undeniable, and conditions as palpable to the eyes as that the sun is round and square, that the cannonshot [sic] is heavier than the feather. Out of these facts, circumstances and conditions, we propose to form a chain of evidence, of the perfection of which we shall ask the people to judge, and, having judged, to punish. Let those, whose consciences warn them of the fate in store for the offender, stand from under.

# THE EVENING NEWS

GOLD HILL, N.T.

July 20, 1864

## Corruption of the Courts

We published yesterday, the first of a proposed series of articles upon the much mooted topic of the corruption believed to exist in the Courts of this Territory. The subject is one of the deepest interest not only to every resident of the Territory, but to thousands of non-residents, who have vast property interests herein, and to the commercial world, to who the prosperity of the Territory and the solvency of its citizens is a matter of vast import. There is, of course, an anxious curiosity of the production of the evidence, which it is proposed to submit to the people for their satisfaction upon the point as to whether such corruption, as rumor attributes to the Courts, does or does not exist. As we said at the outset, such evidence must, of necessity, be entirely circumstantial, and made up of facts which, taken together, must lead to the conclusion to which we have arrived, and which, we believe, must force itself upon the mind of the public as an irresistible sequence. The charge of judicial corruption is one not lightly to be made; it should be firm in its foundation, guarded and cautious in its manner, and free from exaggeration or rancor. It is a charge that involves guilt in many; the bribers and their agents as well as the bribed and their instruments. If the facts as represented to us shall be established, there be shown to have existed in this Territory, from the date of its organization, a system of dark fraud and unscrupulous corruption, that has not only wrought outrage and injustice against the rights of the honest and confiding masses of the citizens, but has struck a terrible if not already fatal blow to the prosperity of the Territory as country and as a body politic. If such an organized system of fraud has existed, it has involved in its meshes, and in its crimes, the judiciary, the executive officers of the Courts, the great and powerful corporations, who have been the chief parties litigant, their attorneys and their agents. It has said, and with some show of propriety too, by those with whom we have conversed upon the subject, and from whom the main facts in our possession have been derived, that guilt of this corruption rests of right upon the Judiciary alone, and that those who have obtained "justice" at a price, are not so much to blame. They say that the seemingly blind goddess has only been shamming [sic] her infirmity that the hoodwink has been cunningly lifted, and that she has kept an eye keenly upon the scales, to see whether the plaintiff's or defendant's pan contained the most tempting offering. They say that when, through the medium of a corps of Court brokers, the

proposition was plainly stated to parties litigant and their attorneys, that, in vulgar parlance, "the longest pole knocks the persimmons," that when this proposition came from those who represented the Court of last resort, and that it was "duck or no supper," it behooved these parties to each hunt with diligence for that duck, and provide himself with longest pole. In some of the heavy suits which have been tried in the Territorial Courts, millions of dollars were at stake, and if a few paltry thousands could turn the scale, small blame, they say, to those who threw the sprat to catch the whale. This may be good logic, and if the bid for the bribery was so open and Judges hung out their auctioneers' sign so plainly, as has been represented to us, we certainly must admit that those who felt that truth and justice was on their side, but that it could only be obtained through bribery, then the act of bribery was measurably excusable. When lawyers tell us that their clients have ceased to consult them as to the principles of law bearing upon their cases in Court, and only seek information as to the probable price of a judgment in their favor, things have come to a rough pass. Yet, that such is the case, we are informed by trustworthy members of the legal profession. This fact, of itself, shows the bent of the public opinion, the extent and universality of the belief of which we have spoken, and is a considerable portion of the volume of the smoke that leads the analytical mind to believe of the existence of a very considerable fire beneath. This is a fearful state of things, whether the charges can be sustained or not. The very existence of the belief is a calamity that is crushing the Territory down to ruin, and until the incubus is removed and public confidence restored in the integrity and incorruptibility of the Courts, there can be no hope of a resurrection. There has been clamor and outcry enough, already, from the throats of the outraged and disgusted people, to have caused the resignation long ago of men who entertained a single sentiment of self-respect. Further clamor to that end will be in vain. It only remains for the people to examine carefully into such facts as will in due time be laid before them, and if they are convinced that the grave accusations so universally bandied from mouth to mouth can be sustained, let them make forcible and unmistakable demonstrations as will demand from the General Government a thorough renovation of Courts of this Territory. There is a long term of a vacation before us giving us ample time to proceed carefully and deliberately in our investigations, and the result thereof we shall from time to time lay before our readers for their grave consideration.

# THE EVENING NEWS

GOLD HILL, N.T.

July 21, 1864

## **Congressional Delegate**

We publish to-day the call of the Territorial Union Central Committee, naming the tenth day of next month as the time for holding the Territorial Convention for the nomination of a Delegate to represent this Territory in the National Congress. The wretched and deplorable condition of affairs under which we are suffering cries loudly for amendment, and the necessity of an energetic, honest and able advocate at the seat of the national capital must be recognized by all. The affairs of the Territory, the regulation of which is entirely in the hands of the General Government, demand a thorough renovation, and we must be represented by a man who can and will expose the rottenness and corruption which is ruining us, in a manner which will arouse the Administration to the work of reform for which the Territory is clamoring with a thousand tongues. The Judiciary, of which the complaints have been so bitter, and it is believed so well founded, are the appointees of the General Government, to be retained or removed by it at will. The voice of the press will be joined with that of the people in demanding such a change, and it is indispensable that we have an active, earnest representative at the capital, who will keep these clamorous calls untiringly before the government until the relief called for is granted. Let the people cast their eyes about them with the view of selecting such a representative. That the nominee of the Territorial Convention will be a soundly loyal man, is a foregone conclusion, and that his nomination is equivalent to an election there can be no shadow of doubt. It only remains for the people to assure themselves that the nominee is one whose skirts are free from the filth and corruption and the pool in which the present incumbents are wallowing, and above suspicion of being tampered with and contaminated during his term of office.



# THE EVENING NEWS

GOLD HILL, N.T.

July 21, 1864

## The State Question

We hardly conceive it possible that the editor of the *Herald* or anybody else could misconceive our position on the State Government question, and it is not pleasant to suppose that he would willfully misconstrue us; yet it is apparent from his leading article of last evening that he does one or the other. His article in question thus:

Without any design of imputing other than honorable motives to our contemporaries, the GOLD HILL NEWS and *Enterprise*, the conduct of these two papers in so suddenly “changing their base” on the State question appears altogether inconsistent with the character of faithful Union journals, such as they claim to be. Both these papers, but a few months since, were quite eloquent in their advocacy of the adoption of a State Constitution—proved by elaborate arrays of figures, and many sound arguments, supported by facts, that a State Government was essential to the prosperity of the Territory. What, we should like to be informed, has caused so great a change in the opinions of these journals, that from being friends of such a measure they have become its bitterest opponents?

We answer for ourselves. The position of the *Enterprise* is unlike ours. It has taken, for reasons best known and satisfactory to itself, a strong affirmative ground against the State Government proposition. We have done no such thing, and the charge that we have become a “bitter opponent” of proposition has no foundation in fact, and cannot be deduced from any article that we have ever written upon the subject. All that the *Herald* says that we did last winter in the matter is true, and were we in a mood to bore our readers with a twice-told tale, and to fill our columns with arguments which were spurned and scoffed at by five-sixths of the people of the Territory we could honestly and sincerely do so again. This is precisely what the editor of the *Herald* is doing. As editor of the *Bulletin* he took the same view of the question as ourselves, and together we toiled and tugged and strained to roll the large round stone of the Constitution up the hill of manifest popular opposition, until on the 19<sup>th</sup> of January last, it slipped from our grip and went thundering down to the plain. Our contemporary has returned to the task like another Sisyphus. The hill is as steep and the stone is as heavy as ever, and we have no stomach for a repetition of the toilsome task. All honor and glory to the *Herald* for its pertinacity, but we are most decidedly not on it. As to the “loyalty” sermon, which constitutes the body and bones of his article, that is a point whereon we differed from him, even while we were his co-

laborer in the cause. Our soundness on that question, we flatter ourselves is too well established to need any self-defense. We rest easy on that score. We have repeatedly, since the passage of the Enabling Act, declared our preference for a State Government, and if the Convention present us with a Constitution that we believe the people can be convinced by facts and figures that they are able to sustain, we will support it. Every argument that we could bring to bear to that end has already been presented through our columns and we have not a new one to offer. What were good arguments then are good now, but we are neither going to weary ourselves nor our readers with repetition.

# THE EVENING NEWS

GOLD HILL, N.T.

July 21, 1864

## Whence Came Their Wealth?

When the police in their rounds discover a suspicious character with no visible means of support, in possession of a large amount of funds, the fact is to them *prima facie* evidence that the wealth has been dishonestly obtained, and they govern themselves accordingly. So, when men occupying positions of public trust, and who hold in their hands the disposition of life and property, the bestowal of whose favor would be vast pecuniary value; whose acts have been such as to excite a belief that those favors are a purchasable commodity, and have actually been made the subject of bargain and sale, the possession of great wealth, which cannot be accounted for plausibly excites public curiosity and suspicion. The judiciary of this Territory have, through such a process of reasoning, excited suspicions as to their integrity, which it would require a very plain and lucid explanation of the sources of their wealth to allay. Two out of the three judges of the Supreme Court are notoriously wealthy, and as their history and their pecuniary circumstances prior to their incumbency of the bench are known, the acquisition of this wealth has become a subject of earnest debate among the people, and the inquiry is general and pointed—:Where did the money come from?" The Chief Justice of that court came to this Territory poor. That is a fact beyond contradiction and one which he would undoubtedly admit upon inquiry. The salary of the position is a mere pittance, barely sufficient to enable him to live in respectable style and leaving no margin for outside speculation. What is his present financial condition? A very brief time since, Judge Turner owned six feet in the Gould and Curry mine which cost him, in round numbers, \$4,000 per foot. He owned also twenty-five feet in the Yellow Jacket which cost him \$1,000 per foot. The stock in these two mining claims, constitutes in itself a very handsome property, more than twelve years of Judge Turner's salary would have bought, had he clothed himself and family in fig-leaves and fed on air in the interim. He has been upon the bench but a fraction of that time. This mining property does not constitute the entire wealth of Judge Turner. He is in possession of ready money to an amount that is, of course impossible to ascertain. That he has such money is a fact which can be demonstrated by proof whenever required. The fact of its possession is not so suspicious and black looking a circumstance as that he desires to conceal the fact of its possession. That he endeavors thus to conceal this fact, can be shown by the other fact, that either Judge Turner or his wife has, from time to time, made loans of

money *clandestinely*. That is to say, a well known money operator in Carson has effected loans for them to a considerable amount, *concealing from the borrowers whose the money was!* The name of this money operator it is unnecessary to mention at this time, but can be forthcoming whenever necessity may demand. As we said before, the exact amount of Judge Turner's wealth cannot be accurately or even proximately ascertained; but rumor, and surmises of those who have watched matters with a close attention, and for a purpose, fix it at from \$75,000 to \$100,000. Is, or is not the sudden acquisition of this considerable amount of wealth a matter of some mystery? Does it not prove clearly that Judge Turner has had sources of revenue other than the compensation he receives from the Territory and the General Government? And lastly, does not the fact that possession of large sums of money is cautiously concealed by him, lead strongly to suspicion that the money could not be plausibly accounted for, and must have been obtained by other than usual and honest means? That the Judge has never been a speculator is a notorious fact. Submitting the foregoing as one proposition, upon which the people can ponder one day and sleep on one night, we leave it with them while we prepare another for their consideration.

# THE EVENING NEWS

## GOLD HILL, N.T.

July 22, 1864

### A Yell in Advance

We have in our day, seen boys whipped at school and thieves of larger growth flogged for stealing, and it was a common occurrence for the culprits to roar lustily at sight of the descending lash before it struck the back. Several articles have appeared within a few days past in this and other papers of this country, which have warned certain offenders against the dignity and well being of the Territory and the rights of its citizens, that there was a rod in pickle which would be used, in due time, to an extent that would amount to laceration. A guilty conscience needs no accuser, and before any particular offender had been ordered to take off his jacket, there comes a wail through the columns of the *Herald*. The article which is the vehicle of this yell in advance, premises by admitting that the evil of which we have been complaining has existed, and that the evil doers are still upon the bench. It says, also, and therein we do not differ, that bribing lawyers, "well drilled witnesses" and "well arranged juries" are in the same filthy mess with the "impressed judges." In all these things it joins with us in that outcry, which is the outcry of an outraged people. *Bueno!* It then proceeds to account for the poisonous milk in this decayed cocoa-nut, as follows:

Judges were sent here from a long distance, and had no ties or interest in common with this people. A President burdened with the care of the nation's life was not likely to scrutinize too closely the character of applicants for seemingly inferior judicial positions in distant territories, and so, men who had never worn the ermine—who had never been tried in the furnace of temptation—who possessed only that kind of ability and character required to obtain local political success—were rewarded for campaign speeches with Territorial judgeships, and by the rapid growth and dazzling development of mining countries, suddenly found themselves in positions where hundreds of thousands, perhaps millions of dollars depended upon their 'ipse dixit.' It would prove a marvel, if such appointees, under such circumstances, were always strictly honest.

Just so, my friend. That's exactly what's the matter, and you talk with wisdom like unto the serpent that beguiled our common mother, and created the necessity of a hell. All this happened in the manner described, and there was no "marvel" of honesty for the people to wonder at. The thing has turned out just as might have been expected; and it is not for the purpose of having the Government sit down and weep over the error of its selections in the matter of judges, but to convince it that such error was made and ask that it be rectified if possible. The main object and tenor of

the *Herald's* article is to make an exception; from the sweeping condemnation, in favor of Judge North, of whom it says:

Out of this stew and swamp of slanders, or worse, the present Judge of the First Judicial District comes forth unpolluted and unsmirched. It is, perhaps, because of his "unapproachability," his firmness, and his refusal to be at all swayed from his own convictions of right by any sort of appeals, that he has been bitterly denounced and vilely slandered by those whose pecuniary interests have been destroyed by his honest course, and who have failed to mould [sic] him to their views, as they have moulded [sic] other and more pliant material.

If this is true, so much better for the Territory; and if the *Herald* or Judge North can make the people believe that it is true, so much the better for him. As it happens, however, at this time, all this wretched question of corruption is about to be examined and canvassed, and the people will judge of the guilt or innocence of Judge North and others, by the evidence presented for their consideration, and not from any assertions of Judge North himself or of the *Herald* in his behalf. If the Judge is innocent of guilt, the efforts of the *Herald* are praiseworthy; if he *is* guilty their defense of him is all right, if they are paid for it. That's a matter of business. When, however, the editor gives his article the character of a menace, he misses his mark and mistakes the temper of those who have taken the matter in hand. The *Herald* says:

Judge North will do no more than is strictly right if he order the names of those of his slanderous persecutors who are members of the bar to be stricken from the roll of attorneys; and he would be fully justified by public opinion in punishing by fine and imprisonment those of his slanderers—not members of the bar—who are unfortunately in control of any press, however degraded and unworthy.

We believe, as firmly believe as we do anything under Heaven, that the foregoing sentence was written at the dictation of Judge North himself, and that it is intended as a threat to frighten the press from mingling his name and his acts with the charges that are being made against the Judiciary. Whoever did write it will miss his figure woefully [sic]. We shall, when it comes his turn, show, as clearly as the sagacity with which his tracks are covered will permit, every act within our possession, which goes to justify the suspicion that he is in deep in the mud as either of his colleagues is in the mire. We shall do this without a single flutter of fear of Judge North, his fines or his prisons. We shall not put ourselves within the reach of any paw that he can legally lay upon us, and if he transcends his legal powers, and stretches his authority one hair to our injury, woe betide him and his. We know our rights, and knowing shall maintain them, and all the powers of a bigger hell than Judge North or any of his clan can raise, will be found inadequate to crush the power of the Press, which speaks fearlessly facts in behalf of our outraged and writhing people. So much for the yell in advance; and so much for the threat cloaked under the editorial of the *Herald*.

TERRITORIAL ENTERPRISE  
CITED  
THE EVENING NEWS  
GOLD HILL, N.T.

July 22, 1864

**Untitled**

Have our Judges, aside from their arduous public labors, been so sagacious and diligent as to acquire an amount of wealth not to be obtained by one in a thousand more shrewd and active who devote their entire time and energies to money-making? The idea will be universally rejected as preposterous. It will be rather believed that they have made a harlot if Justice \* \* \*.

# THE EVENING NEWS

GOLD HILL, N.T.

July 23, 1864

## “Sauce for the Goose,” Etc.

In carrying out our little programme [sic] of overhauling the past acts and history of our Territorial judiciary, it will be occasionally necessary to revive certain matters which are not entirely new to the public and some of which have been already pretty well ventilated before the people. As they, however, form links in the circumstantial evidence against the probity of our judges, they cannot well be at this time omitted. To revive one of these old matters, we will at this time refer to the decisions of Judge North in cases involving the so-called “One Ledge Theory.” It is well known that there are two distinct and contradictory theories concerning the formation and condition of the mineral deposits on the eastern slope of Mount Davidson. According to one of these, it is claimed by certain of the oldest locators that several metalliferous [sic] strata thereon found constitute but one lode. This is the “One Ledge Theory.” The other theory is, that these different strata are separate and distinct ledges. Which of these theories is the correct one, it is no part of our present purpose to inquire. We have a right, however, to expect that decisions, upon a point so vitally affecting the title to mines of such value, made by the same judge, shall be consistent with each other. It has been said and with truth, by the *Herald*, which seems to be the champion of Judge North, that at the time of that gentleman’s accession to the bench, “the jurisprudence of the country had yet to be created; the principles to be established in that jurisprudence were new not to be in the law books.” This being true, how imperatively necessary was it, that upon the “establishment of principle,” that principle should be adhered to consistently; that the decision of such principle might be regarded as the law of the land, and that it might become the “rule of action” by which future operations involving the same principle, should be governed. The application of an injunction in the case of the *Burning Moscow vs. Ophir*, involved the one ledge theory. That application was made before Judge North, and based upon some two hundred affidavits, made by him, after due deliberation, decided *against the one ledge* and in favor of the many ledge theory. In the several applications made by the Gould and Curry against the El Dorado, North Potosi and Sinaloa involving precisely the same principle, Judge North’s decisions were uniformly *in favor of the one ledge theory*. Is there any reason why that theory should be declared in *favor* of the Gould and Curry, and denied when invoked by the Ophir?



Persons who have sought for such a reason, have cried “Eureka!” when they found Judge North crushing Gould and Curry rock “on shares,” and the Ophir rock ground elsewhere? The suspicion that this profitable employment of his mill influenced Judge North in favor of the Gould and Curry, so far that he has never denied a motion made in his Court by that Company, may be unjust and do him bitter wrong, is possible, but it is a combination of circumstances that to sum up in two words—*looks bad*. In addition to this pregnant fact, there are other circumstances connected with this famous Moscow injunction, which, although they have been publicly discussed, do not seem to have struck the public mind with the force that their importance demands. We refer to the Hardy and Stewart imbroglio, of which the printed discussion is before us as we write. To our mind, there is something decidedly unsatisfactory in the position in which the matter was left the respective parties. A prominent lawyer, of high standing in the profession, accuses a judge of bribery. He gives time place and circumstance. He reiterates this statement in the most solemn manner at a subsequent time. His statement is made to attorneys having a large amount of business, when the charge was calculated to inflict upon the judge the fullest and most terrible injury. Afterwards Judge Hardy, in the presence of Judge North admits making charge in the most direct terms, but says that “he had no sufficient authority for stating it.” Upon this Judge North at public meeting endorses Judge Hardy as a gentleman, in the most eulogistic terms. Is such conduct to be looked for in an honest man toward the man who had thus foully wronged him? In order that the public may read once more the character of the language of Judge Hardy concerning Judge North, and the nature of the wound so easily healed we quote the statement of A. W. Baldwin Esqr [sic]., publicly made, and the truth of which was not denied by any of the parties. We quote from the *Enterprise* of January 19th.

MR. BALDWIN’S STATEMENT:

Mr. Baldwin said—With your permission, gentlemen at the request of Mr. Stewart—not feeling any desire to mix myself up in this matter, by simply for the purpose of stating facts—I appear before you, and shall be exceedingly brief, exceedingly brief.

Some time last month Mr. Stewart and myself had several cases in Washoe county. Mr. Stewart at that time was in attendance on the Constitutional Convention at Carson, and I was trying one of these cases before Judge North. During the trial Mr. Stewart came over and told me in a very excited manner, that Jim Hardy had told him several things which reflected very seriously upon the credit and character of Judge North. I warned Mr. Stewart at that time not to attach the slightest credence to the statement of Jim Hardy. I told Mr. Stewart that he had better wait that I was going to Carson that night with him, that he could see Judge Hardy and get from him a detailed account of this immense iniquity of which he said Judge North had been guilty. So we went to Carson City together.

The first man that we saw on striking that town was the Hon. James H. Hardy. He immediately got Mr. Stewart by the arm, took him out into

the middle of the street and after whispering a word or two to him, he beckoned to me to come along too. Then he proceeded to make to Mr. Stewart and myself the following statement: He told Mr. Stewart and myself that in the case of the Burning Moscow Company against the Ophir Company, Judge North who decided that case in his favor, had been bribed! He told us that he had been bribed by getting one hundred feet of Burning Moscow Stock—that he knew all about it. He said that knowing how the injunction was going—knowing that Judge North had been bribed, knowing that he was going to stick to the bargain—he had gone in and invested \$20,000, in Burning Moscow Stock. He went on to say—telling about this thing in the most circumstantial and minute manner, stating it was all the care of a witness on the stand under oath—that a man by the name of “Rice,” in Carson City, a man whom Mr. Stewart and myself know was a particular friend of Judge North, was the “middle man,” and “transacted” the affair and fixed up the trade. I thought over the thing, and started. But Judge Hardy was not in a condition at that time, gentlemen, not exactly in that sort of a condition that a man ought to be in while making a charge so grave. And, still, I told Mr. Stewart, not to make any fuss about this thing but to wait until Judge Hardy got sober, and then see whether he intended it. [Applause and hisses.]

Well, Judge Hardy, Mr. Stewart and myself all slept in the same house that night. Judge Hardy kept talking about this thing. The next morning—very early in the morning—Judge Hardy was “all right.” Then I went into his room; and then when perfectly sober—just as sober as ever any man was in the world—he solemnly reiterated those charges against Judge North, told those facts over again, and said that if he wanted them proved against Judge North, all that we would have to do would be to put him on the stand. To continue my statement: although I am free to say, my fellow-citizens, I don’t like to convey a charge against a man coming from Judge Hardy—[Merriment and hisses]—coming from the side Judge Hardy said had bribed Judge North—my faith in Judge North was somewhat shaken and staggered. However, I didn’t make much of a fuss about it, so far as I was concerned. I didn’t care much about it, one way or the other. I came home. This thing began to raise a smell in the community. Judge Hardy was suddenly taken sick and confined to his room, and gentlemen told me that Judge Hardy was asserting that Stewart was stating these charges against Judge North upon his (Judge Hardy’s) authority, which he had no right to do. Then I chipped in, because I didn’t want my friend Stewart to suffer. I heard this thing myself, and I was not going to allow Judge Hardy to say that he never told Mr. Stewart this thing, when I was there and heard it myself. So I went with Judge North and Mr. Stewart to Judge Hardy’s house. We found that he was lying in bed. He was sick, and we did not want to bore him. Mr. Stewart and myself, together, asked him the questions. We wanted to stay there just so short a time as possible. In the presence of Judge North we asked Judge Hardy this question: “Judge Hardy, didn’t you assert to us, together—to us individually—that Judge North was a thief; that Judge North had been bribed, and you knew it?” He said he did. [Sensation.] Then I left him. Now, gentlemen, that is all I know about the matter.

Mr. Baldwin retired, amid noisy demonstrations of various and opposite descriptions.

Loud calls for Hardy.

The President – Judge Hardy will be heard at his own meeting, I suppose, if he has one.

The facts are here stated with a fearful distinctness, and a minuteness of detail and fullness of circumstance which bear the impress of truth. One significant part of this statement is not denied. Judge Hardy does not deny that he did invest his \$20,000 in Burning Moscow stock on the faith of having “a dead thing,” and it is a well known fact that he did invest largely and recklessly. He undoubtedly did believe that he had a dead thing. He was attorney for the Burning Moscow, and his expectations were justified by the decisions of Judge North. The above facts, to our mind, throw additional light upon the proposition that the Moscow received different treatment from the North Potosi and other companies, and that Judge North’s ideas upon the unity or multiplicity of ledges depend not entirely upon their development. The foregoing is enough for one case and for one day.

# THE DAILY UNION

VIRGINIA, N.T.

July 23, 1864

## **The Organization of the Courts**

Following is the report of the Committee, to whom was referred the Sixth Article of the Constitution, embracing the Judicial power of the State: and upon the whole, after making allowance for some few mistakes, which we trust the Convention will remedy upon more deliberate consideration, we are rather inclined to approve the system adopted in the organization of the Courts. We will take occasion, however, to speak in the future in regard to these important provisions of the new Constitution, and to respectfully make a few suggestions in regard to the changes which we deem justice and the interest of the people require:

### ARTICLE VI

SECTION 1. The Judicial power of the State shall be vested in a Supreme Court, District Courts, in County Courts and in Justices of the Peace. The Legislature may also establish Courts for municipal purposes, only in incorporated cities and towns.

SEC. 2. The Supreme Court shall consist of a Chief Justice and four Associate Justices, a majority of whom shall constitute a quorum. The concurrence of a majority of the whole Court shall be necessary to render a decision.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general elections, as provided by law, and shall hold office for the term of six years respectively, from the first day of January next succeeding their election; provided, that there shall be elected, at the first election under the Constitution five Justices of the Supreme Court, who shall hold office from the time of their election and qualification and continue in office thereafter two, four and six years respectively, from the first day of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall classify themselves and determine by lot the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, after which the senior Justice in Commission shall be Chief Justice.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also in all cases at law in which is involved the title or possession of real estate or mining claims, or the right of any tax, impost, assessment, toll, or municipal fine, or in which the demand (exclusive of interest) on the value of property in controversy exceeds three hundred dollars; also, in all other civil cases not included in the general subdivision of law and equity and also in all criminal cases in which the offense charged amounts to felony on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs, returnable before himself or the Supreme Court, or before any District Court, or before any Judge of said Courts.

SEC. 5. The State is hereby divided into nine Judicial Districts, of which the county of Storey shall constitute the first; the county of Ormsby the second; the county of Lyon the third; the county of Washoe the fourth; the county of Nye and Churchill the fifth; the county of Humboldt the sixth; the county of Lander the seventh; the county of Douglas the eighth; and the county of Esmeralda the ninth. The county of Roop shall be attached to the county of Washoe for judicial purposes, until as herein otherwise provided by law. The Legislature may, however, by a vote of two-thirds of all the members elected to each house thereof, provide by an alteration in the boundaries or division of the districts herein prescribed or otherwise for increasing or diminishing the number of the Judicial Districts and Judges therein. But no such change shall take effect in times of vacancy or the expiration of the term of an incumbent of the office. At the first election under the Constitution there shall be elected in each of the respective districts (except as in the section hereafter otherwise provided), one District Judge; who shall hold office from the time of his election and qualification until the first day of January; in the year one thousand eight hundred and sixty-seven; after the said first election there shall be elected at the general election which immediately precedes [sic] the expiration of the term of his predecessor, one District Judge in each of the representative Judicial Districts (except in the First District, as in this section hereinafter provided). The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years (excepting those elected at said first election), from the first day of January next succeeding their election and qualification ; provided that the First Judicial District shall be entitled to, and shall have two District Judges, who shall possess co-extensive and concurrent jurisdiction, and who shall be elected at the same time in the same manner and shall hold office for the like terms as herein prescribed in relation to the Judges in other Judicial Districts.

SEC. 6. The District Court, in the several Judicial Districts of this State, (except in the First District, for which district provision is otherwise made in this article,) shall have original jurisdiction in all cases in equity; also in all cases at law which involve the title in the right of possession to, or the possession of real property, or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand (exclusive of interest), or the value of the property in controversy exceeds three hundred dollars; and also in all cases relating to the estate of deceased persons, and of the action of forcible entry and unlawful detainer; and also in all other criminal cases not otherwise provided for in this Constitution, under such regulations as may be prescribed by law. They shall also have appellate jurisdiction in cases arising in County Courts and other inferior tribunals as the Legislature may provide. The District Courts and their Judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs necessary to the complete exercise of their jurisdictions; and also shall have power to issue writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts.

SEC. 7. The District Court in the First Judicial District shall have original jurisdiction in all cases in equity; also in all cases at law which involve the title or the right of possession to, or the possession of any real property, or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand (exclusive of interest), in the value of the property in controversy exceeds five hundred dollars; also, in all other civil cases not provided for in this Constitution, and also in all criminal cases where the punishment may be death. The said District Courts and the Judges thereof shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs necessary to the complete exercise its jurisdiction; and also shall have power to issue writs of habeas corpus on petition by or on behalf of any person held in actual custody in said district.

SEC. 8. There shall be established in the County of Storey a County Court having one Judge who shall be elected at the general election, by the qualified electors of the county, and shall hold his office for the term of four years from the first day of January next succeeding his election, except that at the first election under this Constitution, a County Judge shall be elected in said county, who shall hold his office until the first day of January, 1867, and after said election, a County Judge shall be elected in said county, at the election which immediately precedes the expiration of the term of his predecessor, and shall hold office for the term of four years from the first day of January next after his election ; and the Legislature may provide by law for the organization of County Courts in

other counties as the public good may require, and may prescribe their powers, duties, and jurisdiction, in conformity with this Constitution.

SEC. 9. The County Court of Storey county shall have original jurisdiction in actions of forcible entry and unlawful detainer ; of proceedings in insolvency; of actions to prevent or abate a nuisance; and in all civil cases (except those wherein, the title or the right of possession in, as boundaries to land, or real estate or mining claims, may be involved), in which the matter in dispute is a money demand; on personal property, and the amount of the demand exclusive of interest, or the value of the property is over three hundred dollars, and does not exceed five hundred; and also, in such special cases and proceedings as are not herein otherwise provided. The said court shall, also, have final appellate jurisdiction in all cases arising in Courts held by Justices of the Peace in said county and in said inferior Courts, as may be established therein in pursuance of Section 1 of this Article. The said Court shall also have original jurisdiction over the estates of deceased persons; and of the persons and estates of minors and insane persons and also in criminal cases in which the offence is not punishable by death, and which are not otherwise provided for in the Constitution. The Grand Jury for the county shall be impanelled in, and make their presentments and findings of indictment to the said Court, and all indictments of the trial of which the said County Court has not [sic] jurisdiction shall be transferred for trial by order of the said Court to the District Court of said county. The County Courts and their Judges, in counties where such officers shall have been elected shall also have power to issue writs of habeas corpus, on petition by, or on behalf of any person in actual custody in their respective counties ; and said Courts and the Judges thereof shall also have power to issue all other writs necessary to the complete exercise of their jurisdiction.

SEC. 10. The times and places of holding the terms of the Supreme Court, the general and special terms of the District Courts within the several Districts, and the County Courts, shall be as provided by law.

SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State and shall fix by law their duties and responsibilities. It shall determine the manner and the cases in which appeals may be taken from Justices and other Courts: Provided such powers shall not in any case conflict with the jurisdiction of the several Courts of Record; and further that such Justices Courts shall have no jurisdiction in the trial of cases wherein the title to or the right of possession, real estate or mining claims is or may be involved. The Supreme Court, the District Courts, the County Courts, and such other Courts as the Legislature shall designate shall be Courts of Record.

SEC. 12. The Legislature shall prescribe the powers, duties and responsibilities of any municipal court that may be established in pursuance of Section 1 of this Article; and shall so fix by law the jurisdiction of said court, as not to conflict with that of the several courts of Record.

SEC. 13. No judicial officer; except a Justice of the Peace, shall receive to his own use any fees or perquisites of office.

SEC. 14. The Justices of the Supreme Court and the District Judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected, and all elections or appointments of any such Judges, by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void.

SEC. 15. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

SEC. 16. The style of all process shall be, "The State of Nevada," and all prosecutions shall be conducted in the name and by the authority of the same.

SEC. 17. There shall be but one form of civil action, and law and equity may be administered in the same action.

SEC. 18. The Justices of the Supreme Court, District Judges and County Judges, in counties wherein such officers shall have been elected, as provided for in this Constitution, shall each receive quarterly, for their services, a compensation to be fixed by the Legislature and which shall not be increased or diminished during the term for which they shall have been elected, and the Legislature shall provide for setting apart from each year [sic] revenue a sufficient amount of money to pay such compensation; provided that District Judges and County Judges, in counties where such officers shall have been elected shall be paid out of the county treasury of their respective districts and counties.

SEC. 19. The Legislature, at its first session, shall prescribe that upon the institution of each action and other proceedings, and also upon the perfecting of an appeal in any action or proceeding in the several Courts of Record in this State, a special court fee or tax, to be fixed by law, shall be advanced to the clerks of said courts respectively, by the party or parties bringing such action or proceeding or taking such appeal and the money so paid in shall be accounted for by such clerks, and applied towards the payment of the compensation of the Judges of said courts as shall be directed by law.



SEC. 20. The Legislature shall have no power to grant leave of absence to a Judicial officer, and any such officer who shall absent himself from the State for upwards of ninety consecutive days shall be deemed to have vacated his office.

SEC. 21. In order that no inconvenience may result to the public service from the taking effect of this Article, no judicial officer shall be superseded, nor shall the organization of the several courts be changed thereby until the election and qualification of the several officers provided for in the same.

# THE DAILY UNION

VIRGINIA, N.T.

July 23, 1864

## Guilty or Not Guilty

We citizens can view, without pain, the positions now occupied by the Judiciary of Nevada Territory. No good man can contemplate, without regret, the necessity which  $\diamond\diamond$  the people to rise up almost *en mass*, and demand from their Judges personal explanations of suspicious facts—facts which, true and unexplained, render them not only unfit for the high offices they fill, but proper  $\diamond\diamond$  of the most, damning infamy, now and forever.  $\diamond\diamond$  Judges! As friends of yours and as members of this community we call upon you in the name of that justice which your duty calls upon you to administer – in the name of that law whose “seat is the bosom of God, and whose voice is the harmony of the world,” whose chief minister you are; in the name of that country with whose fair fame your own is inseparably identified, no longer to remain silent under the accusations of the press, the bar and the people, but openly, manfully and fearlessly come forward in your own defense. If guiltless we pledge ourselves to stand up as your vindicators.

There are those around you who despise the hand of defeated pettifoggers and the disappointments of unmasked swindlers no less hardily than yourselves. They would go quite as far as the most indignant of your number to spit upon and trample under foot the cat-calls of a corrupt public press, intent only on public commotion or private stipends. But, if your Honors please, let us entreat you not to mistake the signs of the times. Do not confound the general sentiment of the great mass with the dishonest clamors of an interested few. The vociferations of one lawyer might be safely disregarded, leaving a thinking public to measure the voice of the man with the motive of the barrister. The spiteful ravings of a purchase public newspaper might be treated with the scorn and contempt which its merit deserves. But the case is very different when a dignified press, an able discerning bar, and a generous but injured public stagger back at the bold presentations of asserted facts, appearing day after day in the columns of the most moderate journals, and spoken freely from lip to lip by the most discreet and prudent tongues.

There was a time not far back, when an honest Judge would have been greatly at a loss what course to pursue the slanders, if such they were, cautiously whispered at the street corners, or couched in unreasoning generalities by the accusing press. There mostly was afforded no clue

either to the man who uttered or to the signification of the charge made. "The Judges are corrupt," was the cry. Who started the rumor, or in what particulars, none were so bold as to designate. A silent indignation, suffering the pangs of unjust suspicions was all that an honorable man could manifest. But that day is past. Three of the respectable journals of the Territory have endorsed the charges, and are flooding the public mind with the most astounding particulars.

The character of a Judge is the property of the people. If as, pure as the ermine he wears, they are proud of the magistrate and glory in his praise. He is bound to vindicate that purity whenever and wherever assailed – provided only that the accuser is known, and the libel stated. Such is now the state of affairs in the Territory of Nevada. The Chief Justice, and his Associates, are by name held up to the public as criminals of the darkest line and the peculiar circumstances of their crimes vociferated in the public ear. Silence now becomes criminal. It half admits the charge by not daring to confront the accusers. We don't call upon the Bench to resign. That would, perhaps, be to plead guilty. But, in the name of our fellow citizens, we do call upon them, first, under their own signatures, to disclaim and deny these dishonorable accusations, and afterwards call upon the Grand Jury of their respective counties or districts to indict those who are daily undermining their character and poisoning justice at her fountain head.

For our part, we shall stand, as we always have done, in the breach. As public journalists, we have to vindicate, not assail character, but at the same time, as one of the people, we shall insist upon our Judges not only being pure, but whenever properly assailed, coming forward with intrepidity and establishing that innocence to the world.

# THE DAILY UNION

VIRGINIA, N.T.

July 24, 1864

## A Card

VIRGINIA, JULY 23, 1864

TO THE VIRGINIA DAILY UNION – MR. EDITOR: – My attention is just called to your editorial of this morning, which discusses the recent attacks upon the Judiciary of this Territory, and calls upon the Judges respectively to “come forward and no longer remain silent under the accusations of the press.”

You further say: “We shall insist upon our Judges not only being pure, but whenever properly assailed, coming forward with intrepidity and establishing that innocence to the world.”

In this sentiment I may heartily concur. As one of the Judges, I have waited patiently to be “properly assailed.” I not only challenge, but invite the closest scrutiny into my official conduct. If respectable men will make definite charges that can be met, and let their names be known, so that I can know who is, or who are my accusers, nothing will give me greater pleasure than to meet the issue promptly and boldly.

The people of this territory, and especially the people of Virginia, do not need to be told that I am always glad to meet such an issue. But to start on a random chase, after a pack of hired slanderers, is not the business of a judge, as I understand it.

Now, let us come to the point. *Let no other Judge suffer for what I have done; nor let me be held responsible for the acts of others.* Let the question be upon my conduct as a Judge, and let the allegations be made definitely and distinctly.

No one is in doubt as to *whence* these slanders come. Now, let their authors come out like men of honor, if they have honor, and give us their names, and something definite to aim at. This hiring of newspapers to blacken character, by surprises and innuendos, is not the way to benefit the public, or to promote Judicial purity. A Judge who is corrupt should be speedily removed. If not corrupt, it is infinitely base and cowardly to seek to impair the public confidence in him by stirring up vague and irresponsible rumor.

To the issue, gentlemen; to the issue.

J.W. NORTH

# THE DAILY UNION

VIRGINIA, N.T.

July 24, 1864

## **Hon. J. W. North**

In another column we publish the card of Judge North, in response to our leading article of yesterday. If Judge North is not innocent of every breach of official duty his accusers cannot complain that he shrinks from investigation and hides himself behind the sanctity of the ermine. The truth is, he flings out a bold defiance to his assailants and invites them, one and all, to an open field. We admire him for his promptitude in meeting the issue – for his courage in compelling his anonymous accusers to leave their entrenchments of winks and nods and innuendoes, and meet him face to face like men – for his sensitive jealousy of his good name as an officer and a man, and above all, for his regard for that great tribunal, the public, who, if innocent, will rise like a mighty pillar in his defense, and overwhelm his calumniators in the very ruin they have stealthily prepared for him. Now, let us have facts, gentlemen of the press – and you, ye members of the bar, whose saintly virtue has been offended but this great judicial criminal. Our columns are open for all respectful and well-vouched communications. But no anonymous scribbler will be permitted to malign, from his ambuscade, the good name of John W. North, or any other public official who has the manly intrepidity to dare them to the issue, and to defy both the calumny and calumniator. If there really be cause for suspecting the Judge, and facts can be produced tending to cast even an imputation upon the purity of his character and conduct as a Judge, now is the time to arraign him before the public. If such facts are not produced for publication, we shall henceforth be forced to conclude that those who have originated the charges against him are base, malignant and cowardly slanderers, and those who continue to retail them, vile panderers to a morbid public taste, which unfit them equally for the duties of citizens and the association of gentlemen.

# THE EVENING NEWS

GOLD HILL, N.T.

July 25, 1864

## **Beauties of our Judiciary**

A Virginia City correspondent of a California newspaper of a late date writes as follows:

Any one having business in our Courts will at once acknowledge that there is a good deal of truth in the statement—and it is to such a condition of affairs, and the fact of their existence being sent abroad, that Californians who have capital seem loth to invest in our mining interests. Our judges are away from here, and the lawyers have nothing to do. No one will commence suits now as they cannot get into court for probably a year. A writ of *habeas corpus* cannot be issued without sending to Aurora, to be signed by Judge Turner. The District Court calendar is filled up with cases enough to occupy a year to try them.

In the olden times divines argues on "How many angels can dance on the point of a needle? An interesting inquiry of a similar nature would be "How many lawyers can stand on a point of law?"

# THE EVENING NEWS

GOLD HILL, N.T.

July 25, 1864

## More Facts for Consideration

Judge J.W. North has published a card in the *Union*, denouncing the press as “hired slanders,” etc., etc., and is anxious for the names of those who have furnished the information which is being published concerning himself and his colleagues. He may ascertain them, and he may not; that is as pleases us. It is a matter of no public interest where we obtained our information, if that information be shown to be true. On Thursday last, we referred to the sudden and unaccountable accumulation of wealth by Judge Turner in the short space of time that he has occupied the bench. We will to-day advert to the remarkably healthy condition of Judge North’s finances. Unlike Judge Turner, whose only ostensible source of revenue is his salary, Judge North has a quartz mill, which, as a source of profit and a means of accounting for his rapid strides from indigence to affluence, eclipses and throws into the darkest shade all the other mill enterprises in this Territory. It is to a remarkable success which has attended this mill that the Judge owes his present wealth. He has only been upon the bench since last September, and his salary for that period would hardly amount, in greenbacks and territorial scrip, to a support for himself and family. Prior to his accession to the bench, he was an unsuccessful one-horse lawyer over in Washoe, unable to earn a living at his profession, and not worth a picayune. In four short months from the date of his appointment to the judgeship, he stated at the Theatre that he was “doing well financially.” He spoke truly. The style in which he lives and supports his family and his ability to luxuriate at the Bay and the watering places of California, to recruit that health, the shattered condition of which has cost litigants in this Territory millions, are evidence that the financial condition of the Judge is easy – very easy. Fifty thousand dollars and a heavy daily revenue, is a comfortable state of things for one who, a year ago, had no funds in the treasury. That quartz mill has been a most profitable—and exceptionably profitable concern. During the past ten months, but few mills in the Territory have made much more than a living profit, but North’s mill has been a perfect mint to its owner. It is generally believed and reported at Washoe that that mill has paid for itself twice over within the last ten months; and we have authority for stating that Loomis (North’s brother-in-law and manager,) said, a few days ago that “*it paid for itself once in sixty days!*” Glorious piece of property that! But our astonishment diminishes when we learn that all this time this mill



has been crushing *Gould & Curry rock on shares!* As is well known, the Gould & Curry Company has been one of the principal litigants in Judge North's Court. Their suits have been many, and of tremendous importance. Judge North has never denied the Gould & Curry anything that they have asked at his hands. The North Potosi had a ledge, the title to which was disputed by the Gould & Curry – Judge North enjoined the North Potosi. The El Dorado was similarly situated – Judge North enjoined the El Dorado. The Sinaloa's claims clashed with those of the Gould & Curry – Judge North enjoined the Sinaloa. The city of Virginia desired to widen B Street in front of the Gould & Curry's office – Judge North enjoined the city of Virginia! In all these cases the Gould & Curry *may* have had the legal merits; in all human probability *did* have, or Judge North would not have decided so unanimously in their favor. How extremely natural it is, then, that a Judge of such clearness of perception, such a second Daniel, should be *rewarded* therefore by the Gould & Curry, in the way of the *richest rock*, to be ground *on shares*. How perfectly natural, then, that a *mistake* like the following should occasionally be made by the Gould & Curry against themselves and in favor of Judge North. A Superintendent of one of our mines was informed the other day by North's brother-in-law, that "*by accident*," the Gould & Curry sent to North's mill to be crushed (on shares, mind you,) a load of five or six tons "as rich as that you have in your hand," pointing to a piece of almost pure sulphurets which had been handed to him as a specimen! A few such *mistakes* as that would easily account for the mill "paying for itself every sixty days." How do such stories as the foregoing read to the people? Do the people, can the people fail to see a natural connection between Judge North's mill, which grinds pure sulphurets for the Gould & Curry "on shares," and Judge North's decisions, which are uniformly in favor of those who furnish sulphurets by mistake? The foregoing, in connection with the article headed "Washoe Judicial Loans," which we copy from yesterday's *Enterprise*, constitute sufficient food for one day's reflection by the people.

## THE EVENING NEWS

GOLD HILL, N.T.

July 25, 1864

**Wincing**

A flunkey of Judge Locke's residing in Lyon county, has taken it upon himself to write us an insulting letter, concerning our ventilation of the corruption of the Judiciary, and which he, flunkey-like, designates "dastardly." This fellow howls before his master is hit – as we have not yet pointed out his remissnesses [sic] and corruptions. His turn will come, and in the meantime we would advise this understrapper to keep his mouth shut – as his own insignificance is enough to keep *him* out of the NEWS.

# THE EVENING NEWS

GOLD HILL, N.T.

July 25, 1864

## Washoe Judicial “Loans”

Everybody who has read that real epitome of human nature, “David Copperfield,” must recollect Miss Mowcher’s discourse on the humbuggery of calling things out of their names. She illustrates it by the multifarious titles by which ladies designate rouge. Says Miss Mowcher: “One dowager, she calls is lip-salve. Another, she calls it gloves. Another, she calls it tucker-edging. Another, she calls it a fan. I call it whatever they call it. I supply it for ‘em, but we keep up the trick so to one another, and make believe with such a face, that they’d as soon think of laying it on before a whole drawing-room as before me. And when I wait upon ‘em, they’ll say to me sometimes—with it on—thick, and no mistake – ‘How am I looking, Mowcher? Am I pale?’ What a world of gammon and spinnage [sic] it is, though, ain’t it?”

Observation will suggest to everybody that dowagers and hair-dressers are not the only ones who transact business on this gammon and spinnage [sic] principle. Many a man seeks to disguise the shameful nature of a deed, by calling it out of its name. It was not one man only who killed the turkey because it was about to bite him. Millions of the most inoffensive turkeys have been slaughtered in the name of self-defense. The thief who steals your money is not a thief at his own estimation [sic]. He is merely borrower on indefinite terms of payment. And so, if we might believe the word of every purchased wretch, no man was ever bribed. They seek or accept “loans,” which they live with the hypocritical intention of paying, and die without having paid. “What’s in a name? that which we call a rose by any other name would smell as sweet;” and theft and bribery, though cloaked with elegant and honorable pseudonyms, are theft and bribery still.

The word “loan,” in its judicial application in Washoe, is just as equivalent to bribery as the dowagers’ lip-salve, fan and gloves were synomous [sic] with rouge. Every one possessed of sufficient discernment to penetrate beyond the mere name of thing must confess this. Take a notable case, for instance, Judge North’s position upon the Bench was virtually bought for him by the Potosi Company, or some of its principal members. The same parties “loaned” him money to build a mill. They gave him a mill site. They also furnished him with rich rock – for

managers of the Potosi are also managers of the Gould & Curry. – Now, all this was done while they had causes pending before him – and he knew it. Does any one suppose that men of their character, under those circumstances, loaded him with such favors without expecting favors in return? – or that he received them without intending to do them service? If so, just look at the result. In every single instance his decisions have always been favorable to his patrons – even when they involved principles contradictory to those maintained by him in other rulings. Have the \$15,000 loan,” the purchased Judgeship, the mill-site, the Gould & Curry rock, had nothing to do with this fact? If Judge North himself should tell us no, we should consider his effrontery less only than his dishonesty. These transactions purchased Judge North beyond redemption, in the opinion of the community, even if he did not intend to sell himself. But we believe he did. We believe that he deliberately made up his mind to render these parties certain services in return for their favors; and the only respect we have for him is that he has evidently fulfilled his part of the bargain better than might have been expected of a man who would sell the public interest and his own honor. It is idle for Judge North and his friends to say that these facts have been refuted and explained away. They stand in shameful force as ever, and never can be done away with until they are received and rest as incontestable evidences of his guilt.

There is another affair in connection with Judge North which has never been explained away, notwithstanding assertions to contrary. [Here follows a statement of Hardy’ charge of bribery in the Burning Moscow case].

Judge Hardy has never denied this statement, nor his belief that the charges therein made were true. The best evidence that he thought and thinks them true, is that he invested \$20,000 in Burning Moscow, as stated, and that while he was one of the attorneys of the company. In a card, which he subsequently published, he merely said that he distrusted his informant at the time he made the statement, and was unable to prove the charges—at the same time promising at some future day to give the circumstances of the affair and the name of his informant. We sincerely trust that he is prepared to do it now. His own character and the public interest and honor demand that the matter should be cleared up. We have never for a moment doubted the truth of the charges. We believe to have been one of the most corrupt transactions in our rotten judicial system, and a thorough investigation of it will be likely to throw light upon the true nature of Washoe Judicial “loans.” We call for Judge Hardy.

# THE EVENING NEWS

GOLD HILL, N.T.

July 26, 1864

## **Constitutional Convention**

This body concluded its labors last night in passing upon the reports of the different committees, and will adjourn this evening – to-day being occupied in hearing an enrolled copy of the new constitution read, and clearing up some unfinished business. The Convention has appointed a special committee to prepare an Address to the voters of the Territory, setting forth the merits of the new over the old constitution – all of which will be laid before the public within perhaps a week.

# THE EVENING NEWS

GOLD HILL, N.T.

July 26, 1864

## How Judge North Got His Seat

In answer to the vaunting defiance of Judge North, daring the press "to the issue," the *Enterprise* of this morning has a scathing article concerning that Judge, and an expose of the manner in which he obtained his seat upon the bench. We were in possession of the facts as stated by our cotemporary, and should have made them the subject of an article this very day, had we not been anticipated. We consequently shall do no more than extract that portion of the *Enterprise's* article which relates to the purchase of the Judge's seat, repeating that the facts as stated coincided in every essential particular with those stated to us by those who profess to speak from the card:

Judge North pretends to invite the public scrutiny of his conduct as a Judge. A very cunning limitation he would fain impose upon this investigation. We propose to commence a little back of the auspicious hour when the ermine was donned and the quartz mill started, and explain to the people how it was that Judge North came to rule over them. We assert that his place on the bench was bought for him. The price paid was twenty-five thousand dollars. The payee was G. N. Mott. The person paying it was John H. Atchison. The parties for whom it was paid were John H. Atchison and the Potosi Gold and Silver Mining Company. The reasons for buying Mott off and North on were these: The Potosi Company had litigation involving the title to a valuable mine. Mott as a Judge has shown himself hostile to the Potosi Company. Mott could not be bought to decide in favor of the Potosi Company, but he got twenty-five thousand dollars to make room for North. We believe there was some flimsy pretext of railroad business which glossed over the payment of the money to Mott, but it will not be pretended that the object of paying Mott was any other than to get North on the bench. Mott's hostility to the Potosi Company sufficiently explains that Company's anxiety to get him off the bench, and the following were the reasons for having John W. North to succeed him.

In the old Chollar and Potosi litigation, North was a notorious sympathizer with the latter company. It has been stated to us that he was *sub rosa* an attorney of that Company. At any rate he was notoriously friendly to it and was attorney for Rice & Atchison stockholders, and interested in it. Judge Turner has frequently stated, and it is a fact, that while a petition for a re-hearing was pending in the Supreme Court in the old case of Chollar vs Potosi, Judge (then General) North urged Turner to

grant the Potosi Company a hearing. Since his accession to the bench, Judge North has been at *nisi prius*, in the Supreme Court, in good health and ill, the true and staunch friend of the Potosi Company.

Another reason for casting the judicial ermine about the limbs of North was this: In the District Court of the First Judicial District, Mr. Atchison had a little case of his own, involving some two hundred feet of Potosi ground. With regard to the merits of this case, General (soon to be Judge) North had been consulted by Atchison, or Rice, his partner. From what followed it is not unfair to infer that General North's opinion as to the merits of this controversy was not adverse to Atchison & Rice's claim. In the District Court and in the Supreme Court, Judge North by solemn judgment announced his adhesion as Judge to the opinion formed while attorney. Let this, then, conclude one count against Judge North: His place upon the bench was bought for him. The ermine he wears was bought secondhand, like an old coat from a Cheap John shop. Not only this but twenty-five thousand dollars was paid to get him on the bench to decide cases in a particular way. He has decided those cases in which he had previously given opinions or expressed preferences, and decided them in favor of the parties who paid this money.

# THE DAILY UNION

VIRGINIA, N.T.

July 26, 1864

## **Proof or Silence**

After some days of innuendo by the press of this county, the Enterprise has at last placed its charge against Judge North in a definite shape, and in its issue of Sunday morning makes a series of the very gravest accusations reflecting upon the integrity of that gentleman.

If the Enterprise can sustain these charges by evidence, either direct or circumstantial, Judge North should be driven from the bench and punished by the severest penalty which outraged laws demand and an outraged people can inflict. If the Enterprise fail to produce such evidence, a scarcely less penalty should be visited upon its editors for prostituting a free press to the dissemination of most vile slanders against a Judge upon the bench. He who assails the Judicial character of a judicial officer properly occupies a position of far greater responsibility than he who denounces a private citizen, for while traducement [sic] of the latter injures only himself and relatives, a successful slander against the former, poisons the springs of public confidence and inflict unmeasurable disaster upon the prosperity of a community.

Tradition tells us that among an ancient people there once existed a custom that he who proposed a new law should introduce his statute with a rope around his neck; if it failed of passage he was at once strung up. Something similar should be the position of the man or the journalist charging a Bench with the fearful charge of corruption.

The Enterprise charges directly –

1st. – “That Judge North’s position upon the bench was virtually bought for him by the Potosi Company or some of its principal members.”

This is a grave charge. The President of the United States made the appointment and as we scarcely suppose the Enterprise means to say that Potosi Company purchased Uncle Abe, we respectfully call upon it to say exactly what it means, who received the money, and what was the price, and the exact connection of Judge North with the affair.

The Enterprise charges –



2d. – “That the same parties” (who purchased the place) gave Judge North a mill site, “loaned” him money to build a mill, “furnished” him with rich rock to crush, and all this was while they had causes pending before him and he knew it,” and that “these transactions purchased Judge North beyond redemption, in the opinion of the community;” and that “he intended to sell himself and did sell the public interest and his own honor.”

We presume the Enterprise has the evidence to prove all this, or even it would scarcely have dared to say it. We have been informed that Judge North and his partner had a mill site, and a mill nearly completed long before he was appointed Judge; that upon this mill, worth from \$40,000 to \$60,000, he borrowed only \$15,000 at a fair rate of interest, and gave a mortgage on the property as security; and that since the completion of such mill it has crushed rock for various companies, at the same rate and upon the same terms granted to other mills. If we have been misinformed, and the Enterprise is correct; if parties litigant gave the Judge a mill site, and “loaned” him all the money to build a mill, and afterwards furnished him richer rock than they furnished to other parties, at better rates, then the circumstances are certainly suspicious; but if our information is correct we cannot see any loophole in which to fasten a charge of corruption, upon the circumstances enumerated any more than we should think of charging U.S. Supreme Judge Field with corruption, for purchasing at a fair price a suit of clothes of a tailor on trial in his Court. All this talk of “borrowing money of litigants,” and “crushing rock for litigants,” is simply a repetition of the dishonest twaddle for which Bill Stewart was hissed off the stage last January, and unless the Enterprise has something else, something new, some substantial facts to present against Judge North, we advise it, as it dreads Grand Juries and a criminal prosecution for libel, to cease those vain repetitions. No person seeking money could borrow it all without borrowing it of someone having more or less interest in valuable mining claims hereabouts, for such claims are owned by capitalists, and no mill owner could crush rock at all without crushing it from claims in litigation – for only such yield pay rock.

Judge North differs from his Associates upon the Bench in that he was a resident of this Territory for some years before his appointment as Judge, and while a private citizen devoted his energy and talent to the accumulation of property. His appointment to the Judgeship, found him engaged in an undertaking always hazardous and expensive – the construction of a quartz mill. It was scarcely to be expected that he should, on being clothed with the ermine, at once abandon his business, and allow the fruits of years of industry to be wasted. If the possession of a quartz mill, acquired before receiving a Judgeship, and thrifty economical management of his property after receiving a Judgeship, be prima facie evidence of corruption, then is Judge North corrupt; but this

people do not think so, and unless those accusing him present some proof or “strong circumstance leading directly to the door of proof” of guilt, they will continue to believe in the integrity of the Judge of the First Judicial District.

The third charge made by the Enterprise against Judge North, is that Judge Hardy once told Stewart and Baldwin that North had been bribed to decide against the Ophir and for the Burning Moscow. It seems that Judge Hardy has since taken back his statement, but the Enterprise is inclined to believe it, nevertheless, because, “at the time Judge Hardy believed it true, and on the strength of it, invested \$20,000 in Burning Moscow stock,” all of which we submit proves nothing but Judge Hardy’s credulity and lack of sagacity.

In conclusion, we await the evidence of the Enterprise. It has made the gravest charges against a Judge of the Supreme Court. It should be prepared to prove them. It must do so by facts, not misstatements; by affidavits not inferences; “the faith that scorns evidence and rests upon intuitive perception” will not do in so important a connection. “What we want,” said Mr. Gradgrind “is facts.” Without such facts the people will be apt to imagine that it is the malice of disappointed perjury collators and witness brokers striving in the despair of defeat to create a prejudiced public opinion in order to effect the resignation of a Judge who cannot be controlled, rather than any high public purpose, which has caused this last attack upon Judge North. Produce the facts if they exist. Produce them and in their  $\diamond\diamond$  we will  $\diamond\diamond$  Judge North as ardently as we now defend him from what we are  $\diamond\diamond$  to believe is a slanderous and unworthy attack.

# TERRITORIAL ENTERPRISE

July 26, 1864

## Untitled

Chief Justice George Turner is either the meanest or most wronged man in the Territory. We have never heard him spoken of respectfully by any disinterested party. Even those who would gladly assign somewhat of the dignity of the office to the man or for the sake of mankind overlook the character of the individual, were it possible, turn from him with audible depreciation or silently implied disgust. Nor is this universal aversion to be wondered at. The very presence of Judge Turner is disagreeably suggestive of base flattery, fawning, treachery and dishonesty. Besides, his entire history since his advent in this Territory – his previous record being mercifully hidden in obscurity – is one to excite distrust and contempt and alienate the sympathies of every honest and honorable man. The first that our public ever knew of George Turner, except that such a person had been appointed to the Chief Justiceship of the Territory, was by the part he played in a suspicious and dishonorable transaction. As many of our readers may not be acquainted with the circumstances, we will briefly recount them. In the Fall of 1861, when the Judiciary of the Territory was being organized, Rufus E. Arick, the present Mayor of our city, was an applicant for the Clerkship of Judge Turner's Court. He was recommended for the position by many prominent citizens, and the Judge appeared to regard his application favorably. But the judge had evidently marked out the course he intended to pursue, and knew the co-operation of this Clerk would be requisite to carry it out successfully. Naturally distrustful whether Mr. Arick could be made a tool of, and anxious to try him before the appointment was made—apparently only too confident that every man was a rascal like himself—he wrote him the following letter:

CARSON CITY, N.T.,  
NOV. 11TH, A.D. 1861

R.E. Arick, Esq.:

Dear Sir: – I was glad to hear from you. The Districts are not yet made nor Judges assigned; I hope we will be soon. They talk of putting Carson, Genoa and Esmeralda in a district, and making Carson the Capital; if they do, I would prefer this. The Capital is my proper place, and Esmeralda is a desirable region.

Call on Smyth Clark, Esq., and look at the Sacramento ledge, and tell him what he says to you will be in sacred confidence and kept from all but me. I think of buying some with him in that ledge.

Show him this; write to me, and believe me,

Yours ever,  
GEO. TURNER

Mr. Arick asked an explanation of this remarkable letter, which was promised at some future time. Meanwhile Judge Turner said he regarded the recommendations as satisfactory, and desired Mr. Arick to qualify as Clerk immediately, as there would be important business in his Court. We append Mr. Arick's own statement of what followed:

I then asked him to explain his letter of the 11th November. He replied that he had been talking with Smyth Clark about the Sacramento, and that he believed it was a rich thing, and that he had intended to buy into it, but that it would not do for him to own in it until after the disputes were settled. (By the way, a suit is now pending between the Sacramento and Sierra Nevada Companies in regard to the title to the ground.) He asked me to go with him and buy. I told him I had no money. He said never mind that; he (Turner) would make us both rich; and remarked: "I have done you a favor, and now I want you to work for my interest; I will buy the ground in your name, and you hold it until the title is settled, and then you can deed it to me, and I will make it all right with you." I replied that I could enter into no such arrangement; that my relations with him would be purely of an official character, as Clerk of his Court, and that if he had any outside arrangements to make, he must make them with others; and that I was surprised at such a proposition from him. He said: "Well, never mind; call up and see me this evening;" and left the room.

Before Mr. Arick saw Judge Turner again, he had appointed another gentleman as Clerk. This was the initiatory step of the Chief Justice of the Territory. This was when he was poor – but not by any means honest. It discloses the plan he had matured and adopted for acquiring a fortune, which he subsequently put into successful practice. By steadily pursuing this course – by purchasing stock in claims whose titles depended upon his decisions – by receiving direct bribes for rulings in important mining cases – and by otherwise using to his pecuniary advantage the power he exercised by virtue of his judgeship – George Turner has amassed immense wealth, and is now loaning money clandestinely. His history is a brilliant example to all young men burdened with poverty but not with honesty. It shows them that the greatest object to be attained is a cheap Judgeship. Get that, and the rest is easy. No matter how mean your qualifications – no matter how disgusting your vanity, or how repulsive your flattery and fawning; people may despise and loathe you, but yours is the power. Exercise that power without a thought of accountability to God or man. Sell yourself – sell the rights and interests of the people – sell the rights and interests of the people sell the holy and hallowed name of Justice – sell at any price, but sell often, that you may prosper and grow rich. For when you are rich as well as Judge, though you may have violated every principle of justice and honor, though you may have wronged and ruined the community, there will not be wanting a servile set to entertain you with a farcical display of

respect and esteem and a feigned belief in your honor and honesty – as in the case of Chief Justice George Turner.

To illustrate how naturally the instincts of Chief Justice Turner lead him into the paths of bribery and corruption – how he has been bribed and corrupted himself, till, like a surcharged body, he commences bribing and corrupting others – we will publish a letter which he wrote just previous to the convention at Carson, last Winter. It will be recollected that Judge Turner was a candidate for the Supreme Bench – an office with whose value he is probably as well acquainted as any man in the Territory. The original letter is in our possession, but here is a copy of the sweet judicial epistle:

CARSON CITY, DEC. 23D, 1863.

Hon. Thos. Fitch:

My Very Dear Sir: – Being detained here to see a little after my own delegates, I must ask you not to forget me. Saturday or Sunday I will be up.

Thos. Barclay (who was tied) and George Hopkins, mining agent, over Seely and Bryan's office, are friendly to me. Add these to the names I gave you.

I must ask you to come to Convention, if you can, and to mention me personally to the 16 delegates you send. Do this, and I will repay it. Do this, and I will be of more benefit to you than Attorney-General's salary. Will you do this?

Yours earnestly,  
GEO. TURNER.

P.S. – Please present my kind regards to your Ma and Wife, ect. We are at a loss in what light most to admire this production. Whether for its direct and business-like style – for the confidence it reposes in Mr. Fitch's devotion and influence – for the generous nature of the reward – or for the charming domestic tenderness displayed in the postscript. They are certainly all admirable. No one, of course, acquainted with either the author or recipient of the letter, would for a moment suspect that there was anything underhanded or dishonest about it. Neither of them are qualified for dirty work. They are both gentlemen who command the respect of each other – and of nobody else. Judge Turner has patronized and promoted Mr. Fitch, and the latter specimen of overflowing purity has always stood forward to defend and exalt the character of his Judicial masters, and is doing it now. It is a cheap support, and we suppose has been amply paid for.

This pleasant but imperfect glance at the life and letters of Chief Justice George Turner must suffice for the present. We remarked that he was the meanest or most wronged man in the Territory. Our opinion is that he is the meanest. "For Sale" is written on his countenance as plainly as on a house, and he has grown wealthy by virtue of the sign. If the balance of our lovely judges can be induced to retain their seats, we shall be a stout advocate for Judge Turner remaining in his – for in such a body

of Judicial excellence, the Chief Justiceship, as a matter of right, should be filled by a low, slimy, intriguing imbecile like himself.

# THE EVENING NEWS

GOLD HILL, N.T.

July 27, 1864

## A Chapter on the Nature of Evidence

What is corruption? What is proof? What are facts? These are questions suggested by reading Judge North's card, published in the *Union* of last Sunday morning. The Judge boldly and emphatically denies his guilt. Is this at all astonishing or to be considered at all as evidence of his innocence. Few culprits lack thus much of courage. The plea of "guilty" is seldom heard in our criminal courts and that of "not guilty" amounts to nothing in the prisoner's favor. It only serves to put him upon his trial, and it is in that position that Judge North now stands arraigned at the bar of public opinion. With an air of conscious innocence he demands "the proof" of the charges alleged against him. He appears to regard and speak of "proof" as a tangible body of certain shape weight, color and other material properties, to be locked up laid away carefully, and to be produced upon occasion as one would produce the signet ring, the murderer's knife, or the "long lost will" of a sensation romance. Unless this sort of a talismanic "proof" can be produced by his accusers. Judge North believes that he shall be able to walk in the broad light of day, arrayed in the bright garb of innocence unstained and justified in the estimation of his fellow citizens. He seems to suppose that the only evidence of his guilt that will strike the public mind as at all convincing must be that A, B, or C, has placed in the judicial hand, a bag of gold, in exchange for a carefully drawn instrument, duly signed with the judicial sign manual, and sealed with judicial signet, covenanting for and in consideration of the gold so paid and delivered, the rendition of a judgment of the effect and tenor nominated in the bond. The proof of the payment of the gold, the production of the damning bond and the record of the court containing the precise judgment agreed upon, should in the Judge's estimation all be necessary to assure the people that corruption had been resorted to. Such, however, is not our view of the matter, nor do we believe that the public are so foolish as to expect proof of that character to verify the wide-spread belief that corruption is the *rule* in our courts, and not the exception. The methods of corruption are various, as is the character of proof to establish its existence. A judge is corrupt, who is influenced in any judicial decision by any motive of private gain, however that gain is to be accomplished. There are no limits to the variety of modes by which a corrupt purpose may be executed, save those which bound the ingenuity and cunning of those interested in its

accomplishment, and in escaping detection. The modes of proof are equally various. In a case of the bribery of a Judge, the utmost pains are taken to conceal the transaction both by the briber and the bribed. One is equally guilty with the other; they escape together or they are together convicted. Their interest in the concealment of the crime is identical. We may as well hope for the open confession of the bribed judge as the evidence of the party who paid the bribe. If the people look for the press to produce the evidence of the briber, or of one who has seen bribe-money paid, they will be disappointed, and may as well fold their hands at once, and sit down patiently and submit to the high-handed corruption that they feel certain is trampling upon their necks, but of which they fail to recognize the proof. They may writhe and groan, and feel the yoke for years, but if they ever are able to produce that character of proof, it will be an instance unparalleled. The corruption of a judge may be directly by the payment of a specific sum of money, or it may be indirect, but none the less easy and certain by being cloaked under the forms of a business transaction, the corrupt *intent* being in the latter case the thing to be concealed. Third persons-go-betweens – are introduced, in whose names the affair is conducted. By these and a thousand other ways, investigation is baffled and conviction made difficult, it being, in all cases, the interest of those who *know* the facts to conceal them. We apprehend that an officer suspected of corruption is not to escape, simply because the affidavits of those who are participants in his guilt cannot be produced or because an eye witness is not forthcoming. A chain of circumstances may lead to the discovery of truth, as well as the direct testimony; and in all transactions which, like bribery, are secret in their nature, this sort of evidence must be relied on. Neither, to convince the public of the guilt of these Judges, is it necessary to make a case which, like that required in a legal prosecution “excludes the possibility of a reasonable doubt.” We remember to have read, some time since, that a prosecution failed in San Francisco, because of inability to establish, by competent legal proof, the character of a notorious house of ill-fame. The accused escaped the legal penalty, yet were the public so fully convinced of the character of the premises, that any women seen to enter therein would have been spurned from society. It is useless for Judge North to fall back on his official dignity and call for “proof” – as he understands the term. We are giving proof, day by day. His purpose will not be served by this silly subterfuge of “demanding facts” when facts are staring him and staring the people in the face day after day in the public journals. We will recapitulate for his delectation a few facts on one of the charges against him of the nature of which he professes such profound ignorance.

You are charged, Judge North, with corrupt collusion with the Gould & Curry company. The following facts, among others, are stated to sustain the charge. While important litigation, to which that company was a party, was pending before you, you grew rich through its direct aid. You



acquired wealth by crushing their rock on shares—they prospered by your uniform decisions in their favor. Your rock was richer than that sent to other mills. This denied by Mr. Bonner, who in denying it as merely acting up to the good faith due between yourself and the company. He refers to the “books of the company” – Bah! That the rock went to you *was* richer, is attested by the assertions of your partner and brother-in-law, Mr. Loomis, and also by the frequent statements of Mr. Collins, who acted as your Superintendent. Dare you deny these facts? A judge gets money from a litigant, and a litigant gets decisions from a judge. This is the usual *modus operandi* by bribery. What other conclusion can the people draw from the premises? In any other case than one of bribery, we should like to hear Judge North charge a jury upon the nature and character of, and weight to be attached to circumstantial evidence. We have reverted to the foregoing as a sample of the character of the proof, which in our judgment convicts the judiciary of corruption, and to show how silly and hypocritical is the insinuation of Judge North that there is “no proof” of the accusations made against him by the daily press.

# THE DAILY UNION

VIRGINIA, N.T.

July 27, 1864

## **Judge North and His Assailants**

Without setting ourselves up as the peculiar champions of the Judge of the District, and with no present design of taking sides in the controversy respecting his guilt or innocence, we propose, from time to time as the discussion proceeds to take an impartial view of the field, and keep the public well informed of the real progress of the case.

We assume this position the more readily because we believe honestly that such is our duty as a public journalist; and also because it affords us pleasure always to remedy so far as our means permit the injustice done by other journals, either through honest ignorance of material facts, or a wicked and willful perversion of truth. The gist of a Judge's dishonesty consists of his rendering corrupt judgments, contrary to law, and inconsistent with the justice of the case. That Judge North has ever rendered such a judgment, we are not yet satisfied, for we have not seen the first scintilla of evidence upon the point. That a Judge may sometimes err, and honestly mistake the law, we have not the slightest doubt. The greatest masters of the profession have often erred, and Kent, Story and Mansfield have often been reversed by tribunals superior to those in which they respectively presided.

We hear a great deal of Judge North's private affairs, but nothing of his errors. So far as his rulings in one or two of the most prominent cases before him are concerned – and which he is condemned by the losing side for making – there is no pretense that he mistook the law or was guilty of injustice. A very large majority of the bar who practice before him approve of his decisions, and have the most exalted opinion of his impartiality. That some have been disappointed in all that they sued for and others in not being able to sustain the defenses set up, is no arguments against his integrity; for every law suit has *two* sides to it, and one part or the other *must* lose. There is consequently nothing serious in the charge against a Judge that he decided against somebody or other on a certain occasion; the accusation is incomplete – it does not go far enough. The decision must be shown to be against law and proof must be adduced that it was rendered corruptly. Now, where is there any proof of this character against Judge North? We have called for it, and opened our columns for its publication, but it is not yet forthcoming. Instead of this we have a rehash of the address of Mr. W. M. Stewart, delivered at

Maguire's Opera House on the 16th January last, in the *Enterprise* of Sunday morning. To those present on that *funereal* occasion we need not say that Judge North was acquitted by a public verdict, so explicit in its terms that even his defamers were silenced, if not convinced. Such another ovation we do not expect to witness again in a life time. The effect was perfectly stunning to the managers of the play. The occasion passed late a proverb, and some months afterwards we saw the entire court room full of spectators, convulsed with laughter at the reply of a green jurymen, who, in response to the question if he had ever seen Mr. Stewart before, naively answered: "Yes, once: at Maguire's Opera House!"

If we are not surprised, therefore, we are sorry to see that our morning contemporary [sic] has thought proper to re-open discussion upon points long ago settled to the satisfaction of everybody, as we thought – except Mr. Stewart. We know that Mr. Stewart's partner, Mr. Alex W. Baldwin, was fully convinced. We know that he so expressed himself to Judge North, and at the request of the Judge gave him a written certificate to that effect.

The fault-finding (we cannot call it by a more dignified epithet) with Judge North at that time, and now renewed but with no new facts to substantiate it, reduces itself to three specifications.

1st. That he owned a quartz mill, and had borrowed money from a member of the Potosi Company, giving a mortgage on the mill as security.

2d. That he crushed rock for the Gould & Curry mine, with his mill; and,

3d. That, Judge James H. Hardy had informed Messrs. Stewart & Baldwin that he believed Judge North to be corrupt, and that he could prove he had received a bribe in the Burning Moscow case.

We have before us, as we write, the printed discussion, as it was reported at the time, between Judge North and Mr. Stewart.

Now, to show how thoroughly these charges were ventilated and discussed, we propose to give a few extracts from the report. It must not be forgotten that Mr. Stewart challenged Judge North to this discussion, and arraigned him before the public as unworthy of the high office he filled. And it must also be borne in mind that these same charges had been privately circulated by Mr. Stewart, and that Judge North called him promptly to an account, and obtained from him the following public recantation:

VIRGINIA, DEC. 22, 1863

HON. J. W. NORTH – DEAR SIR: – Proceeding upon facts and statements, which appeared to warrant me in doing so, I have recently made public charges reflecting upon your character as a Judge, and as an honest man. With your assistance I have investigated these charges, and I pronounce them unsustainable [sic], and take great pleasure in so stating. In my judgment, there can be no just occasion for the indulgence of any suspicion of your judicial integrity or private character.

Yours, very truly,  
WM. M. STEWART.

In reply to the charge that he had borrowed money to finish his quartz mill, Judge North said: Mr. W. M. Stewart has presented to you this evening, the matter of the loan that I made to finish up my quartz mill, and by the way, he has, as I humbly hope, considerably magnified my indebtedness. Mr. Stewart knew all about this matter when he signed that published card to you and the balance of the public. He then knew it all. And, fellow citizens, I had told him of it that day. I was the one who informed him of it, and he knew all about it then and there. He knew all about that, at that time, and he had sifted it clear to the bottom, and found then, as he has found ever since, that there was not the shadow of a shade out of which to start the story.” In Mr. Stewart’s reply he did not deny that he was well aware of the transaction, at the time he acquitted Judge North, and that he had sifted it to the bottom, and found nothing in it to arouse just suspicion against the Judge.

When the accuser himself backs down and throws up the sponge, there would seem to be an end to the controversy, or, at least, there ought to be. But the Enterprise man, being sadly in want of materials, steals Stewart’s exploded thunder, revamps it, and after a very expressive silence of seven months, again discharges it at the head of the Judge.

The next cause of complaint originates in the fact that the Judge owns, or did own, a quartz mill, and crushed Gould & Curry quartz. Certainly Mr. Stewart knew this before his public retraction. In reply to the heinous offence, Judge North said: “He,” meaning Stewart, “talks about my getting rock to crush from mines in litigation. Now, you all know, fellow citizens, that these mines have their usual rates at which they sell ores, or allow mills to work them. They have their rules for doing business. When I go to the mine, I ask their terms, and they will tell me the terms which they give to all the mills. I take those terms, and no other, I send the challenge before the entire community, to examine every transaction in regard to quartz for my mill that I have ever attempted to make, or have made; and if there is a man on the face of the earth that can say that I have asked for anything different from what others had, they will

find what does not exist, and cannot be found. I defy even W. M. Stewart to the investigation.”

This challenge has been unresponded [sic] to for over seven months – yet no single fact has been added to those before known. A Judge owns a mill, and crushes rock. Here the indictment begins, and here it ends. The Gould & Curry mine employed twenty two mills to do its crushing, Judge North controlled one of those mills; *ergo*, Judge North is a corrupt Judge.

Pick your flint, Mr. Enterprise, and try it again.

The final count in the indictment against Judge North is contained in the accusation made by James H. Hardy, alluded to above.

Now this was *par excellence*, the great burden of Mr. Stewart’s denunciation last winter. To examine it carefully, and to ferret out thoroughly, and to settle it satisfactorily, Mr. Stewart and Judge North went together, in a buggy, to Carson, called upon all the witnesses, searched all the books and records, and peeped into the private banking accounts of the Judge. The result was the *apology* of Mr. Stewart, published the next morning. But this is not all. Mr. Hardy, himself, at the mass meeting at Sutliff’s Theatre, last winter, voluntarily came forward and, after retracting in the most public manner, the charge of bribery, went on to say that “he believed himself the biggest coward in that assembly, but, as big a coward as he was, he had too much courage not to atone for any wrong he may have done, by publicly begging the pardons of the person he had injured.”

In a subsequent card, published in the papers, he reiterated the same thing, in substance. How then can the Enterprise dare to assert that James H. Hardy has never denied the truth of the statement, made by him to Mr. Baldwin? Now to exhibit this whole affair in its true aspect, we have been furnished by Judge North, with a copy of Mr. Baldwin’s card, alluded to above. This shows the estimate put upon the importance and verity of these charges by Mr. Baldwin, months after they were made: We commend the card to the Enterprise man, with the remark, that stale accusations long ago refuted, although republished in a new edition, considerably enlarged, will never convince a just and appreciative public, that they should withdraw their confidence from a Judge who has hitherto won the esteem of his fellow citizens, the respect of litigants, and the approbation of the bar. Until, therefore we have further facts, we must pronounce the verdict of *not guilty*.

But here is the card:

It affords me pleasure to put in writing, my deliberate opinion of the public and private character of John W. North, 1st District Judge—after having practiced my profession before him for nearly a year.

*I regard Judge North as an upright man,* AND AN UNTAINTED JUDGE.

Whatever statements I have made to the contrary of this my present conviction, *I deeply regret,* and would never have made, but for being blinded by passion and excitement.

ALEX W. BALDWIN.  
VIRGINIA, MAY 17, 1864.

The Enterprise of yesterday renews the attack upon Judge North, but adduces no facts to sustain the charges made. The only additional accusation – of which there is not a particle of proof, except the passion-blinded assertions of an infuriated penny-a-liner – is that Judge North’s position on the bench was *purchased* for him from Gordon N. Mott. That John H. Atchison paid \$25,000 to Mott to resign and have North appointed, and that in consideration thereof Judge North had decided a case in favor of Mr. Atchison, involving some two hundred feet in the Potosi mine.

Without stopping to show the absurdity of supposing that Judge Mott *cornered* his seat on the bench, and could sell out to whomsoever he pleased, without the authority of the President who appointed or the Senate who confirmed him, we have been at the pains to inquire into the facts respecting Judge North’s actions in the Atchison case. The public cannot be more astounded than we were when we ascertained that Judge North had nothing to do with the case at all, until it reached the Supreme Court. The cause was referred in March, 1863, to Judge Lindley, by consent, who reported the facts in favor of Mr. Atchison. The motion for judgment on the report was heard by Judge Turner, and granted; and the application of a new trial and rehearing made before Judge Locke, and denied.

On appeal to the Supreme Court, Judge Lindley’s decision was affirmed by the whole bench. If there be anything wrong in this, Mr. Baldwin, who acted as Mr. Atchison’s attorney, certainly was not aware of it, and if the law was incorrectly laid down, the astute intellect of such men as Mr. Crittenden and Messrs. Reardon and Hereford, failed to discern it, as we are informed they examined the whole record, for parties interested in San Francisco, and were unanimously of opinion that the decision was correct.

This plain statement wipes out the fury of the man in the Enterprise, and exhibits to the public the honorable course of that estimable journal. To the insinuation so ridiculously thrown out, that our editorial columns are controlled by “briefless attorneys,” we can only

reply that this charge, like the balance of the twaddle in that journal, is false, and that the editor of this paper only prepares the editorials.

# THE EVENING NEWS

GOLD HILL, N.T.

July 28, 1864

## The One Man Power

It is a fact, universally admitted, that no one cause has as directly operated to create and prolong the present unprecedented depression in the value of mining property and the consequent stagnation in all kinds of business in this Territory, as the mass of unsettled litigation which presses upon and holds down the almost entire valuable property in the country. Long continued uncertainty in titles will ruin the richest country on the face of the earth, and the title to almost all the valuable property in the Territory, to say nothing of the vast amount of which the value is uncertain is hanging in the wavering scale of uncertain and tardy scale litigation. At the beginning of this year there were about four hundred cases upon the calendar of the District Court in this county. In these cases were involved one might almost say, the title to the majority of the property in the Territory. Six months, and more, have elapsed, in which time but *three* civil cases have been submitted to a jury and but in *one* of those has a decision been rendered. Let people ponder upon the distressing results inevitable upon this long delay, and the still further time that that [sic] must elapse before the property tied up in these suits will be freed from the trammels of litigation and made available to the Territory. Vast tracts of mining country, hundreds of mining claims in a partial stage of development are lying still, the workmen idle, business at a stand-still and creditors sinking into bankruptey [sic]. The question forces itself upon the public mind – “Who is responsible for this wretched state of things?” If it can be traceable to any one individual, that individual is Judge J. W. North. – The Legislature provided that from the 1st of January to the 1st of July, the District Court should be in session four months; the first term to last from the 1st of March to the 23d of April, and the second to embrace the entire months of May and June. – In those four months, had the business of the Court been dispatched with reasonable diligence the calendar of the court might have been in a great measure cleared. Perhaps it is not proper or just to attribute much blame to Judge North for the small progress made in the first term; the criminal calendar being extensive and having the precedence over the civil. The months of May and June were, however, lost – absolutely wasted. There has been no court for the reason that there has been no judge. Judge North has been at the Lake, he has been at San Francisco, at San Jose, at Napa, at Santa Cruz; he has been everywhere and any where but where his duty called him, and the very



life-blood of the Territory demanded his presence – on the bench. A large and talented Bar has forced into idleness, and life and prosperity in the community have given place to inactivity and poverty. It is strange if such disastrous results to a vast community are the *legitimate* consequence of the will, the whims, the health or ill health of any one man. Judge North's answer to the clamer [sic] of a suffering and ruined people is – that he is sick. There are many conflicting reports as to the character and degree of this alleged infirmity, but we are disposed to be charitable and admit the truth of the plea. But Judge North knew that the vital interests of the Territory were dependent upon the adjudication of the cases pending in the District Court, and if the state of his bowels, his liver and his nervous system incapacitates him for the discharge of judicial functions, a decent respect for the rights of the people demand of him that he vacate the seat and make room for one who could perform the required duty. In two days' time his successor could have been upon the bench and the business of the court proceeded with. Early in May he discovered and declared his inability to finish the term. Why did he not then resign? He calmly contemplated the ruin that would result to thousands from the closing of the Court until November – and he closed it! What stood in the balance against all the terrible evils of this long suspension of litigation? *Judge North's private pecuniary interests and nothing else!* What *reason* could he urge for not resigning when the consequences of his refusal so to do were so terrible to the community? *The emoluments of his office would cease!* Simply this and nothing more. Judge North's private purse was weighed against the public weal, and the public weal kicked the beam. That is the whole story, and let Judge North or his defenders make another out of it if they can. He will not have the impudence himself, to-day, to claim that at least four-fifths of the Storey county bar are not (to measure them by a low standard) at least his equals in legal ability, honesty and worth. There was no necessity that *he*, above all men, should remain upon the bench, and that, too, at the sacrifice of the interests of every other citizen of the Territory. It were a delicate matter for the people or the bar to propose such a measure to a Judge. It should be of his own motion – dictated by his own sense of honor and justice. Judge North has clothed himself with a reputation that might well deter a counsellor or a litigant from giving him offense – *they* dare not ask him to resign. At that early day, enough had been charged against him to have rendered his resignation acceptable to the people, *and he knew it.* What then made his grip upon the office so tenacious? His private interests and the interests of his patrons – one and inseparable. During the eight months of his judgeship he had strode from poverty to wealth. While he should remain upon the bench, rich rock would roll to his mill; while he should remain upon the bench he could command large loans; while he was Judge North the road to wealth was broad and smooth. When he should sink to North the quartz-grinder, he would be but the one quartz-grinder among the many, with equal risk and equal show. There were many powerful

influences to keep him upon the bench, all tending to his own thrift. The Gould & Carry could not spare him, neither could the Potosi, the Savage, nor the Burning Moscow. We have consumed already more space than we had originally appropriated to this subject for today, and will postpone its farther consideration until another day believing that we have said enough to-day to show the people that the closing up of our Courts for six months, and the suspension of some four hundred cases now in Court, is a sacrifice that the people of this Territory have suffered for the pecuniary benefit of ONE MAN; and that man the HONORABLE J. W. NORTH.

# THE DAILY UNION

VIRGINIA, N.T.

July 28, 1864

## **A Stratagem Spoiled**

In one of those weird tales with which the literature of modern Germany is so plentifully besprinkled, a story is related of a wicked peasant who made a compact with the enemy of mankind to sell his soul for certain earthly advancement. To bind the bargain the peasant agreed to destroy a monastery in the vicinity; an excavation was to be made from his cabin to the cellars of the abode of the monks, and at the proper moment a quantity of gunpowder exploded. But the soul seller had proceeded no further than to excavate under his own house when the Alps, indignant at the compact, generated a thunderstorm in their airy caverns, and hurling a bolt of lightning at the dwelling of the sacrilegious wretch, exploded the combustible matter and left nothing but the blackened timbers and the charred corpse of the peasant.

Something similar to this is the present position of those who have been for a week past, vainly endeavoring to create a popular clamor against Judge North, and we are only surprised that men of ordinary observation and cunning should so mistake the intelligence of this people as to induce them to believe a public officer dishonest without a scintilla of evidence, and upon the mere clamor of interested parties. The present position of the professional persecutors of Judge North is certainly not such as honorable men will be likely to envy. Intimidation and fawning, slander, retraction of slander again, seems to have been the tactics of these prosecutors of an honest gentlemen and an upright Judge, and a clear common sense and shrewd judgment of this people have in every case touched at once their motives as with an ethereal spear, and with the touch the disguises of the devil fell to earth leaving him revealed in naked deformity. Judge Mott resigned. If he was paid for resigning, such is no stigma upon the integrity of his successor. Certain professional men, we are informed, signed the petition for North's appointment, and after North's appointment, finding that their peculiar tactics – as exemplified in the Grass Valley case – were likely to fail in the presence of an honest Judge, they became North's enemies and denounced him for corruption. They could not sustain their charge, and subsequently the same individuals published a card retracting their false assertions. Finding Judge North still impracticable, the attack was renewed in January and the accusers hissed off the stage for their trouble. From blason [sic] to servility again the transition was brief and another of the hundred in many signed a card

expressing his great confidence in Judge North. But the Judge pursued the even tenor of his way, “answered by influence and unbribed by gain,” and as it happens that certain gentlemen were again upon the losing side of their case, the Chollar could not even come into Court without Judge North’s seat upon the Supreme Bench being supplied by more pliant material, why another onslaught must be made, and taught by experience the impotency of their efforts the press was brought into the light, and “Tray Blanche and Sweetheart opened their mouths,” it was hoped under cure of this ◇◇◇ are from the press to institute either a vigilance committee or induce another petition for the removal of the Judges. But inasmuch as the prosecutors of Judge North have utterly failed to make good their charges against him, this last stratagem will also fail. We venture to say that a petition for the removal of Judge North would not, outside of the parties directly interested in procuring such a removal, and outside of the jails and other receptacles, for, or haunts of vice, receive one hundred signatures in this Territory: while, on the other hand, a petition to those who attack him to transfer their peculiarities and persons to some other locality, would – if such could thereby be accomplished – would be boisterously and repeatedly endorsed. As for the “Vigilance Committee” a sober second thought will put an end to that; for who so likely to receive the early attention of citizens taking the law into their own hands as those who have made a business of endeavoring to control the fenstains[sic] of Justice! Who is so likely to be banished from our midst as those who would overwhelm, if possible, with the surges of slander the lighthouse which cannot be perverted for wrecking purposes? We have hitherto ◇◇◇isted upon the “evidence,” or rather the assertions “based upon the faith which scorns evidence, and rests upon intuitive perception,” presented by the assailants of Judge North. If there were even ground for belief in his corruption, the press would have been right in assailing him. But where there is not only no ground of belief, but the motives for this attack are directly attributable to private interests and private malice, the press is highly reprehensible for lending itself to such a purpose, and so ◇◇◇ bringing discredit upon this community. We trust that the friends of the Judge of the First Judicial District will bring this matter to the attention of the next Grand Jury. Of course Judge North, will not and ought not descend from his bench to bandy either words or pistol shots with those who may, from improper motives, attack him. Of course good taste and a due appreciation of his own honor will prevent him from bringing a civil suit against worthless and irresponsible persons. But it is due to this community and its fair reputation that the slanderers should not – therefore – escape scott [sic] free, and because a ◇◇◇ wrong has been attempted, because a statute has been violated, because stain has been thrown upon the robes of justice, and the character of an honored gentleman unjustly and wantonly attacked, we trust that all the punishment which the law of libel permits may be legally visited upon the traducers of JOHN W. NORTH.

THE EVENING NEWS  
GOLD HILL, N.T.

July 29, 1864

**That Load of Sulphurets**

Some days ago we mentioned a load of valuable sulphurets sent from the Gould & Curry mine to Judge North's mill *by mistake*. We gave no names at the time, and Mr. Bonner the Superintendent of the Gould & Curry, came out in an impudent card denying the statement. The *Enterprise* of this morning contains the following affidavits:

TERRITORY OF NEVADA,                    }  
COUNTY OF STOREY, JULY 28, 1864.   }

John A. Adams, being duly sworn, says: I am Superintendent of the Chollar mine. About two months ago a Mr. Loomis, who I am informed is the brother-in-law of Judge North, and a partner of his in the Minnesota Mill, came to our mine to try and make a contract to sell us timber. While there we showed him some specimens taken from our mine. While examining them Mr. Loomis stated that a short time before their (Loomis & North's) mill had by some accident received from the Gould & Curry mine five or six tons of rock as rich as certain specimen at which he was looking. This specimen was almost pure sulphurets, and would assay same \$1,500 or \$2,000 to the ton. He stated that their mill was crushing Gould & Curry rock on shares, and that this load of five or six tons, was, by mistake as he thought, set to them to crush in this manner. I laughingly remarked that it was lucky to have such accidents happen, or words to that effect.

J. A. ADAMS.

Subscribed and sworn to before me, this 28th day of July, A.D. 1864  
N. W. WINTON,  
County Clerk of Storey Co., N. T.

By THEO. HALE, Deputy Clerk.

# THE EVENING NEWS

GOLD HILL, N.T.

July 29, 1864

## The One Man Power

We spoke yesterday of the extent to which one man might injure a whole community, and swamp a State in poverty and bankruptcy, and gave, as a case in point, the condition of things to which this Territory has been reduced by the disturbed functions of Judge North's animal economy. The space in our columns which we were able to devote to that matter yesterday, was inadequate to a complete exhaustion [sic] of the subject, and as it is one of no small importance to the community we propose to take it up where we left off. We had shown to the people the indisputable fact, that the vast interests of this Territory which were and are involved in the immense number of suits pending in the District Court of this county, had been, when weighed in Judge North's balance against his private pecuniary interests, compelled to kick the beam. That instead of resigning when he found the state of his health (?) forbade his farther occupancy of the bench, and permitting the appointment of another Judge who might proceed with the important business of the court, he favored his private interests and calmly contemplated the ruin to the Territory which would be the consequence of closing the court – and closed it. We said that powerful interests, (identical with his own,) urged his tenacious hold upon the office. His *peculiar views* upon the principles [sic] involved in the mining suits pending in his court, rendered him an indispensable incumbent of the judgeship, in the estimation of the Gould & Curry, the Potosi, the Savage, the Burning Moscow and other wealthy litigants, and their interests were, of course, adverse to his resignation. Their attorneys would, of course, be the last to ask for his resignation. Bill Stewart, although he did manage to muster courage enough last winter to question Judge North's honesty, somehow or other seems to have subsided very suddenly when the resignation was talked about. What Gould & Curry *rock* is to Judge North's mill, is Gould & Curry *coin* to the trousers' pocket of the big red-headed lawyer of the Gould & Curry. The triumph of the Gould & Curry in its litigation, was as good as a check in blank for Bill Stewart on the Treasurer of the Gould & Curry. Bill Stewart, love him as little as he might on the outside, could not for his client's sake and his own, spare Judge North from the bench. To each of the companies which we have named, Judge North, *without* a term of court, was better than any other *who would hold court*; and as the man said about the Chinaman, "thereby hangs a tale." There is a certain writ, issuable by our courts, known as the 'writ of injunction;' and as many of our readers may, happily

for themselves, be so unlettered in the law as to not know the use and operation of that writ, we will briefly explain. The application for this writ is made to the Judge alone, and its granting or its refusal is a matter of discretion with that functionary. He is the sole judge of the justice or the injustice of the proceedings. *If the arguments are sound and the reasons weighty*, he issues the writ. This is before the trial, and before the merits of the case have been traversed. The operation of the writ is to effectually close out one of the parties to the suit *until after the trial*. It allows one party to work exclusively the disputed ground, and make it a criminal offense for the other to remove a pound of rock therefrom. At the present time these are several of the most important mining companies in the Territory tied hard and fast by these writs of injunction, and how many more of the lesser importance we are not prepared to say. At the instance of the Gould & Curry, the El Dorado, the Simaloa and the North Potosi are thus bound; the Potosi has the Chollar by the throat in the same manner; so has the Burning Moscow the Ophir, and the Savage the North Potosi. Chained and fettered by these writs, must these companies remain, until, by the grace of God and the will of Judge North, the mind and bowels of that functionary cooperate to permit a final adjudication of the several suits pending between the parties. For all present purposes, the operation of these writs are equivalent to a final decision to the parties in whose favor they operate. Consequently, the longer the trials are postponed, the better for those parties; and if it should so happen (which is not impossible,) that Judge North should live out his entire official term, and should chance at each successive term to suffer from his present indisposition, the parties in possession will have achieved their purpose *without any trial at all*, for by the time there will be nothing left of the disputed ground to have any trial about. Now, we do not propose to say anything about the merits of any of the above cases or as to whether these injunctions ought or ought not to have been granted – for the simple and very good reason that we don't know anything about it. But we do know that those parties against whom these writs are in force, are entitled to a speedy trial of the merits of their respective cases, and that the interests of the whole community earnestly demand that mines of such vast importance as those we have mentioned as well as the hosts of others similarly tied up, and which constitute the bulk of the resources of the country, should be decided to belong to somebody, and should be in process of working and employing hundreds of now idle men, and developing the now locked up resources of the Territory. We further say that when all this mighty interests depends upon the gracious pleasure of the sanitary condition of *one man*, and that man willfully protracts the period of calamity, he is wielding his *one man power* to an extent that is not only repugnant to every principle of free government but is *criminal*; and when that power is wielded for his own benefit or for the benefit of any particular set of men, such use of power is *corrupt*, in the strongest, fullest, most outrageous sense of the word. The facts above stated are

facts, and Judge North made these facts. The conclusions from these facts are our own and we submit them to the people, confident that they cannot fail of an endorsement by very candid, thinking citizen of the Territory, whose judgment is not warped by the favorable operation of the facts above stated and of which we, in the names of an outraged people complain.



# THE EVENING NEWS

GOLD HILL, N.T.

July 30, 1864

## Brothers-In-Law

There are several objections to the married state, some of them so formidable as to deter many cautious men from entering thereinto. Among these may be counted the chances a man runs on his wife's relations. There is, for instance, a general prejudice against mothers-in-law, whether well or ill-founded, we are not prepared to say. There are, also, objections against "marrying the whole family." If, however, there is one relation which, more than another, goes to offset the evils of marrying into a large family, that relative is – a brother-in-law. It frequently occurs, in fact there is nothing more common than such a circumstance, that a man requires a sort of wooden man, a lay figure, as it were, upon whose shoulders to spread certain garments, a cloak if you please, that would not look well on one's own proper shoulders. The bachelor, or the married man who has no brother-in-law, has, in such case to trust his welfare and happiness in the hands of a stranger, or to create a supposititious personage, such as John Doe, Schermerhorn's Boy, or Cheeks the Marine. The three latter personages are inconvenient, inasmuch as they cannot be produced in the flesh, nor make and subscribe to affidavits. He, however, who has a brother-in-law is all right on the main question, or in the vulgar vernacular, is "all hunkey." [sic] We can illustrate our hypothesis by reference to two distinguished instances in our own Territory. Judge North has a brother-in-law, to whom we have occasionally referred in the past, and who will not be entirely lost sight of in the future. The figure that he has cut and will continue to cut in Judge North's fortuitous grinding of sulphurets for the Gould and Curry, is an elegant illustration of the beautiful uses to which a man, who is on the bench, and superstitiously supposed to be above dirty work, can convert his brother-in-law. The beauty and complete working of the automaton is marred, in this instance, by the inability of the puppet to keep its mouth shut. It may perhaps be considered somewhat of a coincidence that *two* of our Judges should be similarly blessed in the possession of the article of brother-in-law. The coincidence is still more striking when it is ascertained that both of these convenient relatives are peculiarly adapted to transactions in quartz – a business that appears to be, in this Territory, inseparably connected with judicial functions. Such, however, is the fact, remarkable as it may appear. Not only has Judge North a brother-in-law, available in quartz transactions, but so has Judge Turner. Ordinarily, the operator in argentiferous rock has either a mine where the same is excavated or a mill

where it is ground. Judge Turner had neither of these, but with talent and a brother-in-law, all obstacles can be surmounted. Turner's brother-in-law, known among men as "Johnson," has been and may be still, an operator in sulphurets. Without either mill or mine, Johnson has been able to do a "Custom-House business" in quartz, that is calculated to excite the envy of miners and mill-men who have no brother-in-law on the Supreme Bench. Johnson was able for some months to constantly purchase, from the Gould & Curry company, rock, which he has been able to re-sell *in transitu*, to wit, on the wagon, at a profit of from five dollars to twenty dollars per ton. To state that Judge Turner ever received the whole or any portion of these handsome profits, would be saying what it would be decidedly difficult to prove. It is fair to suppose however, that the Gould & Curry having done this handsome thing by Johnson, which they certainly would not have done by anybody else, Johnson could not do otherwise that use his *influence* with his brother-in-law, the Judge, whenever the Gould & Curry might need a friend on the Supreme Bench. Don't you *see*? Men of dull comprehension may not be fully struck with the full force and beauty of the idea but it strikes us as a very neat thing – in fact, we may say, a *big* thing. Whether North first taught this brilliant idea to Turner or Turner hatched it up and confided it to North, we are unable to state. If it was the original and simultaneous offspring of the brain of both it is only an illustration of the remarkable fact that two great minds will occasionally produce the same idea at the same moment of time, – "magnetic sympathy" as it were. How wonderful is it then, that nature in carrying out her great and wonderful laws of harmony, should have provided both these judges with brothers-in-law! Indispensable brothers-in-law! The statement of these things may be somewhat astonishing to the stockholders of the Gould & Curry, and they may perhaps cease to wonder why dividends have decreased, and begin to wonder that there ever was a dividend at all. They may, perhaps, be brought with other of their fellow-citizens, to the desire that the bench of the Territory be rid of Judges who have quartz-operating brothers-in-law.

# THE DAILY UNION

VIRGINIA, N.T.

July 30, 1864

## **Truth and Honor Triumphant**

About two weeks ago, as the citizens of Storey county are well aware, the Territorial Enterprise made a ferocious assault upon the Supreme Judiciary of Nevada. Daily, since the opening yell, that paper has continued its anaris [sic] and growth, until the entire community has become disgusted at the exhibition, and now turns with loathing from the disgraceful scene.

The especial mission of the Enterprise was unquestionably to drive Judge North from the bench. Its desultory howling on the trail of Judges Turner and Locke demonstrates that the whine about public justice, purity of the bench, untainted ermine, and all that sort of thing, was all a mere sham. And intended from the beginning to cover the more secret, and to them all important, design of ridding their employers of that stern integrity and unbending firmness personified in the countenance and character of John W. North.

Judge North, as we know, against the advice of some of his personal friends, came forth from his retaricy [sic] and confronted his accusers. This he was induced chiefly to do by a leading article published in this journal, recommending that course, and promising, in the event of his innocence, to stand by him as one of his vindicators.

It is the duty of every conductor of the public press (and to ourselves one of the chief pleasures of our editorship) to defend the innocent, the calumniated, and to stand by the oppressed.

Whenever and wherever we see editors prostituting journalism for the purpose of gratifying personal revenge, or stabbing private reputation, there shall we be found denouncing the scheme and holding up its perpetrators to the just scorn of the world.

We shall not pause to ask who the columnist person may be – whether public official or a private in the ranks – any more than we shall be drawn from the performance of duty, by measuring the power of the slanderer, for the UNION shall be hereafter, we trust, as it has been in the past, no less the shield of innocence, than the courage of guilt. Before we would open our columns to the propagation of falsehood, and convert

them into a common sewer for the drainage of the filth of the entire community, we would quit the profession of publishers, and abandon editorship forever. Before we would crowd our columns, day after day, with refuted slanders, and exploded lies, we would have the decency, like Judas Iscariot of old, to hand ourselves up as an example for future generations.

Unlike the venomous persecutors that are now prowling on the path of Judge North, and endeavoring by spurting their froth and fury upon his robes, we shall continue to pursue our own career as an impartial editor, and expose the meanness and malignity of his assailants.

Our purpose is to deal with *facts*, not assertions; with *proof*, not defamation.

We have called for proof of alleged facts, published in the columns of that immaculate paper known as the Enterprise. Says that paper: "They," meaning ourselves and our neighbor upstairs, the Herald, "*vauntingly* [sic] *demand facts and an accuser*. Facts and an accuser came, facts which they dare not deny, and accuser whose responsibility they dare not questions." But *what* facts? and *who* is the accuser? If by "facts" the Enterprise refers to the stale old slanders rehearsed by Stewart, discounted by Baldwin, and repudiated by Hardy, facts distinguished for being nothing but fictions, and the offspring in the mind of one accuser of "*unsustained* [sic] *appearances*," in that of another "*of passion and excitement*,"—facts that are falsehoods; then, too, Judge North, by his bold challenge, evoked *facts* to grapple with. If by "facts," the Enterprise alludes to the statement contained in its columns that Judge North crushed rock for the Gould & Curry mine at rates better or different from others, then the public denial of the Judge and the card of the Superintendent give it *the lie direct*. If by "facts," the Enterprise makes reference to that chronic charge, which for some days past has overburdened its pages, that Judge North was over at any time, under any circumstances, or in any case existing or contemplates, the attorney, counselor or adviser of John. H. Atchison—then we ask the attention of the public to the following cards of John H. Atchison and Peter Rice, both well know citizens and honorable men:

VIRGINIA, JULY 29, 1864.

TO THE EDITORS OF THE UNION: — My attention has just been called to an affidavit, published in this morning's Enterprise, purporting to have been made by one George Roberts, in which the following passage occurs: "About three months ago, and during the last session of the Supreme Court, J. H. Atchison stated in my presence that Judge North, previous to his appointment as Judge, acted as attorney for him (Atchison) and his partner (Rice) in the case of Haskell, Administrator of estate of Blodgett vs. Atchison, then pending in the District Court for that county.

In reply to the charge made therein, I have this to say: I deny most unequivocally, that I ever stated to said Roberts, or to any one else, in his presence, or elsewhere, that Judge North ever acted as my attorney in the case of Haskell vs. Atchison; and furthermore, the statement of the fact itself that Judge North ever did act for me as my attorney in that case, is entirely false.

Possibly, Roberts may have heard me say that Judge North was the attorney of the Washoe Mining and Manufacturing Company, in which I am a stockholder, as well as Peter Rice and Judge North himself. Rice is not now, and never was a partner of mine in the Blodgett interest, in the Potosi Company. The assertion, therefore, that I claimed Rice as my partner in that case is like the balance of the charge, unfounded.

J. H. ATCHISON.

VIRGINIA CITY, JULY 29, 1864.

TO THE EDITORS OF THE UNION – GENTLEMEN: An affidavit published in the Enterprise of the 29th inst., and subscribed to by George D. Roberts, has been shown to me, in which my name appears in connection with a charge against Judge North, that he had acted as *my* attorney in the case of Haskell, administrator of Blodgett vs. J. H. Atchison.

Months before the institution of that suit I sold out my entire interest in the Blodgett claim to John H. Atchison; consequently Judge North never did and never could have been my attorney in that case. But I go further, and assert most positively that Judge North never was my attorney in that matter when I did own it.

If Mr. Atchison ever made any such statement as that attributed to him by Roberts – and which I do not believe – he is laboring under a great mistake, which those who know him will unite with me in believing he is not apt to make.

Mr. Atchison never was my partner in the Blodgett interest whilst I owned it, and since I sold to him I have never been interested with him. Whilst I was owner the interest was not in litigation, and before the litigation commenced I had sold out.

PETER RICE.

Storey County as – Peter Rice being duly sworn, deposes and says that the facts stated in the foregoing card are true.

Sworn and subscribed to before me this 29th day of July, A.D. 1864.

G. A. KING, District Clerk.

If, however, the Enterprise means to chronicle as facts in the case, unfounded assertions made by the conductors of that *◇◇◇*ing, frothy and retromingent [sic] sheet, against the purity and honor of the Judge, then all

we have to reply is this – that were those fellows to pile up their agonized utterances as high as Mount Davidson, or dig the pit of their calumnies as deep as the caverns of Avernus, from which they exude, not one honest man could they convince, nor one sensible man delude.

A fact is not the hot coinage of an editor's brain, nor the flippant assertions of his tongue. And when the Enterprise *ex cathedra* declares "Judge North is corrupt, and we know it;" "Judge North was Atchison's attorney, and he dare not deny it;" "Judge North got rich by crushing Gould & Curry ore, and rewarded his benefactors by deciding cases in their favor" – the mere declarations are not facts nor legal testimony to prove facts. At best they are the delusions of a gangrened brain, jaundiced by envy or weakened by infatuation.

But who are the accusers of Judge North? He invited them to come out from behind their masks and anonyms, and over a responsible signature to make their charges. The Enterprise says now, the Judge has found an "accuser whose responsibility he dares not question." Where is he; show us the man, not the myth. Give us a name, not a voice without a "local habitation."

If the Enterprise means by an accuser either W. M. Stewart, Alex W. Baldwin or James H. Hardy, why does it not say so, and show its hand. This, however, would not suit its stealthy purpose, for each one of those gentlemen over his own signature, politely declines the combat and backs down and apologizes.

If the Enterprise means by an accuser, the street-corner scandal-mongers who are hired to defame – or that corrupt public sentiment, which listens to slanders for the purpose of calumny, and deals in rumors to prove its own existence, then a struggle with such opponents would be a battle with the wind-mills.

But if the Enterprise intends to insinuate that it, the Enterprise, is Judge North's accuser, and that the Judge ought to appear before *its* high tribunal, and put in his plea and go into his defense, then we would gently insinuate that such an accuser would be required to produce credentials of good character itself – for, after all, a newspaper man, who sets himself up as a sort of "guardian angel of judicial purity," is nothing more than one man – and sometimes a very mean specimen at that. We are afraid that no responsible gentleman in this entire community would be willing to endorse any charge made by the Enterprise. It would be hard to think that Messrs. Baldwin or Stewart would do so, after the direct insult offered to them both in the day before yesterday's Enterprise, wherein they are informed that this community have no reliance in their honor, and that their "*equivocal position*" towards Judge North, renders them incredible.

Well may these unfortunate exclaim “God save me from my friends!” So long as we imagined Judge North’s accusers were men earnestly pursuing what they believed to be the path of patriotic duty, we felt called upon to explain or deny facts and statements which could be easily shown to be false or frivolous, and to refute arguments that we knew to be weak.

But, if after all, it turns out that the whole scheme has been concocted in the shallow pates of the Enterprise people, and the editors of that dainty periodical turn out be Judge’s accusers, we shall at once to retire from the controversy, on the ground that charges emanating from that source are unworthy of the slightest notice, and can have no injurious effect upon the standing of any honest man.

It was the power *behind the throne* we were after, but should there be none, then we counsel the Judge to meet insolence with unperturbed silence, and treat such calumny with a cold contempt.

# THE EVENING NEWS

GOLD HILL, N.T.

August 1, 1864

## A “Strong” Argument

An “injunction” is a big thing, and, in fact, *the* thing in a country where owing to chronic derangement of the bowelary [sic] system of the Judge, it is impossible to obtain the trial of a case upon its merits. The merest ◇◇◇ in the legal profession will perceive that the party who can obtain an “injunction” and can cause the Judge to refrain from dissolving it, has got the game in his own hands, and never will allow the case to come to trial at all, not if he knows himself intimately. There are in this Territory many attorneys whose knowledge of practice is derived from their experience in States and Territories where the “rules of Court” are slightly different from those prevailing here. For the edification of such limbs of the law, we will give an insight into the *modus operandi* of obtaining the important writ, which may insert a flea into the auricular organ of such lawyers as have clients the proprietors of argentiferous sulphurets. A “precedent” is a good thing to help out a “case lawyer,” and we will furnish a valuable one. The issuance of an injunction in favor of the Gould & Curry and against the El Dorado Company, is a matter of record, but the manner of its obtaining is not. There is an outing void which we propose to fill. When the Gould & Curry applied for that writ, Charles Strong, the Superintendent, went with his attorney to North’s room. The attorney stated his business, saying that he desired an injunction against the El Dorado Company. North turned to Strong, and said that he was getting very poor rock at his mill, and was not getting it regularly, Strong replied that he should have it more regularly and of better quality. North said, “Well, there is my man” (pointing to a person who was near the door), “and he will attend to it.” Strong went out and went with the man to the Gould & Curry dump. In about twenty minutes they came back, and “North’s man” said it was “satisfactory.” In a few minutes afterward, Judge North granted the injunction desired by the Gould & Curry. “A nod is as good as a wink to a blind horse,” and recently arrived attorneys will learn from the above “little story,” what a *strong* argument is before Judge North at chambers.



# THE DAILY UNION

VIRGINIA, N.T.

August 1, 1864

## J. W. North

VIRGINIA DAILY UNION: Under the above caption, in a leader of the 24th of July last, defending the fair name of Judge North, you say among other things, “our columns are open for all respectful and well-vouched communications” concerning the conduct and propriety of Judge North in the course pursued by him while on the bench. Be kind enough, then, to insert in your columns the following:

VIRGINIA, JULY 30, 1864

Hon. J. W. North – Dear Sir: A card over your signature, which appeared in the VIRGINIA DAILY UNION on the 24th day of July last, was perused by me, and I must say that the bold and defiant manner with which you flung down the gauntlet to your accusers was well calculated to make every individual feel, who read, that you were a wronged and persecuted man, unless that individual was in possession of facts which proved the contrary of the position there and then assumed by you. I naturally, in common with many others, supposed that all further attacks upon your judicial career were at an end, and I turned with pride to my past acts in defending you, and with no little satisfaction in calling to my mind the interview had with you at your chamber, sometime in the early part of the present year. Do you remember my short visit and the eminent satisfaction I received from the pledge you made me? I will assure you that at no moment of my life was I more deeply impressed with the idea that amid the multiplicity of corruption and temptations of vice, there may be an honest man. I was impressed also with the belief that you were that man. On that occasion you remember you had but a few moments time, and I briefly told you that it had been reported by men *supposed* to know all the secrets of the Potosi Company, that they could get a peremptory injunction against the Bajazet & Golden Era Co., from Judge North, at any time they chose to ask it; that such reports carried the idea of corruption along with them; that I did not believe them; nor did my friends believe them, though it was exceedingly annoying to those on the other side of the mountains to hear these reports; that they had written me on the subject; and, to show you the high estimation in which they still held you as a man of purity and honor, I showed you one or two letters, which you rapidly glanced over, passed back to me, and said:

*You can assure your friends, that no peremptory restraining order closing the operations of your mine, or of any other active mine, will be granted by me while upon the Bench, unless the parties first have an opportunity to be fairly heard, and then I should grant an order with great caution and reluctance.*

These, if not the exact words, embrace the idea you gave me on the occasion. You gave also your reasons for the above remark in such terms of candor and seeming honesty, that I could only believe that you were an honest and upright man – a pure and impartial Judge. I so wrote my friends, as I had often done before, only I insisted that all the charges against you must be false – for such seeming candor and honesty could not be less than the essence of these representatives of purity's self. I left you with this impression, but my good Judge how was I startled at my own belief on reading the following article, which appeared in the columns of the Virginia Daily Enterprise, July 30th, in regard to the very claim of which you gave me the above assurance – a statement which on diligent inquiry I find to be true.

# THE DAILY UNION

VIRGINIA, N.T.

August 1, 1864

## **Judicial Propriety**

The following facts have been laid before us by members of the Bajazet and Golden Era Mining Company, who think they have been most unfairly dealt with by the Judge of the First Judicial District. We will state the facts as given to us, and submit to the Bar of this Territory whether or not the conduct of Judge North therein has been unprofessional – the laity as well as lawyers can judge whether or not such conduct has been unfair and partial.

Upon the 20th of this month the Potosi Gold and Silver Mining Company applied to Judge North, upon a complaint filed, for an order to show cause why an injunction should not be granted restraining the defendant, the Bajazet and Golden Era Company, from entering or working upon certain mining premises in dispute between the two companies, and upon which the latter has for two years or more been working. Judge North granted the order to show cause and fixed the hearing for Tuesday, the 26th instant, at 10 a.m. The Judge remained in the city until about an hour previous to the time fixed for the hearing, and then, without any notice to the defendant or its attorneys, left in a carriage with his family. At the hour appointed for the hearing, defendant's attorneys went to Judge North's room and found him gone, and the attorneys of the Potosi not in attendance.

On the 28th instant the plaintiff's attorney went to Washoe, and without notice of any kind to the defendant, procured from Judge North a new order to show cause, fixing the time for hearing on the 8th of August. At the same time a restraining order was granted preventing the defendants until the further order of the Court from entering upon or working the premises in controversy, and a referee was appointed by whom the application for injunction was to be heard. All this was done ex-parte; and without any notice to the defendant or its attorneys. The attorneys of plaintiff returned from Washoe on the 28th, but did not file the orders until the 29th. Shortly after the filing, the Bajazet parties having ascertained the character of the papers, telegraphed to Washoe to ascertain the whereabouts of the Judge, with the intention of applying for a dissolution of the restraining order. They received an answer stating that he (the Judge) had left for Carson, upon which they immediately started for the latter place, and upon their arrival found that North had passed

through and was on his way for the Big Trees, in California, with the intention of not returning for two or three weeks.

The result of this proceeding is that until such time as Judge North sees fit to return and hear an application to dissolve the restraining order, the Bajazet are compelled to desist from working their mine, or from even entering their tunnel through which they have for a long time been taking out ore.

We carefully avoid in this, as in other cases pending in the Courts, any expression of opinion as to the relative rights of the claimants, but we entertain a very decided opinion as to the conduct of the Judge in this transaction. We cannot consider it otherwise than as an outrage to grant *ex parte*, and without notice, an order suspending the entire operations of an active mining company until the further order of the Court, and then by leaving the Territory to defer for an indefinite period the opportunity of applying for such further order. Besides, the times and manner of the several acts mentioned indicate to our mind a deliberate purpose to bring about precisely the result which, by those acts and the operative strategy of the opposing party, has been obtained.

We have less hesitation in arriving at this conclusion for the reason that sufficient facts have heretofore appeared in our columns to show a very intimate relation between Judge North and the Potosi Company, and to convince us of a fraudulent collusion between them.

In your "Card" above referred to, you say: "Let the question be upon my conduct as a Judge, and let the allegations be made definitely and distinctly." I make no allegations, but my dear Judge, be kind enough to reconcile the above, that I may not lose my former good opinion of your integrity and honor as a man.

With great respect I am,  
R. D. FERGUSON.

## THE EVENING NEWS

GOLD HILL, N.T.

August 2, 1864

**A Shot in the Rear**

When Judge North found the roar of artillery and the rattle of small arms too hot and heavy for him, he decided on a change of base and sought the tall timber of the Big Trees, where safely ensconced behind the lofty range of the Sierras, in solitudes never invaded by a “hireling press” he could bind up his wounds and study out deep plans to cope with his “persecutors.” In his hasty flight he forgot to spike his own guns and lo! This morning’s *Union* fires a screaming shell of huge caliber and tremendous range that will burst upon him even in his remote intrenchments [sic]. —R. D. Ferguson, Esq., a gentleman whose most implicit faith and confidence were pinned on the “unsmirched [sic] skirts” of the Judge, turns this unspiked [sic] Parrot gun upon him and declares *his* belief in that functionary’s honor broken and shattered. Mr. Ferguson takes the statement of Saturday’s *Enterprise* concerning Judge North’s action in the Bajazette and Golden Bra case, a statement that covers the Judge with infamy, and loads the *Union* gun withal. He republishes that statement and says that “on diligent inquiry” he finds this statement to be *true!* How does this shot ring in the ears of the people? Does it strike them that there is something more in all these dark charges of fraud, corruption and oppression than mere personal hatred and persecution? Or do they think that the *Union* has come over to the ranks of the “hireling press” and that R. D. Ferguson has enrolled himself among the “assassin slanderers?”

# THE DAILY UNION

VIRGINIA, N.T.

August 2, 1864

## Communicated

VIRGINIA DAILY UNION: – In your issue of this morning, we find an article headed J. W. North, and signed by R. D. Ferguson, which has a tendency to do injustice to Judge North. We deem it proper that a full statement of the facts should be made:

On the 25th day of May, 1863, a suit was instituted by the Potosi company vs. The Bajazet company; and an order to show cause why an injunction should not issue was granted against the Defendants, the Bajazet company. By an amicable arrangement between the parties, the hearing of the same was postponed to an indefinite time; by such agreement the original order lapsed.

Some time last month the undersigned, as Attorneys for the Potosi company, applied for and obtained another order directing the Bajazet company, to show cause on the 26th day of July, 1864, why an injunction should not be granted as prayed. Between the 20th of July and the 26th day of the same month, our firm called upon one of the Attorneys of the Bajazet, company to see if we could agree upon a referee. Several names were suggested to the parties, but no final agreement was made. On several occasions, both before and after 26th day of July, our firm requested the Attorneys of the Bajazet company to advise their clients to desist working upon the ground claimed by the Plaintiffs, inasmuch as we did not want to have any trouble with their company. And at the same time we told said Attorneys, viz: D. W. Perley, Esq., and J. H. Hardy, Esq., that if they did not cease, we would apply to Judge North for a restraining order. Both of said gentlemen, in a spirit of commendable fairness, said they thought the matter could be thus arranged. Mr. Perley said they had telegraphed to certain gentlemen of the Bajazet to come to Virginia. They requested us to defer any action in the matter until these gentlemen arrived – saying at the same time they would be here at a certain time. We waited until the day named, and for some few days afterwards but they did not come. In the mean time, the day prior the hearing of the order to show cause, viz: the 26th day of July, had passed, and in our opinion the order had lapsed – consequently we had to apply for another order, which we did, and coupled with it a restraining order, which Judge North granted upon the condition that we would execute a bond in the sum of fifty thousand dollars. We did not return from Washoe, where we saw Judge North, until five o'clock in the afternoon. After that we had to find men that were worth sufficient to execute such a bond. We presume, every body, however much prejudiced, will acknowledge that a fifty thousand dollar bond cannot be procured in a few minutes. On the night of our return, we succeeded in obtaining one bondsman, the next morning we obtained the other, and in a few minutes after the

bond was completed we filed the papers; there was no disposition on the part of any person to conceal the action of the Potosi Company.

The order granted by Judge North for the Potosi Company, is one of almost weekly occurrence without respect to parties. It is just such an order as can be obtained by any company under a proper showing as a legal right. The Bajazet Company has just obtained, from Judge North, an order to show cause, and from Judge Ferris, in connection therewith, a restraining order against the Potosi Company. Now, whether or not the Bajazet Company asked Judge North for a restraining order, we do not know.

Under this statement of facts is it not unjust to charge Judge North with anything unfair?

Besides, it is known to several gentlemen in the city that the day before Judge North left Virginia City he fainted at the table and had to be carried to his room, which renewed attack of illness was the reason he left Virginia for Washoe, and from thence went to the mountains for the benefit of his health.

Again, upon our arrival at the residence of Judge North, in Washoe, and before he knew the object of our visit, he informed us he would leave for the mountains the next morning.

The above we have written in justice to Judge North, and with no intention to reflect upon any individual or company, inasmuch as we do not deem the press a proper medium for individual complaints or the trial of law suits.

The respective rights of litigants must be settled before another tribunal.

Respectfully,  
REARDON & HEREFORD

## THE EVENING NEWS

GOLD HILL, N.T.

August 3, 1864

**Stand from Under**

An evening paper intimates that the Supreme Court, which meets this week, will take revenge upon those who accuse the Judges of corruption. What are we to understand by this? Are the alleged criminals going to try their acousers [sic]? Do they mean to punish us and others for contempt of Court? We are willing the Judges should sue us for libel, because then we will have a chance to meet them on grounds of equality; but if they want to punish us for "contempt," let them sail in. We plead guilty in advance to holding all three of the Judges in the most thorough contempt.

– *Enterprise.*

We concur.



THE EVENING NEWS  
GOLD HILL, N.T.

August 3, 1864

**The Vote on the New Constitution**

The *Union* of this morning publishes the following dispatches concerning the time for holding the election on the new Constitution:

To His Ex. ABRAHAM LINCOLN:

Was the Enabling Act for the admission of Nevada Territory into the Federal Union, so amended as to provide that the submission should be made on the first Wednesday of September, A.D. 1864, and if not, please telegraph the day when the vote is to be taken on the Constitution, for its approval or rejection, by the people?

J. W. NYE,  
Governor Nevada Territory.

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WASHINGTON, JULY 28TH, 1864

HONORABLE J. W. NYE:

The amendatory act of May 21st, fixes the First Wednesday of September instead of the Second Tuesday of October, to submit the Constitution to the people of Nevada. Copy of the Act by mail.

W. F. SEWARD, Ass't Sec'y.

# THE EVENING NEWS

GOLD HILL, N.T.

August 3, 1864

## Unpublished Chapters

As in the lives of all great men and the histories of all great nations, there occur a multitude of tyrants which are omitted by historians, yet are of vast importance as influencing, controlling, and accounting for the more startling and salient points in those histories and biographies; so there are in the history of the litigation of this Territory many facts which the future compilers of that history would fail to find upon the record. The private memoranda of the judges, the litigants, the attorneys, the court-brokers and other cotemporaneous personages must be patiently and sagaciously examined, compared, and put in connected and readable shape, before the world will be fully posted as to "Proceedings in the Civil Cases in the Courts of Justice in the Territory of Nevada," as the same were conducted in the "dark ages" of Silverland. No single case would serve to give a complete and lucid idea of the general system of practice; but if one were to be selected as such an example, that of the Chollar Co. vs. the Potosi co., would, perhaps, answer as well as any upon the Calendar. This celebrated suit was commenced in December 1861, tried twice by a jury, and finally decided in the Supreme Court, in January 1863. Judge Mott, then on the bench, both in the District and Supreme Courts, showed a remarkably strong bias in favor of the Chollar Co. and incurred the suspicion of belonging to that Company. In the Supreme Court, Judge Turner wavered for some time, was pulled and hauled by both sides and finally went for the Chollar. This did not end the litigation. Outside of the ground named in the first judgment, the Potosi had found a rich chimney which was also claimed by the Chollar. To succeed in this second controversy, the Potosi *must* get rid of Mott, and in his place secure "a friend." The story of the \$25,000 paid by Atchison, of the Potosi to Judge Mott, and Judge Mott's resignation, has been ventilated for days past in the Virginia papers. Mott's resignation was kept secret in the Territory until the appointment of North. North may not have known who "persuaded" Mott *off* the bench, but he knew whose influence put himself *on*. Since his appointment to the bench, North has been to the Potosi, what Mott was to the Chollar. — The Potosi company have never been denied anything by Judge North which they have asked at his hands. In 1863, several cross-suits were instituted between the Potosi and Chollar, relative to ground east of that formerly owned by the Chollar Co., but not yet reached for trial. In March of this year, both parties applied for injunctions. After a hearing, North decided in favor of the

Potosi and granted that company the injunction. This decision surprised nobody who knew the relations existing between North and that company. It was in the Supreme Court that the fight has to be fought. The Chollar company appealed, and in April the case was argued and submitted in the Supreme Court. It was universally understood that Turner was for the Chollar and North for the Potosi. [The Grass Valley company was in some way mixed up in that suit, and just at that point comes in a story that our authority does not warrant us in asserting the truth of. It is rumored that the Grass Valley company had secured the services of Judge Turner, by the payment to that functionary [sic] in cash, exclusive of brokerage, the sum of \$20,000. This charge, we are satisfied, cannot be directly proven, although the recent expose of the accounts of that company show that a vast sum of money has gone *somewhere* and cannot be accounted for]. North and Turner being therefore a dead "stand off," the whole strife was for Locke. At different times both parties supposed they "had him," but his stupidity and want of back-bone rendered all contracts doubtful. North and Turner both plied him for their respective patrons. The night the argument closed, and while the Chollar side was arguing, North declared himself "too ill to sit" and the argument closed. Within half an hour afterwards this *sick* and fainting Judge, with Locke and two others, started for a ride to the Lake, a distance of sixteen miles. This "queer break" for a sick man filled the Chollar folks with blank dismay, and two of their attorneys and two other friends rigged up a team and started in pursuit, stating that "they wanted to see who the brokers of the Potosi were, and, if possible, stop negotiations." Soon after arriving at the Glenbrook House, Wm. M. Lent, a heavy owner in the Potosi, and supposed to possess [sic] heavy financial ability, accompanied by J. S. Henning, came along (*accidentally*, of course,) *en route* from San Francisco. They appeared somewhat astonished at finding the crowd so badly "mixed," and made but a short stay. After that the Chollar party took possession of Locke – had a big supper at 11 P. M., at which North ate heartily for a "sick man." The number of hard-boiled eggs reported by our informant to have been engulfed [sic] in that invalid a stomach is preposterous, and shall not be repeated in these columns. Locke is said to have turned himself perfectly loose – got as drunk as a boiled owl – stood on his head – balanced himself on the small end of a champagne bottle – and did all those things which a jolly old judicial acrobat might, could, would, or should do when relieved from the stiff and stern trammels of the bench. They "didn't go home till morning, till daylight did appear. Doffing the motley and donning once more the ermine, Locke ornamented the bench that day; the Chollar folks in high glee thinking they "had him sure." On the day (Friday) the Court adjourned. The next day North went to Washoe with the Potosi men, and Locke to Virginia with Sandy Baldwin, one the Chollar attorneys. On arriving at Virginia, he told Sandy that he was going to put up at the International – in lieu of which he quartered himself in North's room. On Sunday he dined at the Gould & Curry office with a

Potosi crowd. (Onsertain man, that Locke!) On Monday, North came over from Washoe and had an interview with Locke at his rooms; after which, North opened the District Court.

The balance of this “strange, eventful history,” which is too lengthy for one number of our paper, and too strong to be taken at one dose, we have safely stowed among our archives and will proceed there with like a faithful chronicler, to-morrow, and as the story lengthens so will our reader’s eyes continue to “buck out,” till there shall be no lack of hat pegs in all the land of Washoe.

# THE EVENING NEWS

GOLD HILL, N.T.

August 4, 1864

## **A Brilliant Discovery!!**

If the editor of the *Sacrament Bee* is not “old smarty” himself, he is certainly old smarty’s son. Under the head of “Grand Bearing operations” that paper has the following sapient article:

Reflection convinces us that a grand bearing operation is going on over in Washoe. Seeing that from natural causes mining stocks had depreciated, several operators have combined to depreciate them still further. First they stop work on several of the best claims which have been opened and prospected; second, they divulge some very startling truths relating to the mismanagement of the mines; and lastly, that public confidence may be wholly and irretrievably destroyed, a raid is made against the Territorial Judiciary, which is denounced in the most unmeasured terms as corrupt in the extreme. It is expected that by this sort of tactics the people will become so alarmed as to refuse to touch mining stocks with a “ten foot pole,” even, and that, as a matter of course, they will refuse to pay further assessments. Of course stocks will be advertised as delinquent, but no outsiders will buy; the ring operators will thus have an opportunity, at assessment sales, to become possessed, for the mere cost of advertisement and sales, of the best mining stocks in the Territory. Having thus become possessed of the good stocks, and having, by stopping work on the mines, driven the laboring classes of the Territory into poverty, so that they will be glad to work for a mere song, the ring operators will recommence mining operations and in a short time realize fortunes. The stockholders who have paid for placing the mines in a condition for successful working are to be frightened off, and the ring operators – Trustees, Superintendents, etc. – are to be made rich. This is why Judges are abused, mining rascalities [sic] shown up, and the deuce played ◇◇◇

# THE EVENING NEWS

GOLD HILL, N.T.

August 4, 1864

## **Attorney and Judge**

We call attention, particularly that of lawyers, to the article with the above caption. It tells a tale of disgusting judicial infamy, and fully lays bare the fact asserted by Roberts, and the utter impossibility of any attempt to cloak or mitigate North's dishonesty in the transaction.

# THE EVENING NEWS

GOLD HILL, N.T.

August 4, 1864

## Attorney and Judge

(From the Enterprise of Yesterday)

Judge North is convicted. On one of the numerous charges against him on the proofs may be considered as closed, and the result is a disclosure of facts which even in a Court of Justice would compel a jury to pronounce a verdict of "Guilty," without leaving their box. The charge was that Judge North after having given counsel as an attorney in a certain litigation, afterwards sat as Judge therein, and in the District and Supreme Courts, pronounced judgment in favor of his former client. It was a grave accusation. The law as found upon our statute books (Laws of 1861, pp. 450) says: "A Judge shall not act as such in any of the following cases:

\* \* \* \* \*

Third—Where he has been attorney or counsel for either party in the action or proceeding." Not only is such an act thus prohibited by the letter of the law, but it is in its nature a flagrant moral crime, revolting to every instinct of honor and honesty. The Judge who commits it disgraces the profession with which he claims fellowship, and pollutes the ermine which he wears. We made the charge because fully convinced of its truth. Judge North had published, "let the question be upon my conduct as Judge, and let the allegations be made definitely and distinctly." We made the allegations "definitely and distinctly." That the recollection of our readers may be refreshed, we recapitulate the facts. One Blodgett was an owner, by location, of 200 feet in the Potosi claim. While the interest still stood in his name upon the books he died. One Robert Foulkes then claimed to have purchased (by verbal sale) this 200 feet from Blodgett in his lifetime. The heirs of Blodgett denied this purchase. Pending the dispute Foulkes deeded his right to Peter Rice, and he demanded and sought to obtain from the Potosi Co. (which had then become incorporated) stock for the amount of this interest. The Potosi Company refused to issue this stock, on the ground that there was doubt about the validity of Rice's title. Rice subsequently, by deed conveyed his disputed title to J. H. Atchinson. Meantime, one Haskell was appointed administrator of the estate of Blodgett, and as representative of his heirs claimed the ownership of this 200 feet, and that the stock therefore should be issued to those theirs claimed the ownership of this 200 feet, and that the stock therefor [sic]

should be issued to those heirs and not to Rice or Atchinson. The Potosi Company refused to issue the stock to either until this dispute should be decided by the judgment of a competent Court. An action was therefore commenced in the District Court of the First Judicial District, entitled "Haskell, Administrator, vs. Atchinson," to determine the validity of these respective titles. A referee was appointed, who reported the facts and recommended a judgment in favor of Atchinson; and the District Court, upon a motion to set aside this report and the judgment entered thereon, decided finally in favor of Atchinson's title. Upon appeal to the Supreme Court this judgment was affirmed. Concerning the above facts there is no dispute, and they would possess no public interest except for what follows. After stating them in substance, we charged that North, before his appointment as Judge, acted as attorney in behalf of the Atchinson title, and as such gave advice to Rice and Atchinson, and that after his appointment he did, as District Judge, pass upon the case and decide it in favor of his former clients, and subsequently participated in a decision in the Supreme Court affirming this judgment. Judge North thus accused, through the *Daily Union*, speaking in his behalf, first denied that he had ever acted as Judge upon the case in the District Court, not then disputing that he had previously acted as attorney in the matter.

This denial we met and stamped with falsity, by publishing the record of his own Court, containing the final order disposing of the case on the merits, under his own hand, and certified to by his own Clerk. Hopeless of impeaching a record signed by Judge North himself, it was next denied that he had ever acted as attorney in the matter wherein he was thus proved to have acted as Judge. We published an affidavit of G. D. Roberts, establishing this fact. In reply a card, not an affidavit, of Mr. Atchinson was published in the *Union*, in which he denies that Judge North ever acted as attorney for him in the *case* of Haskell vs. Atchinson. Rice at the same time published an affidavit, in which he denied that North was *attorney* for him in that case. Had the matter rested here the public might have remained in doubt. But while awaiting further information which should reconcile these apparently conflicting statements, Mr. Atchinson published another explanatory card, which if it does not tell all, reveals the criminality of his judicial patron in unmistakeable characters. We reprint this, that our readers may give it a careful examination:

CARD

To prevent any misunderstanding of my card published in the *Union* on Saturday last, I desire to state, that I did not say and did not mean to say that Mr. Roberts *intentionally* misstated our conversation at Carson I do not so believe. I do think, however, he was mistaken, Judge North never was either counsel or attorney for me in the case of Haskell vs. Atchinson, or any other matter. I do not therefore think that I could have said that he was. I may have said to Mr. Roberts (for I think I have said the same to others), *that Rice did consult with North as to procuring stock from the Potosi Company, on this two hundred feet*



*formerly owned by this two hundred feet formerly owned by Blodgett, and did get North to write a letter to the Potosi Company about it. This may have been the foundation of Mr. Roberts' construction of the conversation. I will further say that I never understood that North was attorney for Rice in any difficulty between him (Rice) and Blodgett's heirs. But Rice simply advised with North in reference to getting the stock from the Potosi Company. North was never attorney for Rice, as Rice sold out before any litigation was commenced.*

J. H. ATCHINSON.

Mark the history: Rice claiming stock on 200 feet of Potosi ground in dispute between him and Blodgett's heirs, consults North, an attorney practicing at Washoe, as to the means of obtaining it. North gives him advice. He (North) opens communications with the Potosi Company and writes them a letter on behalf of his client Rice. The same questions which made the advice of an attorney necessary to Rice, was the disputed validity of his title as against the representatives of Blodgett. Upon this North gives him counsel. He advocated his claims with the Potosi Company and urges an acknowledgment of this title by issuing stock upon it. What is it that he afterwards decides upon as Judge? The validity of the self same title which he had been retained as an attorney to advocate. The silly prevarications in this card and in Rice's affidavit as to whether North acted as attorney in the case are too contemptible to merit consideration. Even the statute which we have quoted provides against any such quibbling evasions by disqualifying the Judge from acting, not only when he has been attorney, but when he has been counsel, and not only in the action but in the proceeding. Such a subterfuge might serve to delude the conscience of an uneducated man like Atchinson. But a Judge of the Supreme Court to play no such trick upon his moral perceptions. No mere variance of names on the title page of the action deceived him. He knew that the point upon which he was called upon to decide as Judge, to wit: the validity of the title derived from Blodgett through Foulkes was the identical question which, while an attorney, he had been counselled upon, and upon one side of which he had expressed and even urged and advocated his opinions. Knowing this, he decided it as Judge, and doing so he stands convicted as a bold breaker of the law which he attempted to administer – a perjured violator of his oath of office – an ignominious betrayer of the honor of the profession into which he has intruded – and a foul defiler of the sacred judicial robes with which he still covers his rottenness.

# THE EVENING NEWS

GOLD HILL, N.T.

August 4, 1864

## **For State Government**

The friends of State Government met last evening at the Probate Court Room, for the purpose of making preliminary arrangements for properly presenting the new Constitution to the people at the next election. Among those who met for consultation we noted Messrs. Beebe, Benham, Corson, Foster, De Long, Fitch, Rising and Sankey of the legal fraternity. Hon. John A. Collins presided, and W.M. Gillespie acted as Secretary. Messrs. ◇◇◇

# THE EVENING NEWS

GOLD HILL, N.T.

August 4, 1864

## **Hustle 'Em Out**

The *Washoe Herald* of last night contains the following "defense" of the judges:

That the Judges have issued such injunctions is most notorious. It is a part of their duty to issue them when counsel in the cases concerned can show good cause for such action. That these injunctions have injured every branch of business in the Territory is equally true. But the blame rests with the lawyers who compel the Judges to issue them, and of all the lawyers in the Territory, Bill Stewart himself has obtained the most of these injunctions.

If this is true, and Judge North is bossed around by Bill Stewart, to the detriment of the Territory, it is time he was ousted and somebody appointed in his stead who will have a mind of his own.

# THE EVENING NEWS

GOLD HILL, N.T.

August 4, 1864

## Let Them Resign

Our intercourse with the community has satisfied us that there is an almost unanimous dissatisfaction with the present condition of our judicial affairs and an absolute loss of all confidence in the Courts so long as they are presided over by the present judges. Charges of the most terrible nature have been made upon the streets and through the columns of the press, both editorially and over the signatures of well known and responsible citizens. These charges have only been met by a feint general plea of "not guilty," or with a silence that amounts to an admission. A petition is in preparation, we are informed, and will be circulated freely among all classes of our citizens. Let every man who feels and believes that the broad charges of corruption and incapacity made against these judges to be well founded, boldly, honestly and fearlessly record that belief, upon the petition. Let the Miners League, and working men generally, who have so forcible and direct an experience of the disastrous effect of this judicial misconduct, express their desire and determination that it shall come to an end. Let them remember the words of the orator who addressed them on Monday last:

But beyond all this there is another, and more effective cause at work, potential, and extending through every section and portion of our Territory. You will find it in the deep and universal distrust of our Judiciary. Among all classes this feeling prevails. Unfortunately this conviction rests on a solid foundation of facts, and evidences undisputed and undeniable. *It is a fact, flagrant and notorious, that thousands, and hundreds of thousands of dollars have been expended in obtaining corrupt decisions from infamous Judges.* Some of our Judiciary steal into our cities by midnight, grant injunctions by which hundreds are thrown out of employment, and then, like fugitives fleeing from justice, fly before daylight from the indignation of an outraged people.

*Had the thousands of dollars which have been lavished in the bribery and corruption of the Judiciary been expended in the legitimate development of our mines, there would at this day be no complaint of hard times, and no demand for reduced wages.*

An opportunity will be offered to citizens to speak in thunder tones their direct condemnation of this outrage, infamy and wrong. Let the people speak. Let them tell these Judges that it is time to come down from the judgment seats they have too long disgraced, and to lay aside the ermine they have so foully [sic] polluted.

# THE EVENING NEWS

GOLD HILL, N.T.

August 4, 1864

## Unpublished Chapters

—WE LEFT DON JUAN SLEEPING,  
 PILLOWED ON A FAIR AND HAPPY BREAST.  
 —BYRON.

We left Judge Locke sleeping off the spree, which, as alternately the guest of the Montagues and the Capulets, the Potosi and the Chollars, he had been running “high for luck” – the Potosi having had the last say on him, at the Gould & Curry feast. On Monday afternoon, it became whispered among the *quid nuncs* that Locke was going for the Potosi, and the faces of the Chollar men were long and sad – those of the Potosi’s broad and gleeful in proportion. One or two men bought Potosi stock that afternoon “on a dead thing.” Locke had arisen from his slumbers, and, after the interview spoken of with North, got drunk as an admiral, and started for Carson in a two-seated carriage, accompanied by one of the Chollar lawyers and two others, supposed to belong to that side of the house. Locke, with the confidence inspired by whisky [sic], insisted on driving, and drove as might have been expected. He capsized the buggy over a high bank; the buggy was smashed to smithereens, and the horses ran away. The party obtained two other teams at Silver City, and started again, Locke keeping up his lick at the lightning whisky, quarreling with the teamsters on the road and hugging his companions. Arriving at Carson, the fatigued Judge retired to bed. The next morning, North arrived from Washoe, with Atchison, and *then* the way that judicial business was dispatched was caution to the Court of Queen’s Bench, the Supreme Court of the United States, or any other old-fogy tribunal. At twelve o’clock, the Immortal Three met for consultation, and at half-past three P. M., had decided *sixteen cases*. Several of the most important of these had been argued the week before, and neither Turner, Locke, nor North, had looked at the record in either of them since the arguments, and did not look at them during their consultation. As soon as the Chollar and Potosi case was decided, North left the room for a few minutes, and, it is supposed, communicated the result to the Potosi men. Lent, who had come down, left before the consultation was finished. Every one of the cases before them was affirmed. No opinions were filed at that time, but there was a big Potosi jollification that night at Dorsey’s mill, three miles from Carson, at which North is said to have been present. Immediately after this an agent of the Grass Valley Company, as is well known to the public, denounced Locke as a perjured scoundrel, having previously

notified him of his intention so to do. The next day North files an opinion – Locke concurring. By this opinion North held that record in the former action was a bar to any claim by the Chollar to the ground now in controversy. The Chollar Company were anxious not to have the decision based on this ground, lest it should be held authority for subsequent decisions on another trial, and preclude the introduction of any evidence by the Chollar Company, especially should it be tried before North. The Potosi folks were, of course, as anxious the other way. The Chollar folks remained in Carson two or three days, and stuck to Locke like a sick kitten to a hot rock, until Locke finally filed an “*addendum*” to his decision, which removed the feature so prejudicial to their case. That *addendum* is a curiosity in law, and reads as follows:

It is unnecessary to express any opinion as to the merits of this cause. Both parties may be heard upon the trial as to what was adjudicated on a former trial.

P. B. LOCKE, J.

Turner now thought he had Locke nailed, and to “clinch” him, writes and files the following:

Opposing the whole doctrine in the former opinion, I concur with Justice Locke in the views expressed in the latter clause, to-wit: that ‘it is unnecessary to express any opinion as to the merits,’ etc.,—and that on the final trial before the court and Jury, both parties should be heard in evidence as to what premises were adjudicated in the former trial, these or others.

GEORGE TURNER, C. J.

The next day, down came the Potosi folks, and North came also. North and the Potosi folks got Locke in a room and had a long talk – the Chollar men trying to get him away, and succeeding as far as prevent him from signing a *retraxit* of his “*addendum*” *that* day. But that night the Potosis captured him, and took him to Washoe. There he was kept a week under North’s tutilage, and the Potosi’s “argument” when he filed the following with the Clerk of the Supreme Court.

You are directed to strike from the files in your office, any addendum or qualification to the opinion delivered by North, Judge, and concurred in by me. Said addendum or qualification is hereby revoked by me, and rendered null and void and to be of no legal effect.

Given under my hand, this, the tenth day of May, A. D., 1864

P. B. LOCKE.

The cake of the Chollar was very cold dough. This noted case, was lengthily and elaborately argued and authorities cited were numerous. It is usual, in such cases, for Judges in writing their opinions, to enunciate the principles of law which govern the case and to cite the authorities which sustain them. In this case North has done either – and Locke “concur.” What *induced* him to write that addendum? Certainly no re-examination of the points, for the senseless jargon of that document betrays nothing of the kind, and in fact, it is well known that he made no

such examination, and then – what *induced* him to sign the *retraxit*? Thus we conclude one of the heretofore, unwritten, chapters of the judiciary history of the Territory. It is one to be read with shame by every one who claims kin with the principal actors, and with alarm by every citizen whose life, liberty and property are at the mercy of such a judiciary. It is a shameful story of judicial partisanship, imbecile weakness, and wretched vacillation; and what is worst of all – it is *true!* With the exception of that portion enclosed in brackets in yesterdays paper, concerning the rumored corruption of Judge Turner by the Grass Valley Company, and which we hesitatingly, every word of the long chapter is true and can be established by undeniable and unimpeachable testimony. What do the people think of these men, who, clothed in the robes and with the authority of Judges of the Supreme Court, can demean themselves in the shameless manner which we have recorded? A petition is now in circulation, calling upon these stained and dishonored judges to resign the position they so unworthily fill. Let every citizen sign that petition and so record his disgust and disapprobation of this corruption and infamy.

# TERRITORIAL ENTERPRISE

August 4, 1864

## Untitled

The corruption of our Judiciary has been conclusively proven. The scant robes of meretricious assertion and ingenuous sophistry have been torn from the persons of our recreant Judges, and Turner, North and Locke stand revealed before the eyes of our community in all their naked hideousness – a spectacle of festering filth so repulsive as to sicken all beholders. Corrupt, perjured and convicted before the bar of public opinion they yet dare to further outrage all the rules of honor and propriety and decency by holding on to the ermine they have basely polluted, and remaining on the Bench they have foully defiled. It has been said by a philosopher that there is an art of sophistry by which men have deluded their own consciences by persuading themselves that what would be criminal in others is virtuous in them. It is barely possible that our perjured Judges by such casuistry may have supposed themselves immaculate. Equally probably would it be for the man who commits a murder for money to suppose that he was doing society a service. Trial and conviction open his eyes at last to the error, and he seeks to atone to his Maker for his crime. Not so these Judges. Tried upon and convicted – with the sentence of condemnation upon their heads – they yet have the brazen effrontery to deny or palliate their great crimes. They hope to wear out and conquer public opinion by mendacious audacity. They are egregiously mistaken in their hope. The public cannot be hoodwinked, cannot forget cannot forgive crimes of such turpitude as those of which our Supreme Bench stands convicted. The ruin of thousands not only in this Territory, but in California, can be traced to the purchased decisions of our Judiciary. The Territory itself, its mining interests, and indirectly those of contiguous States and Territories have been almost irreparably damaged by these corrupt men, it will take years to undo what in a few short months these conscienceless destroyers have done. Yet, like Nero, they fiddle while Rome burns by the torch themselves applied. They mock at the flames. They hear the public accusation. They read the undeniable proof. They hear the public sentence. They laugh and heed it not. Dead to all sense of honor and decency; privately glorying in, although publicly denying their shame and dishonor; these Judges pretend to believe that they are victims of a conspiracy, and shutting their ears to the hoarse mutterings of the storm, hypocritically affect that the people still have confidence in them! Let the people speak. Let them sign a petition calling upon these polluted wretches to resign the office they debase. Let a document of this sort be circulated at once, so that they may



have ocular evidence of what the people think of them, and we believe it will be signed by thousands:

We, the undersigned citizens of Storey county, believing that the prevailing want of confidence in our highest judicial officers, is operating most injuriously upon all interests and classes in our Territory, and is a prominent cause of the present distressing depression in all kinds of business, and particularly of the ruinous stagnation in mining enterprises and the consequent loss of employment by our laboring population; and believing that the remedy for this evil is in the immediate resignation of the present judicial incumbents, and the appointment upon a recommendation by the people themselves, of others in their stead, in whose integrity and capacity all have confidence, do therefore request our District and Supreme Judges, J.W. NORTH, GEO. TURNER AND P. B. LOCKE, to forthwith resign their official positions.

# THE EVENING NEWS

GOLD HILL, N.T.

August 5, 1864

## A Very Short Chapter

Up from the dust of the past, let us resurrect a very short chapter in the dark history of Washoe litigation. It has been written before, it has been publicly discussed, and its facts have been admitted by Judge North; but that was some months ago, and in the bustle and change of this bustling people, the interesting episode may have been forgotten. We'll revive it and "keep it before the people."

On the 2d day of November last, the Grass Valley company applied to Judge North for an order to show cause why an injunction should not be issued against the Potosi Company. The order was granted. On the 21st day of November Judge North *borrowed from William E. Barron, the heaviest owner in the Potosi, fifteen thousand dollars.* On the 15th of December, while still owing that member of the Potosi company that sum of \$15,000, Judge North heard the argument in the case and *denied the injunction.* Is there anything in this short chapter that pervades the popular nostrils with the flavor of rat?

# THE EVENING NEWS

GOLD HILL, N.T.

August 5, 1864

## Lame and Shuffling Defenses

Through the columns of the *News*, and other papers of this county, the people of the Territory have of late been very extensively enlightened as to the manner in which Judicial matters have been conducted, and there can be but little doubt that the revelations made, have by this time extinguished the last glimmer of belief that the charges of incapacity, dishonesty and corruption are other than well and firmly founded. Could a direct vote of the people be taken upon the point there is no doubt what the popular verdict would be. This is now the third week that a steady fire has been kept up on these corrupt officials, and they have "opened not their mouths." Judge North, at the first onslaught, entered a faint and feeble plea of "not guilty" to all the charges that had been or might be made against him, and threw down his sickly challenge of "*To the Issue, gentlemen, to the Issue.*" That challenge was accepted, and Judge North has since that time had such a stomach full of that "*Issue*" that he has sickened and fled from the gaze of the people. His "sickness," that has been his standing defense and the curse of the Territory, has returned upon him in such deadly force, as to render the climate of Washoe unsafe for him, and he has buried himself in the salutary shades of the Big Trees of Calaveras. If he would but convert one of these fallen monarchs into a hermit's cell, and there pass in penitence and prayer the remnant of his days, it might be for the benefit of his soul, and certainly would be an excellent thing for this Territory. Up to a late hour of his stay in the Territory, he had a few friends – a very few – friends who were unable to say or do much in his defense, but who still entertained a sort of sympathy for his shame, – begot perhaps of association in dishonesty or of gratitude for favors received. Since his departure we don't hear much from these friends. A feeble squib appears occasionally in the *Herald* or *Union*, hardly worth noticing, and certainly doing no execution. There has been for a few days past a sort of change of base – if Judge North's defenders can be considered as having any base at all. Wretched, paltry threats of some terrible "vengeance" to be visited upon the offending Press by these puissant [sic] Judges, is a favorite peroration [sic] of articles in the papers referred to. Are the editors of those papers men who could be muzzled and gagged into silence by threats like these; and do they measure other men by their own standard? The papers which have assailed these; unworthy judges, have assailed them with facts! – Facts stern, terrible and disgraceful, and made so by the judges themselves. We have assailed them with the record of their own misconduct, and by that record they

must fall. It is barely possible that they may attempt to construe the rough statement of fact that we and our cotemporaries have made concerning them into "Contempt of Court." Be it so. Let them "try it on." We have no doubt the Sheriff would promptly imprison us if so ordered by the Court; but we imagine that it would be about the sorest job for the judge who should write the commitment that he ever undertook in his born days. So much for that idea. Another, and about the sickest, style of defense of these small-bored gods, is, that *they* are not to blame for the rascality, oppression and corruption with which their courts fairly stink; but that it is the *lawyers* who are the guilty parties! If the lawyers did not ask them to tie up mining claims for months and years and drive the mining population to emigration or starvation, the judges would not do it! If lawyers and clients did not endeavor to corrupt them they would not be corrupted! This *may* all be very good logic, but it looks very much to the man in the tree, like merely dividing up the odium and not getting rid of it. The *Union* this morning finds another "mare's nest." It shifts the responsibility and crime a peg lower still, and ascertains that it is the *witnesses and jurors* who are guilty of the rascality; that it is *their* perjury that has brought the evils upon the country, of which the people and the press complain. The idea is ingenious, but it won't work worth a "continental" as an argument, from the marked fact that these have been but *three* jury trials in our District Court this year, in civil cases, and in only *one* of them a judgment. The *Herald* and *Union* may succeed finally in establishing the fact that it is the people themselves who are corrupt and dishonest rascals, and that all the integrity and purity of the country is confined to the Judiciary and the editorial sanctums of these journals. They *may* establish this theory to their own satisfaction, but the people will hardly "concur."

# THE EVENING NEWS

GOLD HILL, N.T.

August 5, 1864

## **Lander County and the Judiciary**

The following communication in this morning's *Enterprise*, from one of the delegates from Lander county, shows how far the citizens of that county have been aroused to the necessity of a complete change in the judiciary of the Territory:

EDITORS ENTERPRISE: — In your paper of this morning you mistake my true position as the delegate from Lander county to the Territorial Convention which meets at Carson on the 10th instant. I was chosen to cast the vote for Lander county, with instructions to go for H. G. Worthington, Esq. I have simply said that in the event of his not receiving the nomination — knowing him to be sound on the Judiciary question — the vote of Lander county should not be cast for any man who would not, pledge himself in favor of a reconstruction of the present Territorial Judiciary, believing that whether the charges made against them be true or false, their usefulness as Judges must be greatly impaired. I have expressed no opinion as to their innocence or guilt.

P. G. CLARK.

AUGUST 4, 1864

# THE EVENING NEWS

GOLD HILL, N.T.

August 5, 1864

## **The Petition**

We are informed, although we have not yet seen the document, that the petition calling upon Judges North, Turner and Locke to resign, is in circulation. Let every citizen who believes that those men are unfit to longer sit in judgment upon life and property, sign the call for their resignation promptly. It is a matter that interests every citizen who has a dollar's worth of property in the Territory, or who breathes the air polluted by this judicial corruption, and it is the duty of every citizen, by signing the petition, to affix the seal of his condemnation upon this official rottenness. The press has done its duty in showing up the evil; let the people do theirs by abating it. Unless endorsed by such a popular demonstration, the efforts of the press will have been vain. The Judges will claim a triumph, and corruption, outrage and wrong, will stalk in pride and insolence upon the prostrate necks of the people.

# THE EVENING NEWS

GOLD HILL, N.T.

August 8, 1864

## The Judiciary in Esmeralda

The Aurora correspondent of the *S.F. Flag* gives a graphic account of judicial affairs in that district. He says:

The present Judiciary system is on a decidedly bilious state. Judge Turner opened court here on the 5th of July, and after a session of seven days, in four months, during which a portion of the criminal calendar was disposed of, and the civil cases of minor importance tried, he adjourned the court. Before doing so, however, he issued a restraining order on the Young America Company, not to cart any rock from their mine until a hearing could be had why an injunction should not issue, as applied for by the Antelope Company. And instead of hearing the case himself and deciding it in two or three days at the farthest, he appointed his Clerk (without consulting the parties interested) as referee, to hear the testimony and to submit it to him for examination and decision; and now the farce after the skeleton court is being effectually carried out. The hearing commenced on the 18th ult., and after a session of two weeks seven witnesses have been examined, and the Antelope Company say they have one hundred witnesses, evidently and ostensibly for delay, in order to freeze or starve out the Young America Company. The latter company have their witnesses and case to make out, and who can tell in the dim future when the examination will close? After which, when the Judge, if his life should be spared to that age, may render his decision. The Antelope have it all their own way. They are working the mine with a full force, taking out the rich rock and having it crushed, thereby getting the money for all their purposes, while the Young America Company are, as the Pond Company were with the Del Monte, totally deprived, by the caprice of the Court, from deriving any benefit from their mine, and a dead-lock is put upon their just means to protect and defend their rights. What makes the case more aggravated is the fact that the order was issued before there was any connection between the two companies' drifts or mines, whatever, either above or below ground; and the fact of the Young America company having first struck and discovered the mine, had peaceable possession, was working it, taking out rock that paid over \$100 to the ton, the bullion from which was worth four to five dollars per ounce; while the bullion from the Antelope rock is worth two dollars and under – a conclusive fact of there not being one and the same ledge. The case now on trial has no bearing as to the title of the mine, which is for a future suit. The people have generally come to the conclusion to vote for the Constitution which is to be submitted in September, as no relief is looked for until they can have a Judge of their own selection and a resident of this county. The first mining case is yet to be tried in Esmeralda county, and there is no probability of one being brought to trial until we have a Judge of more firmness and reliability.

# THE EVENING NEWS

GOLD HILL, N.T.

August 9, 1864

## A Stampede

We were threatened a few days ago by the *Washoe Herald* (now defunct) with a session of the Supreme Court, to have been convened last week. At that awful convention of the mighty Three, measures were to have been planned and executed, which should have completely annihilated the "hireling press" of this county, and have incarcerated the "hired slanderers" in loathsome dungeons, where there should have been penitential wailings and munching of sow-belly. Somehow or other the cock seems to have ignominiously failed to fight, and the mighty Three failed to connect. North took a bottle of peppermint and scrambled with his bowels for the tall timber of Calaveras. Turner concluded to Westward ho also. What part of our neighboring State he has ambushed himself in, we have not learned. Where Locke is, we don't know, and it don't make any difference. He has not got either of his accomplices here to tell him what to do, and he does not know enough to hatch up any deviltry by himself. They are all three gone from our gaze like the night-mare, but they are not off of our minds. The thought that they still live, that they are still our judges, that they are only lying in ambush within a few hundred miles of us, and are liable to come sneaking back on us any night and doing mischief, is uncomfortable. It is a feeling of unpleasantness that the people of this Territory can only be relieved of by the death or resignation of the whole three. The first it is unchristian to hope for, and we have too little faith in their decency to hope for the latter consummation. The petition calling upon them to resign has already several thousand signatures, but we are of the opinion that it will require more formidable means than a peaceful and respectful petition to get rid of them. But we shall see what we shall see.



# THE EVENING NEWS

GOLD HILL, N.T.

August 9, 1864

## The County Commissioners

The *Enterprise* comes down upon the Commissioners very severely in its editorial columns, and "Cosmos" pours in a steady fire of figures and "facts" the tenor of which is to prove that the affairs of the county have been abominably mismanaged, The [sic] Report of the Commissioners is not by any means clear and lucid enough in its explanation of the matters complained of; in fact, taking that report as the sole basis of argument the opponents of the Commissioners have decidedly the strongest ground. In private conversation upon an explanation of the matter the Commissioners make a much better showing in their own favor than they do in published report, and seem to feel greatly aggrieved at the aspersions cast upon their conduct by the Grand Jury and others who have taken upon themselves the investigation and discussion of the subject. In the present state of the public mind, resulting from the showing up of the misconduct of the Judiciary as well as from the general condemnatory tone of the Report of the late Grand Jury, there is a disposition to look with jealousy and distrust upon all public officials, of whatever degree or functions. The people see the one patent and undeniable fact, that the public affairs of the Territory are in a deplorable and almost hopeless condition, and are disposed to regard all those in whose hands the administration of affairs has been, as the authors or at least the abettors of the public calamity. That is the "*prima facie*" appearance of the case, and it will require something more definite and minute in the way of explanation than the Commissioner's Report affords to remove the very general impression that there has been a worse than culpable carelessness and want of business tact in the conduct of our county affairs. A general overhauling of all County and Territorial matters is undoubtedly needed at this juncture, as we are upon the eve of a general election, and the public mind is ripe for a thorough house cleaning. It is desirable that all unfaithful public servants should be ousted, and their places filled by those who, at least, give promise of a better administration. At the same time it is neither just nor desirable that those who have done the best that circumstances would possibly permit, should come within the general sweeping condemnation. We admit that the Report of the County Commissioners is not a satisfactory document, but we will not wittingly do them an injustice. We should be glad to learn either through the medium of a more full, published exposition, or by any other public explanation, that the County Commissioners are not to blame for the present bankrupt condition of the County Treasury.

# THE EVENING NEWS

GOLD HILL, N.T.

August 10, 1864

## **The Petition**

The *Enterprise* continues to publish the additional names signed to the petition calling upon Judges North, Locke and Turner to resign. The petition has already obtained a larger number of signatures than there has ever been votes polled in Storey county and the list as far as published, makes three and a half columns, in double column. Will the judges have the insolence and temerity to retain their seats in fact of this tremendous demonstration?

# THE EVENING NEWS

GOLD HILL, N.T.

August 11, 1864

## **Another Echo**

The Nevada *Transcript* man has been reading our articles and those of our contemporaries concerning the Judiciary, and says:

Our cotemporaries of the would-be State of Nevada are doing all they can to prove the Supreme Judges of the Territory unworthy of confidence, and so far as we are capable of judging, they make out a clear case.

In regard to the three Judges of the Territory, enough has been said by the press of that country to satisfy any decent man that they should be ousted from their positions without the grace of a single day. It is possible – barely possible – that these Judges may be above reproach; but enough has been brought to light to destroy all confidence in their integrity. While this is so, it is manifestly the duty of the appointing power to remove these suspected incumbents, replacing them by men of well established character for learning and purity. Our neighbor never can prosper while the judiciary is suspected. Capital will refuse to go there for investment unless at heavy premiums for risk, and men of families will decline to make a spot their homes where vice instead of virtue reigns in high places. The remedy is in the hands of the President, and it behooves him to act promptly. Gentlemen from the Territory tell us there is talk in some circles of revolution being preferable to the existing state of things if long persisted in. Washoe is a fast country. Its people, many of them, are driven to desperation by the general depreciation of property induced by almost chronic distrust, and but little provocation is necessary in all such countries to fan now smouldering [sic] embers into a blaze. Their endurance is not like that of older settled communities, and it must not be judged by the ordinary standard. The removal of obnoxious officers in a new country should be prompt when the occasion demands.

# THE EVENING NEWS

GOLD HILL, N.T.

August 11, 1864

## **Mob Law**

The recent hanging affair at Dayton has, as a matter of course, caused some little excitement, and more than a little of the discussion upon the merits and demerits of that method of procedure which generally follows transactions of the kind. It would be difficult to maintain any very powerful argument in favor of mob law as a theory or code to govern a civilized people; but we, who have in our time seen a good deal of that sort of thing, have noticed that wherever and whenever there has been an execution of the kind, the act has been either directly and openly defended or quietly winked at by the great majority of the local population. We are not speaking of things as they should be but of things as they are; merely speculating upon a fact, and not discussing a theory. We have further, in our somewhat extended experience, noted another fact; and that is that "mob-law" is resorted to with a frequency that bears exactly an inverse proportion with the confidence reposed in the regularly constituted courts. In those old countries, where the law is properly administered, and where punishment follows crime with the certainty that the thunder succeeds the lightning, such a circumstance as the hanging of a criminal by the mob is unknown. In newer countries, where the administration of the law is lax, and where one passes, at every street corner, and individual who "has killed his man" and has been cleared by the farce of a trial, or as is too often the case, has never been tried at all, there we find "mob-law" occasionally resorted to, and when resorted to, justified by the silent acquiescence of the community. In the abstract, the principle is and must be condemned by every thinking man; but in each special instance, it happens, somehow or other there are circumstances which justify it in the minds of those same thinking men. That this ought not be so, we can argue as well as anybody; that it is so, we know to a dead moral certainty. The people see the fact and they know the root of the evil. The fault is with the courts. Try and obtain better courts. We have spoken.

# THE EVENING NEWS

GOLD HILL, N.T.

August 11, 1864

## The Petition

The list of names signed to the petition calling upon Judges North, Turner and Locke to resign, numbers nearly four thousand, and occupies now six double columns of the *Enterprise*. The *Union* is wrathful about it. It says "not one in ten of the prominent business men have signed it." How true that assertion is, let any one look at the list and see for himself. It is a pretty cheeky assertion to make in the teeth of that very class of men whose signatures are there staring the Judges and the *Union* in the face, and who, of course, are supposed to read that paper. Very cheeky.

The *Union* further says:

Judging from the names as published one would conclude that most of them were obtained by having the procession of workingmen, which paraded our streets a few days ago, stop at some street corner and sign it in a body.

Although that class of citizens did not "stop at some street corner and sign it in a body" yet a large proportion of them have signed it individually. In God's name does that detract from the force of the petition? Have that body of working men no rights, no sense to know their rights, and no privilege – of demanding those rights? Are their views and sentiments less entitled to respect than those of the business men of every degree and every calling, whose names are signed with theirs in this petition, or those other business men, who, like the proprietors of the *Union*, have refused to sign? The *Union* writhes at the terrible and sweeping condemnation of the unworthy officials whom it vainly attempted to shield and defend – it is natural. It had better, in the most gracious manner possible, bow to this unmistakeable [sic] expression of the popular indignation; it is not strong enough to battle against it.

# THE DAILY UNION

VIRGINIA, N.T.

August 11, 1864

## **Our Judiciary**

One of those long, fat advertisements that makes a printer's mouth water, appears daily in the Enterprise, purporting to be a petition (but intended as a demand) signed by over three thousand names of citizens asking our Supreme Judges to resign. In yesterday's issue there appeared, in connection with the advertisement, an editorial article, which assumed that the petition so numerously signed was a clincher to the frequent tirades of abuse which that paper and one or two smaller ones have, for the last two weeks, been inflicting upon this community, until they have succeeded in exciting the disgust of and contempt of all decent people. The editor even intimated that their resignation was a necessity, which the Judges could not escape without incurring personal danger from an excited and indignant populace. Bah! Is the man an idiot, who thinks he can cause such a result in an intelligent community by his insane ravings about corruption and bribery? Does he imagine that the true author and instigator of all this hullabaloo is not as well known as though W. M. S. was written at the bottom of each article? His car-marks are too conspicuous to deceive any one but strangers. His interest in this subject and the nature of that interest is too well understood among business men for them to be deceived by continually harping upon corruption. The old cry of stop thief, applies to this case, and is well understood.

Readers, look over the list of names purporting to have been signed to that petition and see how many of our well known and prominent business men have signed it. Not one in ten of them! And yet the writer of those editorials would have us believe his petition is signed by everybody. Judging from the names as published one would conclude that most of them were obtained by having the procession of workingmen, which paraded our streets a few days ago, stop at some street corner and sign it in a body. The signatures were evidently obtained from that class who know better the value of hard earned wages than they of the truth of the charges of bribery and corruption against our judges, and the motives of the parties making them. The business men who have kept themselves informed of the doings of those unscrupulous persons who are hounding our judges with unsustained charges of corruption, have generally refused to sign the petition. Any one doubting this statement will satisfy himself of its correctness by carefully examining the published list. The better portion of the community repudiate the conduct of those who are so busy

in “destroying the usefulness of our judges,” by publishing false and malicious charges against them. If the charges emanated from a different source they would command the respect of the intelligent citizens. But there is a history behind all this noise and fury of a subsidized press, which is known to many of our citizens, and not known to most of the signers of that petition. It is a knowledge of more or less of that history which enables that very large and respectable number of prominent citizens, who have not and will not sign it, to estimate the charges made and the source from whence they come at their true value. Who does not know that the chief of the pack would call off his dogs if Judge North would grant a rehearing to the Chollar Company in its suit with the Potosi Company, and refuse injunctions in all cases to such companies as oppose the one ledge theory? The members of the Bar know these little items connected with this history of the litigation in our Courts. Why don't they sign the petition? Who would be more likely to know of bribery and corruption than they? Are they such bad citizens themselves that they would not sign a petition to get rid of Judges they knew or believed to be corrupt? Let the reader ask himself of such and such lawyers of his acquaintance can be ignorant of the truth or falsity of these charges, and then ask why they have not signed the petition. Be assured that when bad men, having certain objects to accomplish, get control of two or three newspapers, they will create all the noise and excitement they can, in the hope of drawing a formidable crowd of yelping curs together to follow them in the chase after their intended victims.

Until Judge North granted an injunction against the Ophir and in favor of the Moscow, while the first Constitutional Convention was in session, he was the most honest, upright and incorruptible Judge that ever was, if Bill Stewart told the truth, for such were his exertions in North's behalf at the time that Convention met, that he succeeded in having him chosen President of it without much opposition. Then there was nobody like Judge North, in his estimation, and his disposition to debase himself by fulsome adulation and flattery to his face was such as to disgust not only Judge North, but those other members who knew Stewart's character well enough to estimate his motives correctly. So long as he thought he could use the Judge for his base purposes he was his most devoted worshipper. But mark the sudden change when the Moscow injunction was granted. Then began that system of base, unmanly and disgusting warfare upon the Judge, which has continued until the present time, increasing in vindictiveness and cruelty, so that now, while listening to the din and clamor himself and clients have created, they fancy the whole community has joined them in their yelping chorus, and call upon their fleeing victims to surrender.

If we are not mistaken in our knowledge of public opinion, as gathered from our daily intercourse with the people, these noisy hounds will find they have lost the scent and are barking up the wrong tree.

The judges have thus far maintained a dignified silence, worthy of their position, and will probably continue to do so, and let the whole pack “bay the moon” till they are hoarse. They can leave the matter in the hands of the intelligent community. It will be time enough to think of resigning when the substantial business portion of our citizens indicate a desire to have them do so. This raid upon our judiciary will prove as abortive as that of the rebels into Maryland, and when it is over the raiders will prove to have been the principal sufferers. They have overdone their work, and destroyed their influence and power for future harm.



## THE EVENING NEWS

GOLD HILL, N.T.

August 13, 1864

**Flip-Flap-Flop**

The *Union's* course on the Constitutional question reminds us of the process of frying slapjacks. First it favored the formation of a State; then it flipped around against it; and now it flops again in favor of it. For the life of us we cannot see what it means by this last turnover, for the only persons whom we have heard speak favorably of a State Government do so because they are convinced of the corruption of our Judiciary and think it the quickest way to purify the Bench. But the *Union* while advocating the adoption of a State Constitution pretends to believe our Judges pure as the snow flake!

—*Enterprise.*

Speaking of the “flip-flap-flop,” are not our neighbors of the *Enterprise* indulging slightly in the “pot and kettle.”

# THE EVENING NEWS

GOLD HILL, N.T.

August 13, 1864

## Prodigious!!!

The Virginia *Union* of this morning publishes the following *refutation* ! ! ! of the charge of corruption made against the Judges of this Territory by nearly four thousand of our citizens. Hear and tremble:

HON. JOHN W. NORTH. – It is perhaps known to some of our readers that this gentleman, now one of the U.S. Judges in Nevada Territory, has been assailed by personal and political opponents during the past year, affecting his official honor and integrity. We have been permitted to read a private letter from a citizen of that Territory in relation to the matter, which we would, but for its length, be glad to publish. It is sufficient, however, to state that it is a complete and full vindication of the character and conduct of Judge North, and shows conclusively that he has been triumphantly sustained by the voice of public opinion in that Territory. *In this State, where he is so well known, his enemies would never have dared to whisper a charge of corruption*, and we are not surprised to learn that among comparative strangers, the purity of his life has confounded all their machinations against him.

The *Union* adds:

The above paragraph is taken from the St. Peter (Minnesota) Tribune. Comments is [sic] unnecessary.

A very short comment *is* necessary. The idea that the People of this Territory are incompetent to judge of the integrity or dishonesty of their own Judiciary and of acts perpetrated in their midst, but that they are to be instructed therein by an unknown editor of an unheard-of newspaper, printed some where in the backwoods of the outskirts of civilization, is *rich*. The editor may be sincere enough in his belief, but the fact that Judge North may have had a reputation for honesty when he lived in a country, the whole real and personal estate of which would not have been worth stealing, is not contradictory of the charges alleged against him here, and proven to satisfaction of this people. That nobody would have “dared to whisper” such charges there, weighs little against the palpable fact that they *do dare* to make them *aloud* here, and put them down in broad, plain black and white. By the way, we wonder if the “private citizen,” who wrote that letter to the backwoods editor, was not North’s “brother-in-law.” He is the regular white-washer whose services North has ever at command.

# THE EVENING NEWS

GOLD HILL, N.T.

August 13, 1864

## **The Prospect at Reese**

A correspondent of the Sacramento *Union*, writing from Austin, Reese River, says:

The impression is fast gaining ground here that the people will adopt the Constitution now offered, and become a State. The advantages of a sound judiciary will more than counterbalance the additional expense of a State Government, besides the privileges of full American citizenship.

Advices from Nye county, Churchill, Lyon, Ormsby, Douglas, and Esmeralda, all tend to the same thing. We have every reason to believe that Storey county will vote the same way.

# THE EVENING NEWS

GOLD HILL, N.T.

August 17, 1864

## **A Lawyer's Opinion of the Judges**

At the Constitution meeting on Saturday evening last, Hon. R.H. Taylor, in summing up the necessity for a change in our form of government, took occasion to publicly express his private opinion of our Judges, as follows:

I believe that we can then elect Judges who will discharge their duties; who will not tie up mining claims by temporary injunctions and then leave for the Big Trees of Santa Clara. This is a matter in which you working men have an interest; a matter in which the professional man has as deep an interest; one upon which I feel that my very bread and butter depends, as well as yours. No man having the interests of Nevada Territory at heart can otherwise regard it. Now gentlemen, I have recently signed a petition, respectful in character, decorous in its language, which was addressed to the Supreme Judges of this Territory, asking them to resign, although they are not responsible to you for their action. And I must say as a legal proposition, that I do not believe they are responsible to any power whatever. From the course pursued by at least one of them, I must say that he has disregarded the interest of this county at least and thrown himself upon his reserved rights. How is it with the others? Has any one of them heeded the voice of over three thousand citizens of this county, that they could no longer hold their position with honor to themselves or profit to this people? What one of them has resigned? For nearly a year they have practically had no Court, while great interests were at stake, laboring men out of employment, and capital, as a whole, because of the state of things, refuses to come here. A year ago our streets were teeming with a busy population. Where has trade gone? Where has our prosperity gone? Remember this at the next election. Remember the hundreds of cases which cannot be decided for want of Courts, which might be settled if our Judges would heed the popular interests, or at least devise some remedy. I do not stand here to say our Judges are corrupt, because I do not know it myself, personally; but I have my opinion privately. I have not the slightest hesitation in saying to you publicly, that if in the opinion of the many, the judicial ermine has been tarnished [cheers and hisses] whether charges could be preferred against them or not, the people have lost confidence in them, and they should resign, and listen to the voice of the people, who have recently addressed them telling them that they could no longer hold office with honor to themselves or profit to the people. It is patent that they have neglected their duties, whether wantonly or not, it is not for me to inquire. If ill health prevented Judge North from holding Court, should he be permitted to draw his salary, and go where he pleases, and let the people, in vulgar parlance, go to the realms of Pluto? If ill health prevented the discharge of his duties, what is his plain duty? Why, simply to give up his place; for Uncle Abraham could send out another Judge as good as he, in the

opinion of this community; in a week's time, and not do much either. It is a plain duty they have neglected, as well as the voice of the people beseeching them to leave their place, and permit those to fill their offices who would attend to their duties. You know that hundreds of men are out of employment by their neglect of business. Is there a remedy while we remain a Territory? They will not heed the voice of the people. They say that the power which appointed them has not the power to remove them. I believe, as I said before, that they are right; that the President has no power to remove them. If they have been guilty of gross misconduct in office, it would be possible to reach them by impeachment in the Senate of the United States. They know that, and lie back in their buggies on their way to Lake Bigler, and we are the sufferers – you and I, and every one of us – by this conduct. It may be that by patently bearing the yoke until charges could be preferred against them, we might be relieved; but it would not be a serious charge that these Judges had been away. They could object, and say “We were in ill health.” It would be a difficult matter to adduce proof of sufficient weight to insure their removal. How, then, are we to rid ourselves of this incubus by remaining in a Territorial condition?

# THE EVENING NEWS

GOLD HILL, N.T.

August 17, 1864

## A Welcome Decision

The decision of the Supreme Court of California sustaining the Specific Contract Law meets with general approbation on this side of the mountains. The announcement of the decision appears in the San Francisco dispatches of the Virginia morning papers, and both the *Union* and *Enterprise* have congratulatory editorial articles upon the subject. The *Enterprise* says:

The Specific Contract Law has at last been passed upon by the Supreme Court of California. That able body of jurists has declared it to be a Constitutional Act, and the decision will be hailed with joy, not alone by the people of our sister State, but by all the hard currency States and Territories west of the Rocky Mountains. Capital has, to a great extent, been withheld from the investment because of the fear lest the loan be repaid in greenbacks, and the general uncertainty as to what view the Supreme Court would take of a matter upon which lawyers and Judges were so divided. Now that the question is definitely settled – for we presume that no one will go so far out of the way as to make up another case and take it before the Supreme Court of the United States – better times will appear. Confidence being restored, capital will be brought forth from hidden coffers and seek re-investment. This important decision will also have an authoritative weight in the consideration of the subject by the tribunals of other States, and may have even remoter bearings.

\* \* \* \* \*

The plan of specific contracts has worked admirably on the Pacific coast, and the people of the Atlantic States are just beginning to see it. Before long they will all have their Specific Contract Acts, the constitutionality of which will, we hope, be universally acknowledged. Again we congratulate the people of the Pacific slope upon the decision of the California Supreme Court, and hope if Nevada be voted in as a State that we shall have a Judiciary upright and discriminating enough to do likewise.

We hope the vast benefits which the *Enterprise* sees as the results of a State Government, will prove of sufficient magnitude in its estimation to induce it to cast its influence in support of the adoption of the State Constitution.

The *Union* says:

It wanted just such action as this decision of the Supreme Court to give new confidence to capitalists, and put again into active circulation the full volume of our currency. We can soon decide the question whether it is sufficient to satisfy the increasing wants of this coast. In order that Nevada Territory may be benefited as well as California, she must embrace the present opportunity and become a State, so that we may also have a Specific Contract law which will protect capitalists in making loans upon property in this Territory as well as California. Then if money is plenty there it will come here also, for the rates of interest here are and always have been much higher than in San Francisco. The interests of California and Nevada Territory are so intimately connected that they ought to have the same financial policy, so far as currency and collection laws are concerned. By the adoption of the Constitution now before the people we may have the benefit of a Specific Contract Act before Christmas, and look forward to a speedy revival of business. We do not believe any serious opposition would be made to the passage of such an Act after we shall have become a State.

We concur most heartily in the views expressed by our cotemporaries, and if the people generally take the same view of the question, there can scarcely be an argument brought to bear against the adoption of the proposed Constitution, which will have any considerable weight as an offset to the advantages which must accrue to the country from a renovation of the Judiciary and the restoration of confidence in the security of contracts. These two points alone ought to carry the Constitution by an overwhelming vote.

# THE EVENING NEWS

GOLD HILL, N.T.

August 17, 1864

## **State Government**

The prospects for the adoption of a State Government by the people of Nevada Territory, were never better than they are now. From every quarter we have cheering news to the effect that the people intend rising up in their sovereign might on Wednesday, the 7th of September, and adopt the Constitution now before them for their sanction. This is no idle boast of ours; but is the plain, honest truth. The people look upon this matter calmly and deliberately; and they have made up their minds what to do. Quite a number of heavy tax-payers in this county, residing in Virginia, and also in Gold Hill, until yesterday had made up their minds to oppose the Constitution, but a lot of them got together last evening – they representing at least *one million dollars* of taxable property in Storey, county, besides their [sic] being men of large political influence – and, after deliberating upon the Constitutional question for a number of hours, they all united to vote for the adoption of the Constitution. Miners, business men, and everybody else, have fully concluded to have an entire change of Government – the principal reason for which is to get rid of our corrupt and trifling Judiciary. When this great and much-desired change takes place it will remove a dark cloud of adversity which is now overhanging every department of trade, mining and business in Washoe – and e'er the frosts of winter fall upon our now comparatively idle country, confidence will again be restored, and business will again move on.



## THE EVENING NEWS

GOLD HILL, N.T.

August 22, 1864

**To Resign**

A communication in yesterday's Virginia *Union* stated that Judge North was to resign his office *to-day*. We hope it is true, but we have our doubts. "To the Issue," Judge, "to the Issue!" – or the adoption of the Constitution will settle your hash effectually.

# THE EVENING NEWS

GOLD HILL, N.T.

August 24, 1864

## The Curse of a Territorial Government

The *form* of government granted to a Territory is not only inconvenient and utterly inadequate to the wants of a free and enterprising people, but is absolutely degrading. So far is it from a republican form of government, and so far beneath the *status* of citizens are we, that not only are we debarred from the right of electing our own rulers, but those rulers are not even selected from among our own people. To be a resident of a Territory (the word "citizen" would be misapplied) appears to be a fatal disqualification from holding any important office within its borders. It ever has been so. The territories and ever will remain so here, until we shake off our serfdom and assume our proper position as a State. A galling instance of the degraded and beggarly attitude which we occupy, is afforded in the occurrences of yesterday in the matter of our Judiciary. The shameful story is told in a few words in the *Enterprise* of this morning, as follows:

On the 22nd instant, from the overwhelming pressure of public sentiment and the imperative demand of the members of the Bar, our Supreme Judges were forced to resign. A meeting of the Bar of Storey county was held yesterday to determine upon a successor to Judge North, and R.S. Mesick was selected to fill the position. A committee was chosen to solicit his appointment by the President. The committee telegraphed to Judge Field, Senator Conness and Governor Low for the assistance of their united recommendation in procuring the appointment. Last evening a dispatch was received from Judge Field stating that a week since, himself, Senator Conness and Governor Low, with the knowledge of Judge North's intended resignation, and at the request of several gentlemen of this Territory, has recommended the appointment of John F. Swift, of San Francisco, as his successor; but that they would use their influence to have Mr. Mesick appointed as successor of one of the other Judges! Who has ever heard of Mr. Swift? Who does he belong to? Who are the "gentlemen of Nevada" that have treacherously usurped our dearest rights and robbed us of what little voice we have in the selection of our Judges? We demand that their names be made public, that we may know who are implicated in secret resignations and the appointment of men of whose very names our people are totally ignorant! Depend upon it, we have been sold. True to his instincts, when the general execration excited by his shameful Judicial conduct rendered it impossible for Judge North to remain upon the Bench, he secretly signified his resignation to his patrons and partisans that they might forestall the public voice and have a man of their own choice appointed to fill the vacated seat. Perhaps he received a consideration for this service. In view of his Judicial antecedents, it is not at all unlikely. But, at any rate, he will receive his

just reward at the hands of an outraged and indignant people, who will consign him to oblivion with this crowning act of infamy in his judicial career. We know nothing of the new appointee, Mr. Swift. He may be a gentle man who would honor the position. But, if he possessed all the virtues and abilities which have distinguished the greater jurists of the world, we would advise him in view of the excitement and indignation created by his secret appointment to never cross the Border.

We fully sympathize with the just indignation of our contemporary, and are fully of the opinion that justice to ourselves and the best interests of the Territory demand that if Mr. Swift receives and accepts the appointment thus outrageously procured, there be such a general and unmistakable expression of public dissatisfaction, that he will consider it advisable to resign and give way to the choice of the people.

# THE EVENING NEWS

GOLD HILL, N.T.

August 24, 1864

## The One Ledge Theory

The voluminous decision of the Referee in the case of the Gould & Curry vs. the Potosi, which was published in full in the *Enterprise* of yesterday morning, and which decision was affirmed by Judge North prior to his resignation, is based upon the so-called "One Ledge Theory," and in the opinion of the *Union* mashed out totally the "Many Ledge Theory" and all the hopes and prospects of those relying thereon. That paper, after reviewing all the scientific lore and guess-work which tells us how the world was made in the beginning and all that has happened to it since it started rolling, says:

Here we have the whole argument in support of the one-ledge theory, and we are constrained to say, it is very plausible. Of course, the Referee could only apply the facts and theories given by the witnesses produced before him on the trial, to the condition, character, position, extent, ect., of the different masses of separate veins of quartz, the horses, clay seams, etc., as developed by the works of the two parties litigant, and form his decision accordingly. Whether these are sufficient to convince people generally is another thing. At all events, it will stand as the guide in determining such suits in the future, until a different theory is established upon equally plausible reasoning.

This decision, though tending to strengthen or establish the one ledge theory, will not be accepted by opposing litigants, as final, and hence much expensive litigation is yet pending. We would suggest that as the one ledge claimants have now got the advantage, and are generally wealthy, they buy up the opposing titles and stop the litigation which is retarding our progress so much. This can now be done, we believe, cheaper than to continue the litigation, from the fact that the decision will depress the value of all opposing titles.

If this theory is true, or whether it is true or not, if it be held as the correct one by the Courts, and made the ground-work of future decisions, we cannot look upon it in any other light than the most disastrous decision that could have been made for the interests of the country. There seems to be no limit, much short of the width of the continent, to the breadth of the great "fissure," which was at one time filled with "semi-fluid quartz" and "horses," and which got hard just in time to be all gobbled up by the locators of the Comstock Ledge. All but the original locators of that ledge, and their assigns, are out in the wet to a degree that it is horrible to contemplate. The results of such a decision to this Territory must be so disastrous that we shrink from its contemplation. The "buying up of the opposing titles and thus putting a stop to litigation," suggested by our

contemporary, would perhaps be a wise course for the few individuals interested, but it would not assist the progress of the country much. To throw all the vast number of rich mines of the Territory into the hands of the limited number of companies whose locations cover the Comstock Ledge, would stop the working of innumerable mines, and bring the whole mining business of the country down to the working capacity or policy of those few companies, and there it would remain at a perpetual stand-still. It is to be earnestly hoped that another bench of Judges, who will ere long compose our Supreme Court, will view the matter in the light more in consonance with substantial justice and public policy.

# THE EVENING NEWS

GOLD HILL, N.T.

August 24, 1864

## The Vacant Judgeship

Yesterday morning the Bar of Storey County met to select and recommend a successor to the judgeship rendered vacant by the resignation of Judge North. A series of resolutions were adopted, after which the Bar proceeded to ballot, each member having his name recorded as he voted.

Forty-nine members voted. The result was as follows:

Mr. R. S. Mesick received 26 votes. Mr. H. O. Beatty received 21 votes. Mr. C. M. Brosnan received 2 votes.

The Chair thereupon announced that Mr. Mesick having received a majority of all the votes cast, he declared him the nominee of the Members of the Bar of Storey county for the position of Judge of the First Judicial District.

On motion, the nomination was made unanimous.

On motion, a committee, consisting of Wm. M. Stewart, Caleb Burbank and Joseph M. Nougues were appointed to frame and dispatch to the President a telegram informing him of the action of the Bar of Storey county.

The following dispatch was submitted:

VIRGINIA CITY, AUGUST 23, 1864

*To his Excellency, Abraham Lincoln, President of the United States:*

At a meeting of the Bar of Storey county, at which forty-nine Attorneys were present, it was unanimously resolved to recommend R. S. Mesick, Esq., of this place, for appointment to fill the vacancy occasioned by the resignation of Judge North. And the Attorneys earnestly request the appointment to be made immediately and the undersigned informed thereof by telegram.

WM. M. STEWART  
CALEB BURBANK  
JOS. M. NOUGUES

## THE DAILY UNION

VIRGINIA, N.T.

August 24, 1864

We heard a man who was commenting on the resignation of the Territorial Judges, remark that, as for himself, he would be satisfied if any man could be found to act as Judge who would *not* be satisfied with a piece of a mine as a bribe, but who would sternly, rigorously and peremptorily demand the *whole* mine!

# THE DAILY UNION

VIRGINIA, N.T.

August 24, 1864

## The Judiciary

Judges North, Turner and Locke, composing the Supreme Bench of this Territory, have resigned and left us without a Court. We cannot but regret that they should do so at this time, and under the attendant circumstances. Whether the charges so industriously and vehemently circulated by certain parties, for the purpose of compelling their resignation, were true or not, we do not see how the public is to be benefitted by such resignations at a time when a new judicial system, with new judges, is about to be inaugurated under a State government. They would have been so soon removed by the adoption of the Constitution, it was not demanded by the public interest that either the judges or the people should be humiliated by the forced resignation of one, much less all of our judges. We can only regard the proceeding as disgraceful, from the beginning of the malignant personal attack upon them down to their resignation night before last, after being badgered all day by certain members of the bar.

It is said that Judge North resigned on account of ill health; that Turner resigned because counsel in the cases pending before the Court were unwilling to have them decided until there should be a full bench in session, and for the further reason that he thought it might be for the public good. Then a Committee of the Bar was sent to see Judge Locke and convinced him, also, that the public good required his resignation. This they succeeded in doing, after much persuasion, and he reluctantly resigned "for the public good." They were all at last *resigned* – to their fate, and Stewart & Co., triumphant.

The next move of the victorious party is to designate some one [sic] to fill the vacant seat of each, and ask his appointment by the President. The Bar of Storey county held a meeting yesterday, at which R.S. Mesick was selected to succeed Judge North. Whether any steps will be taken in the other districts to have the vacancies filled we are not informed. The time that they can serve, if appointed, is so short, it looks more like giving someone a chance to draw a quarter's salary, than like doing anything necessary for the public welfare. Of Mr. Mesick we know very little, and cannot, therefore, speak of his qualifications for the position; but it is yet to be proven that the public will gain by the change. We will hope for the best, and put our trust in a State government for our



ultimate salvation. The professed object of urging the appointment of a successor to North is to have the November term of the District Court held. There is barely sufficient time to accomplish it. A few weeks only will be gained, as the three Judges under State Government go into office on the first Monday of December, when, of course, the November term must end. In the meantime we are without a Court to grant restraining orders, injunctions, etc., but that may be no disadvantage to the mining interest here.

# THE EVENING NEWS

GOLD HILL, N.T.

August 25, 1864

## **John W. North**

The private citizen who recently resigned a high judicial position, not on account of anything that had been said about him in any newspaper, nor because anybody had requested him to do so, but simply on account of ill-health, appears to be disposed to rake up old matters and make another "issue." We have nothing to ask of him, and no measures to dictate to him in his present capacity of a private citizen. We have a right, however, to proffer advice to those whom we think it will benefit, and our advice to John W. North is to keep his head shut and his signatures out of the newspapers. He will find that a war with newspapers which are endorsed by the signatures of thousands of citizens will prove but a losing game. We have dropped the hatchet – he had better follow suit.

# THE DAILY UNION

VIRGINIA, N.T.

August 25, 1864

## **One Ledge**

We have not the space required to review the decision of the referee in the case of the Gould & Curry against the North Potosi, in which decision the theory of “one ledge” is sustained. This conclusion is reached by the referee from, as he pretends, a vast variety of evidence. Hence he declares that Gould & Curry Company are the rightful claimants of the Comstock ledge. The public should not suppose that this decision gives any finality to the question of a right to any ledge or part of ledge which may have been, or may hereafter be opened and worked. No referee, no regular court of law, no Judge, no Commissioner, no effort of combined capital, and no grasping and monopolizing mill companies can convince the people that there is only one real silver vein running through these mountains, and that only one company, or a very few companies, rightfully occupy it. No decree, or decision, can enforce this narrow opinion against the conformations of nature, and the rights, interests and privileges of the multitude.

This multitude are right in considering the idea of one ledge only as an absurdity which has been promulgated by the hirelings of monopoly – a monopoly which works, through hired “legality” against poor people, to add millions to its millions already gained. This heartless and shameless combination can readily find “agents,” tools, attorneys, Courts and “scientific gentlemen” to aid in producing an oppression such as never will have had parallel in America; but these cannot, and ought not to, prevail over the opinions and rights of a large community who have collectively expended their millions in legitimate discovery, development and industry.

# THE DAILY UNION

VIRGINIA, N.T.

August 25, 1864

## Correspondence

VIRGINIA, AUGUST 19, 1864

HON J. W. NORTH – *Dear Sir:* – I learn through a mutual friend that your continued ill-health and consequent incapacity to discharge the onerous duties of your Judicial position, compels you to resign. The public attacks which have been made upon you within the past month or so demands, in my judgment, at the hands of attorneys who have had the pleasure of practicing in your Courts a more substantial evidence of their regret at their professional separation from you than is usual on such occasions.

Allow me, therefore, to say that in practicing in your Courts, I have ever found you courteous and considerate in the highest degree; that I have had and still have entire confidence in your honesty, integrity, and purity of motive and purpose; that your capacity to discharge the duties of your office cannot be – and so far as I have heard, has not been – questioned; and that for industry and an earnest desire to dispatch business, it has seldom been my pleasure to practice before your equal.

I regret exceedingly that parties have seen proper to make the severe, and as I conceive, unjustifiable attacks upon you before alluded to, and particularly at a time when, from severe illness and prostration brought on by over-work in the discharge of your Judicial labors, you were not in a condition to meet and combat them.

I write this in the discharge of a duty which I owe a fellow-man and an honorable member of the noble profession to which we belong, and therefore authorize any use of it which you deem proper.

With the best wishes for your prosperity, and the hope that your health will soon permit you to meet your enemies as they should be met, I am your friend, ect.

THOS. H. WILLIAMS.

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VIRGINIA, AUGUST 16, 1864

HON JNO. W. NORTH – *My Very Dear Sir*: – I was delighted to learn of your safe arrival home, and trust that your journey materially improved your physical health. I cannot but hope that the newspaper assaults upon your moral and Judicial integrity will give you no alarm or uneasiness. You have hosts of warm and devoted friends in this county, both within and without the limits of the legal profession, who consider the continued assaults upon your judicial character as the product and result of your unswerving integrity – of your refusal to become the instrument of a clique and the Judicial organ of a mooted theory. There is, however, a very large number of your most true and devoted friends, who entertain fears that you will allow yourself to resign before our State Constitution shall be voted on by the people. I express the earnest wish of this class of friends, when I beg you to postpone your resignation till after that time.

Your sincere friend,  
JOHN A. COLLINS

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VIRGINIA, AUGUST 16, 1864

HON J. W. NORTH – *Dear Sir*: – Being about to leave for San Francisco, I desire, before my departure, to assure you of my hearty concurrence in the sentiments of confidence and regard expressed in the letter addressed to you by certain members of the bar of this city, and which is shortly to be handed to you. While I sincerely join in its expressions of regret at your ill health and of hope of your speedy recovery, I wish to add, that though your ill health may temporarily postpone some of the business of your Court, and thus be productive of *some* injury – it will be, in my Judgment, a small one compared with the loss which the public would sustain by your retirement from the bench in the present condition of affairs in this Territory.

Very respectfully, your obed't serv't,  
A. P. CRITTENDEN

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VIRGINIA, AUGUST 16, 1864

HON J. W. NORTH – *Judge First Judicial District – Dear Sir*: – Recent charges involving your reputation, impose a duty on us as attorneys practicing in your Court (understanding as we think your public and private character), to assure you that we have undiminished confidence in the purity and integrity of your public and private life.

In the trying position of Judge of this Court, the most onerous (we venture to say) of any *nisi prius* Court in the United States, you have given the highest evidence of prompt attention, patient industry, energetic dispatch, commendable legal ability, official courtesy, and the more crowning quality of a Judge – stern, unflinching integrity of purpose.

We deeply regret the vast accumulation of pressing, complicated business in your Court, involving and suspending in litigation the great interests of our Territory, and we more deeply regret the continued ill health, which has heretofore delayed you in the discharge of the duties of your office so fully as you otherwise would have done. Sincerely hoping that you may speedily regain your vigor, we remain

Respectfully yours,

CHAS. LINDLEY,	G. D. KEENEY,
JNO. A. MCQUAID,	THOMAS FITCH,
RICHARD RISING,	FRANK HEREFORD,
P. O. HUNDLEY,	T. B. REARDON,
WM. T. BARBOUR,	W. H. DAVENPORT,
PHIL W. KEYSER,	LEONARD W. FERRIS
WM. H. RHODES	(PROBATE JUDGE)
D. CARSON,	J. J. GRIFFITH,
MARTON WHITE,	J. CARMICHAEL,
FRED A. SAWYER,	GEORGE M. BEEBE,
E. PAGE DAVIS,	FRANCIS L. AUD,
R. S. MESICK,	D. W. PERLEY,
ALFRED A. MACE,	C. E. DELONG,
M. KIRKPATRICK,	SAM D. FULTON,
EDWARD JANIN,	JOS. W. MCCORKLE,
CLARK CHURCHILL,	HENRY K. MITCHELL.

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WASHOE CITY, AUGUST 22, 1864

HON. THOS. H. WILLIAMS, JOHN A. COLLINS, A. P. CRITTENDEN, CHARLES LINDLEY, R.S. MESICK, L.W. FERRIS, D. CORSON, and other members of the bar and citizens of Virginia, who have recently expressed to me by letter, their cordial friendship and steadfast confidence.

GENTLEMEN: – Were I in health, it would give me great pleasure to reply to each of your kind and valued letters, separately and at length. As it is, I am sure you will excuse me for saving myself labor, by addressing you jointly.

The voice of friendship, which is always welcome, is especially so when one is prostrated by illness, and when enemies are desperate in their efforts to injure reputation and destroy the public confidence. These expressions of approval from leading members of the bar are the more welcome, since they come spontaneously, and in the face of earnest efforts to induce you to hold a different language. For your disinterested friendship and esteem as well as for the kind interest you have ever taken in sustaining me in the faithful discharge of duty, I sincerely thank you. Had my health permitted the relation we have sustained to each other for the past year, would have continued until the fourth of March next; as it is, I must let it terminate now.

Since my illness at the term of the Supreme Court in April last, I have contemplated resigning my office during the present vacation, so as to give ample time for the selection of my successor before the next term of Court. The attacks of a few enemies, together with the solicitation of many friends, have caused me to hesitate in this determination, until all that could be said against me should be heard and fully considered. Being, much of the time, too unwell to give attention to the matter, I have not seen many of the articles which I am informed have appeared pro and con in the papers. From what I have learned, I am entirely content and satisfied with the result, and glad that I have given an opportunity for calumny to do its worst. And now, since the clamor has about ceased, and the dust and smoke have passed away, we look back upon a rehash, in the newspapers, of the stale and thrice refuted slanders of the man who distinguished himself at the Opera House last winter, aided by the note of one prison convict. One of these individuals seems to writhe under disappointment at the thwarting of some of his pet schemes; and the other thinks it an outrage that she should be sent to prison for shooting a man through the head. These make complaints on their own account, and call to their aid such assistance as can be lead into the service.

“No rogue e’er felt the halter draw,  
With good opinion of the law.”

Or with good opinion of the Judge who applied the law to his case. It is not strange that such persons should sometimes get angry and indulge in billingsgate. It is a little strange, however, that some honest men should be misled by them, and allow themselves to be used as tools for a base purpose. The frequent messages I receive from the few *real* men, whose names have been paraded before the public as asking all our Judges to resign, and their earnest expressions of confidence in me, shows that they are beginning to be sensible of the wrong they have done. I have never doubted for a moment that I have the confidence and approval of the great body of the good citizens of the Territory; and I am equally confident that I am not popular with criminals and corrupt men. And it is a significant

fact, that after all the noise that has been made, not one of my decisions is attacked, as either illegal or unjust. That I have been able to discharge the difficult duties of my of my position so as to secure this as a result, is a source of sincere gratification. This being the position of affairs, I regard it as idle longer to heed the stale repetition of old slanders, and *wrong* to allow it to influence me in the action, which as a good citizen it is my duty to take.

My continued illness wholly unfits me for the severe labor of a Judge of this District. A due regard for the public welfare requires that I should make way for my successor before the commencement of the next term of Court. I had hoped to be able to finish the business which is in progress before me; but I have tried my strength sufficiently to satisfy me that this is impracticable. I have given to the labors of the office what health and strength I possessed, and I am now compelled to give up my time to regaining the health I have lost.

Of the uniform courtesy and kindness of the members of the bar, and the cordial and sustaining confidence of the good people of the District, I shall always preserve a grateful recollection. The position has been, as I expected, laborious and trying. I was not so vain as to expect to discharge all of its duties perfectly. I did expect to do my duty with fidelity, and this I have done, conscientiously and fearlessly. I am glad to have had the opportunity of rendering some service to the District, in securing the ends of justice, and in preventing corruption and crime. I can only wish that my health had enabled me to do more.

There is much need of improvement in our Judicial system, as is shown by the inevitable accumulation of business in Virginia; and I earnestly hope that by the adoption of a State Government, a sufficient number of Judges may be obtained to do the business of this District. And I also hope that your future Judges may be in all respects what good citizens could wish.

For the few virulent enemies who have labored so hard, during my illness, to destroy my good name, I cherish no vindictive feeling; though I shall probably ask some of them to come before a Judicial tribunal and prove their calumnies or retract them once more. I know the errors of honest men will be corrected in due time. I hope to remain in the Territory in the practice of my profession, if my health permits, and we shall all have an opportunity to look back on present events, after time shall have tested the correctness of our present views. My resignation is telegraphed to Washington to-day, to take effect when my successor shall have been appointed and qualified.

With sentiments of sincere regard, I am, as I hope to remain,



Your friend and fellow-citizen,  
J.W. NORTH.

THE DAILY UNION  
VIRGINIA, N.T.

August 25, 1864

**J.W. North**

In our columns this morning will be found the correspondence of the principal members of the bar with Judge North in relation to his resignation, and the circumstances under which it was made. It will be seen from these letters that Judge North had contemplated resigning on on [sic] account of ill health, but delayed it on account of the persecution by his enemies, and by advice of friends, desiring to give his calumniators a chance to prove their charges. As they have done their worst, and the time is short in which to secure the appointment of a successor to sit at the next term of the Court, he sends on his resignation to take effect when his successor is appointed and qualified.

The Judge's letter is manly and dignified, and administers a rebuke to his principal enemies which would annihilate them if they possessed any sense of shame; and the letters of the leading members of the Bar uphold and sustain his purity of character, both in his official and private capacity. Let our citizens compare the names of those lawyers who sustain Judge North, with the names of those who have attacked him, and see which are the best and most substantial citizens. With the best citizens, as with the best lawyers, Judge North will always stand high in their estimation hereafter, as one who has outlived the calumnies of his bitterest enemies.

# THE DAILY UNION

VIRGINIA, N.T.

August 25, 1864

## The Cards Stocked On Us Again

While the community is jubilant over the abdication of the old chronic corrupt Judges – while the people are elated with the prospects of Courts whose ministering in the name of Justice shall be something more than a farce and a mockery – we are called upon to chronicle an act of treachery which must excite a universal feeling of indignation and resentment. On the 22d instant, from an overwhelming pressure of public sentiment and the imperative demand of the members of the Bar, our Supreme Judges were forced to resign. A meeting of the Bar of Storey county was held yesterday to determine upon a successor to Judge North, and R. S. Mesick was selected to fill the position. A committee was appointed to solicit his appointment by the President. The committee telegraphed to Judge Field, Senator Conness and Governor Low, for the assistance of their united recommendation in procuring the appointment. Last evening a dispatch was received from Judge Field; stating that a week since, himself, Senator Conness and Governor Low, with the knowledge of Judge North's intended resignation, and at the request of several gentlemen of this Territory, had recommended the appointment of John F. Swift of San Francisco as his successor; but that they would use their influence to have Mr. Mesick appointed as successor of one of the other Judges! Who has ever hears of Mr. Swift? Who does he belong to? Who are the "gentlemen of Nevada" that have treacherously usurped our rights and robbed us of what little voice we have in the selection of our Judges? We demand that their names be made public, that we may know who are implicated in secret resignations and the appointments of men of whose very names our people are totally ignorant! Depend upon it, we have been sold. True to his instincts, when the general execration [sic] excited by his excited by his shameful judicial conduct rendered it impossible for Judge North to remain upon the Bench, he secretly signified his resignation to his patrons and partisans that they might forestall the public and have a man of their own choice appointed to fill the vacated seat. Perhaps he received a consideration for this service. In view of his judicial antecedents it is not at all unlikely. But, at any rate, he will receive his just reward at the hands of an outraged and indignant people, who will consign him to oblivion with this crowning act of infamy in his judicial career. We know nothing of the new appointee, Mr. Swift. He may be a gentleman who would honor the position. But, if he possessed all the virtues and abilities which have distinguished the greatest jurists of the world, we would advise him, in view of the excitement and indignation created by his secret appointment to never cross the border.

–Enterprise of yesterday.

Did ever anybody see greater impudence than is exhibited in the above from Bill Stewart's organ! In the hour of his triumph at his success in hounding down Judge North and compelling his resignation to make room for a tool of his own, he finds himself checkmated by his victim, and gives vent to his rage in the above prolonged shriek of agony and despair!

He tells the new Judge not to cross the border if he values his safety! The people of the Territory have not yet surrendered their rights to Stewart & Co.; nor do they intend to; and we respectfully suggest that their assumption of authority to speak for the people and to control their affairs, has well neigh reached that point when forbearance ceases to be a virtue. An event might happen which would make the passage of "the border" an object of solicitude to those who threaten others.

The howlers' organ contemptuously asks: "Who ever heard of Mr. Swift? *Who does he belong to?*" It is apparent that he does *not* belong to Stewart and Co.; and it is equally apparent that they think the judge of this district out [sic] to belong to *somebody*. They do not understand this business of forcing a Judge to resign and securing another in his place, to mean anything else but a strife to obtain *possession* of the Judge! What a commentary upon recent scenes witnessed here in this disgraceful and outrageous attack upon our judiciary.

The question "*Who does he belong to?*" suggests a train of thought which we ask the people to consider for a moment. It throws a flood of light upon and reveals the true motives of the recent attack upon Judge North. It confirms our oft repeated assertions that the warfare upon him would never have been made if he had "belonged to" Stewart & Co. The extensive practice of a certain law firm in this city was acquired while Mott was a Judge. Soon after North was appointed in his place, their influence and practice began to fall off and has continued to do so ever since. This is the secret of all this howling about corruption. They lost their grip on the Judge and are trying to regain it.

Now we do not know John F. Swift of San Francisco; but, if he is the choice of Judge Field, he is capable; and if the choice of Gov. Low and Senator Conness, he is both loyal and honest; and we will vouch for him as possessing all the qualifications of a good judge. We much prefer their endorsement to that which Mr. Mesick has received. "Who are the gentlemen of Nevada that have treacherously usurped our rights and robbed us of what little voice we have in the selection of our judges?" We will assure the organ of the *Corruptionists* that they are loyal and honest, and have the good of the people in view, in preventing the appointment of anybody "belonging to" Stewart & Co. "Depend upon it, we have been sold!" Yes you have and we are glad of it! Instead of owning a judge,

you were sold by one, and you ought to feel cheap about it; for the purchasers got a big bargain at your expense.

A few words to the public, and we dismiss the subject for to-day. You have good cause to rejoice that the machinations and wire-pulling of the base men who have brought disgrace upon you by their malignant and unsustained [sic] charges of corruption against our Judiciary have been defeated, and a man endorsed by Judge Field, Gov. Low and Senator Conness, secured as judge of this district. Let the public in future guard more carefully the reputation of their judges when attacked by unscrupulous men for selfish purposes. The honor of your judges is in your keeping; protect it for the sake of the public honor and interests, and not allow again such a dishonorable and disgusting attack to be made upon your judiciary by designing men, as you have lately been compelled to witness. What honorable man can be expected to accept a position as judge, in a community that does not guard his official reputation and honor as belonging to itself? Let your disapprobation of the conduct of the corruptionists [sic] be manifested by the manner in which you will receive and sustain the successor of Judge North, and all others who may hereafter be placed in authority, whether by election or appointment, until substantial proof is furnished of his or their corruption or unworthiness. If the people want a reform in the Judiciary, they must themselves secure it by protecting our judges from the malicious and unjust attacks of members of the Bar, and litigants who seek to destroy because they cannot use them for base purposes.

# THE DAILY UNION

VIRGINIA, N.T.

August 26, 1864

## The Judiciary Muddle

It appears that Judge Field, Governor Low and Senator Conness have telegraphed to the President, advising delay in making the appointment of a successor to Judge North, until after the September election. From this we infer that the intention is to make no appointment if the Constitution is adopted. This is a wise conclusion. We shall have our new Court under the State Government in operation on the first Monday of December. We do not know what time in November the next term would begin, but the Judge could sit but four weeks at most. Better let the matter drop, for it will all come out right in the end.

But, if we understand the matter, John W. North is still Judge of the First District, and will remain so until the State Government goes into operation in December – if no appointment is made soon. In his letter, which we published yesterday, he says he telegraphed his resignation to the President, *to take effect when his successor was appointed and qualified*. Judge Turner, we are also informed, did not resign as was supposed. Somebody has been sold more than once in this resignation business. It is a nice mess, to be sure! The people will settle it on the 7th of next month, by adopting the Constitution ten to one.

# THE DAILY UNION

VIRGINIA, N.T.

August 27, 1864

## **Meeting of the Bar and Citizens of Ormsby County**

Pursuant to a call for a meeting of the members of the Bar of the county, by printed posters and general notice, almost the entire Bar of Ormsby county assembled at the court house in Carson, on last Wednesday evening, August 24th.

An immense concourse of citizens also were in attendance, so much so as to fill the court room with a dense crowd, many of them our most prominent and influential business men.

One of the members of the Bar then moved that as there was so large an attendance of persons, the meeting be resolved into a mass meeting of Bar and citizens, which motion was carried.

Thereupon, by a vote of the meeting, Judge Thomas Wells was called to act as President, and Israel Crawford, Esq., to act as Secretary.

P. H. Clayton then offered the following resolution:

RESOLVED, That a committee of three be appointed by the chair to draft resolutions expressive of the sense of this community, in regard to the resignation of the Judge of this Judicial District.

Said resolution was carried, and the chair appointed Messrs. Clayton, Lewis, and Clark upon that committee. Mr. Clark stated that he would prefer that an older citizen should be appointed in his stead. The chair then appointed Judge McKeeby in his place.

The committee retired to perform their duties, and speaking occurred during their absence. The committee previously appointed then appeared, and presented the following preamble and resolutions:

WHEREAS, The Judges of the Supreme Court of this Territory have seen fit in their own good judgments to resign their places as such Judges, and a new Constitution is soon to be passed upon by this people, and a short interval will occur between this period and that at which it shall be finally acted upon; and

WHEREAS, We, as citizens and members of the Bar of the Second Judicial District of this Territory, are chiefly interested in the quiet and

proper adjustment of our rights, without any sudden suspension or disturbance; and

WHEREAS, The Hon. George Turner has for over three years acceptably served as Judge of this District, and as such, having himself held every term of court provided for by law, having also held sundry courts in other Districts, having disposed of all the business as fast as it matured, and having so fully and satisfactorily transected the same that to-day the public business of this District is completely done, and no causes at issue anywhere are awaiting trial on account of any delay of the court; and our said Judge having himself performed a very large majority of the labors of the Supreme Court, as is well known to all our people; and

WHEREAS, The press, people and Bar of this Judicial District have never complained of our Supreme Judges in any way; therefore, be it

RESOLVED, That we regret the unexpected resignation of the Hon. George Turner, at the time it occurred, although it seemed to be made necessary by the resignation of Judge North, previously made on account of his sickness, and also from the impossibility of doing any further business in the Supreme Court after Judge North's retirement, only two Judges being left.

RESOLVED, That we tender our thanks to Judge Turner for the industrious, impartial and able manner in which he has discharged his judicial labors.

RESOLVED, That we respectfully request him still to take care of the judicial business in our District, so far as he can, until his successor is appointed, qualified and ready to act, to preserve us from disorder and confusion.

The report of the committee was received with marked approval by the assembly, and the committee discharged.

On motion, the report of the committee was unanimously adopted.

After the adoption of the resolutions, speaking occurred, and among the rest, Mr. Clayton being called for made an able and eloquent effort.

On motion the Secretary of this meeting was instructed to furnish Judge Turner with a copy of the resolutions as adopted.

On motion the Secretary was further requested to furnish the VIRGINIA DAILY UNION and the Carson Independent a copy of the proceedings of this meeting for publication.

On Motion a committee of three was appointed by the chair to wait upon Judge Turner and inform him of the meeting and the purport of the resolutions. Said committee was composed of the following gentlemen: Messrs. Clayton, Judge Haydon and Gen. Russell.



The committee waited upon Judge Turner, at his hotel, and, after a short absence, returned, accompanied by the Judge, who was cordially greeted by the crowd.

The resolutions were then read to him and he was invited to respond. The Judge made a speech in reply which was able, feeling and eloquent.

He stated he had given the Bar notice of his resignation, at the session of the Supreme Court upon last Monday. He gave, substantially, the same reasons for his resignation which he had previously given in open Court: That Judge North has resigned most unexpectedly to him, and that his resignation had emasculated the court; only two Judges were left. The Bar in open court objected to the trial of their suits by two Judges. Further, that two judges could not properly hold that court; the majority rule cannot be applied to a lower number than three. So, by the resignation of Judge North, the court was rendered powerless to act, and the retention of their places by the two remaining Judges, was merely an empty form.

The Judge thereupon concluded that as the new Judges under the State Constitution would take their places long before the next term of the Supreme court [sic], provided by law, the public could not be served, nor any further business done, whether he remained or vacated his seat, and therefore he had determined to resign his place. The Judge also stated that he had promptly forwarded his resignation to the President immediately after the adjournment of the Supreme court [sic], conditioned to take effect when his successor was qualified and ready to act. He would, therefore, not desert a people who had been so kind to him, but take care of the business until his successor was qualified. The judge was frequently applauded during his remarks.

After he concluded, Mr. Gibson offered the following resolution, which was unanimously adopted viz:

RESOLVED, That this community tender to the Hon. George Turner their heartfelt thanks for his assurance to them that he will not neglect the interests of this Judicial District, and that he will continue to discharge the duties of Judge of the Second Judicial District until his successor is qualified.

On motion the meeting was adjourned,

THOS. WELLS, Pres.  
ISRAEL CRAWFORD, Sec.

# THE EVENING NEWS

GOLD HILL, N.T.

September 5, 1864

## **A Recommendation**

The Reese River *Reveille*, speaking of the resignation of the Judges, says:

Should it prove true that one or more of the Judges had resigned, we have a citizen of Austin we would earnestly recommend as one of the successors. We refer to the Hon. David Cooper, formerly Judge of one of the District Courts of Minnesota, a gentleman eminent in his profession, and far above the breath of slander, "without fear and without reproach." The record made by Judge Cooper in Minnesota was worthy and honorable to the highest degree. For several years occupying such a high position on the bench, a prominent candidate for the United States Senate, he always firmly retained the confidence of the people. With such Judges on the bench confidence would be restored, and business and prosperity resume its sway.

As the people will, on Wednesday, vote for a State Constitution; and as the appointment of new Judges would be but a mere temporary affair, the *Reveille* must devote its energies toward the nomination of Judge Cooper in the State Convention.

# THE EVENING NEWS

GOLD HILL, N.T.

December 31, 1864

LITIGATION. – We are evidently a people who indulge in the harmless sport of litigation, as it will be seen by the County Clerk records that since July, 1861, the large number of 1,549 suits have been entered in the District Court calendar. In the Civil Probate Court, to the time of its absorption by constitutional provision, 839 suits were entered on the docket, making a total of 2,388 lawsuits for the people to fee lawyers on. Who wonders at hard times? Call on Mr. S. M. Bishop, Deputy County Clerk, and we will guarantee he will furnish you with data and statistics that will astonish the unbeliever of Washoe litigation.

# THE EVENING NEWS

GOLD HILL, N.T.

December 31, 1864

CRIMINAL. – Since the 10th day of last March sixty-two indictments have been entered on the books of the Clerk of the Courts, most of which are those caused by the indiscriminate carrying of deadly weapons. We think a law prohibiting the carrying of such weapons would be humane, and effective in keeping a good state of society.

# THE EVENING NEWS

GOLD HILL, N.T.

December 31, 1864

HOW OUR COURTS ARE MANAGED. – The Judges of our District Courts, it seems, are busily engaged in clearing off the docket of those old suits that have so long been a drag on men and mines. Judge Burbank is engaged with the criminal calendar, and Mr. J. A. Apperson of this town acts as Clerk of his Court, holding a deputyship under the County Clerk. Judge Messick also, holds Court for the disposition of civil matters, the hearing of arguments on motions, demurrers, ect., ect. Mr. B. H. Hereford acts as Clerk of Judge Mesick's department, and wins golden opinions by his business qualifications and gentlemanly demeanor. Judge Rising has also a "Court of his own," for the disposition of Probate and Civil matters – Mr. J. B. Dayton acting as clerk thereof. The whole thing appears to be systemized, and by its rapid disposition of business meets with the general approbation of Bar and community

## Appendix D

### Judiciary Related Quotations from the 1864 Constitutional Convention

<p>Delegate Earl: Offered the following resolution which was read by the Secretary</p>	<p><i>Resolved</i>, That we now enter into a Committee of the Whole, and ask Congress to give us a change in our Judiciary, and that this body now propose such change necessary to be made and forward the same to Congress. That we then adjourn, hoping that Congress will grant our prayer; that we say to the people of this Territory that if this change is granted us, we think it better for the present to remain as we are, under a Territorial Government.<sup>277</sup></p>
<p>Delegate DeLong:</p>	<p>. . . in the short space of less than a year, I have seen so many of the evil workings of a Territorial Government like ours, situated so far distant from the central Government, to which men are looking for appointments; I have seen, in our judicial department, such an extraordinary lack of ability to come up to the requirements of our condition, in the men who have received appointments in that department, that I have come to the conclusion that some remedy is absolutely demanded. Nor is it alone a lack of ability on the part of our judges. Of our three judges at <i>nisi prius</i>, at this time, one is sick and the others have absented themselves, and thus blocked the wheels of justice; so that in reality we have no Courts at all; although I know, and every lawyer knows interests in litigation so vast in importance that the parties interested in them could almost afford to pay the expenses of a State Government for one year if that means they could have their rights judicially determined. This is what impels me to favor a State organization. It is to obtain the power of electing our own judges, and just as many of them as we can want, to transact our criminal and civil business. . .<sup>278</sup></p>
<p>Delegate Collins: On adopting the constitution of California and using California precedent</p>	<p>To my knowledge, members of that Supreme Court, to whom have been accorded great judicial and legal ability, have rendered decisions that subsequently the same Court, being differently constituted, has reversed, and in many instances I would hardly know which side of those judicial decisions I would take. . . . I do not believe that the decisions of California will be binding, or will to great extent control the Courts of Nevada. We are different from California. In almost every respect this Territory may be declared <i>sui generis</i>. There is nothing on the east or the west, the</p>

<sup>277</sup> Marsh, *Debates and Proceedings in the Constitutional Convention of the State of Nevada*, (San Francisco: Frank Eastman 1866), 13.

<sup>278</sup> *Ibid.*, 14.

	north or the south, like her, and she needs a Constitution based upon her own peculiarities – a Constitution adapted to her own condition – a Constitution that will meet the wants of her mining, her agricultural, and such other interests as she may have. <sup>279</sup>
Delegate Dunne: In reference to his offered resolution to send a prayer for an alteration in the Judiciary in the event the Constitution does not pass	I think it eminently proper that that resolution should pass, as we all agree that a great necessity exists for an alteration in our judiciary system, as at present constituted in the Territory. As that necessity is made by friends of the Constitution one of the main arguments for their favoring its adoption, and as we must look forward to the probable defeat of the Constitution, or its possible defeat at least, I think it would be proper for us to take such action as is here proposed. This resolution contemplates, that in the case the Constitution should be defeated, a repetition for that prayer, for an alteration of our judiciary system, should be placed before Congress at the next session. The memorial will not be presented, of course, if the Constitution is adopted, and therefore it will do no harm; but I am satisfied it is the wish of every member, in case it should not be adopted, that the matter should again be brought before Congress in proper shape. <sup>280</sup>
Delegate Dunne: In response to arguments against adopting the resolution because it would discourage adoption of the Constitution	In the event that this resolution is rejected, what more potent argument could be adduced in Congress against the change asked for in our judiciary system, than calling upon the fact that a resolution of this kind was introduced in the Constitutional Convention, composed not of merely private individuals, but of representatives of the people of the Territory of Nevada, and they had declared, by their action thereon, that they did not desire any change in the judiciary system? It will show the sense of the Convention to be, that they do not deem it necessary, even with the possible alternative of the Constitution being rejected, to repeat the prayer heretofore made to Congress for a revolution or change in the judiciary system of our Territory; – that in fact, they do not wish a change to be made. Gentlemen will agree with me, I think, that much opposition would be made in Congress to any change of our judiciary system, and this action of our Convention would no doubt be used to prevent a change which I know we all desire, in case we continue under the form of a Territorial Government. <sup>281</sup>
Delegate DeLong:	I am opposed to this resolution. I know that many are going to vote for the Constitution in order that we may be released from the present judiciary system; but if we pass a resolution like this, many will say there is no use of adopting the Constitution. . . <sup>282</sup>

<sup>279</sup> Ibid., 19.

<sup>280</sup> Ibid., 172.

<sup>281</sup> Ibid., 172-173.

<sup>282</sup> Ibid., 173.

<p>Delegate Hawley: In opposition to Delegate Dunne's proposed resolution</p> <p>Delegate Hawley Continues:</p>	<p>The argument which the gentleman from Humboldt has made, I think, discloses his real <i>animus</i>, and moreover, it defeats itself, when he asserts that the true sense of the Convention can be obtained upon that resolution in the event of the rejection of the Constitution. . . . every member here is in favor of a change in the judiciary system in that event; and I think we need not fear but that Congress will be, as it has been heretofore, fully advised of our sentiments on that subject. . . . Now, if Congress shall become aware of the fact of such rejection it can only be through a perusal of our debates, and when they come to read those debates, they will also ascertain, and at the same time, that it is the unanimous sense of the Convention that such a change should be made in our judiciary system, in the event of the rejection of the Constitution. . . .<sup>283</sup></p>
<p>Delegate Brosnan:</p>	<p>Not only that, Mr. Chairman, but if you adopt the system proposed, you dignify the character of your judiciary in the several counties, and secure the respect of litigants for the court, to a degree which, I humbly submit, they do not always challenge at the present time. Further than that, you also secure the services on the bench, of men of ability – men in whom the community can confide. You get men whose qualifications are known, coming from the neighborhoods in which they are elected, and known to all the citizens within their counties, and you avoid the great struggle which, aside from political considerations, would always be sure to arise, to a certain extent, under the old system of judicial districts comprising several counties in each, between the different counties of those respective districts, where men would naturally be combating and struggling over the question of which county should present the candidate for District Judge.<sup>284</sup></p>
<p>Delegate Johnson:</p>	<p>Members of the Convention, I am sure, will appreciate the importance – having in view the progress made in other portions of our work – of obtaining, at the earliest possible moment, a report from the Judiciary Committee; for I do not conceive that there can possibly arise in other portions of the Constitution yet to be acted upon, many vexed questions, and certainly none involving consequences so important to the people of this Territory, or State, as that which will be involved in the adoption of our judicial system.<sup>285</sup></p>
<p>Delegate Collins:</p>	<p>If there is any one thing more than another that tends to produce discouragement in our community, it is the difficulty and expenses attending our litigation. In all small matters, even if a man is the gainer in litigation, he is a loser in the end. I have heretofore been considerably embarrassed in my own mind, in</p>

<sup>283</sup> Ibid., 174.

<sup>284</sup> Ibid., 233.

<sup>285</sup> Ibid., 234.



<p>Delegate Collins continues:</p>	<p>endeavoring to discover some mode by which we could do justice to the outside counties. . . . It occurs to me, inasmuch as every county must have a County Judge, that we might as well give something more of dignity to that officer, and enlarge his jurisdiction. That would have a tendency to bring a more efficient, learned and intelligent officer upon the bench, and a judge would certainly be none the less qualified to discharge the lesser duties of a County Judge because he was amply qualified to discharge the duties of the higher jurisdiction. It seems to me that such a system would be efficient, and that by this means would enable the litigants to have their cases adjudicated more promptly, and with very considerably less expense. The Courts could then be in session, if necessary, the greater portion of the entire year, and that is an important consideration, for the delay of justice, under our present system, is practically a bar to justice, and anything that will conspire to hasten litigation, to bring about some determination, whatever the result to the litigants may be, is practically an improvement on the slow and tardy movements of our present system. . . . I do believe that if this resolution is adopted, and the system it contemplates presented to the electors of this Territory, it will have a very material influence in securing the adoption of the Constitution which we are framing, by the people of this Territory.<sup>286</sup></p>
<p>Delegate DeLong:</p>	<p>[The system proposed] appears to my mind clear and reasonable. It saves to clients a great amount of expense, by having a permanent court, instead of having a traveling court, going about like a band of Bohemians or Thespians—a system which I have always regarded with disfavor. If you have a District Court in each of the counties, a man cannot sneak off, in a sly way, and get out an injunction somewhere else, stopping the work upon a whole mine, when it would require three months for the opposite party to have the injunction dissolved. . . .<sup>287</sup></p>
<p>Delegate Collins: On the District Court discussion</p>	<p>I think this is the most important business to come before the Convention. . . .<sup>288</sup></p>
<p>Delegate Chapin: On the District Court discussion</p>	<p>It is a subject of vast importance to us, and this, it seems to me, is the proper time to have a full and free discussion upon it and bring out all the points. . . . it was dictated by wisdom, and that we ought to, and I trust will adopt it, with great unanimity.<sup>289</sup></p>
<p>Delegate Collins</p>	<p>If there be any one thing which more than another will operate to induce Storey County to go for a State organization, it will be the conviction on the part of the electors of that county, that the State</p>

<sup>286</sup> Ibid., 236.

<sup>287</sup> Ibid., 237.

<sup>288</sup> Ibid., 240.

<sup>289</sup> Ibid., 242.

<p>Delegate Collins continues: :</p>	<p>will be launched, the judicial officers elected, and their duties defined by the Legislature, at the earliest practicable day. We have on the docket of the court in that district, somewhere about four hundred cases, and we have only one judge whose jurisdiction extends to those cases. There is besides that, a large amount of litigation which would be commenced in that court if there were the least possible chance of cases being brought to trial at an early day. If this Convention shall assure the people of Storey County, (and I think there are other counties in the same category, though not, perhaps, so deeply involved in this judicial – I will not call it muddle – this judicial inaction,) that the judicial system under the state organization will be put into immediate operation, it will secure the support of the people of Storey County for a State organization. The people of the whole Territory feel the present condition of things in respect to the judiciary to be a great hardship, and they will take much less interest in the question of establishing a State Government if there is to be delay in that matter, than they would if assured that at an early day, as early as November, if possible, the Legislature would meet and define the duties of the judges who are to be elected under this Constitution.<sup>290</sup></p>
<p>Delegate Collins:</p>	<p>Again there are now on the printed calendar of the District Court in Storey County, nearly four hundred cases, and more than one-half of those cases are exclusively mining cases, seventy-five of which, at the outside, will occupy three times as much of the time of the court as all the rest put together. Now, I ask those who profess to represent the mining interests – which is really a mixed interest, however, as I have shown – if it is right and just to tax the owners of the surface property to pay all the expenses of that litigation, when it is keeping their own cases out of court? There is a dark shadow hanging over our county, and I think also over many other counties, on account of the difficulties in the way of litigation. Cases cannot be reached on the dockets of our courts, probably, for a long time to come. There are, in our county, clouds upon the titles of our surface property, and also upon our mines, which, on account of the difficulties in the way of litigation cannot be cleared up. . . .<sup>291</sup></p>
<p>Delegate Earl:</p>	<p>There is a large amount of capital invested in the mines in our Territory, which is now locked up by litigation upon litigation...<sup>292</sup></p>
<p>Delegate Brosnan submitted the following report:</p>	<p>MR. PRESIDENT: – Your Committee on the Judiciary has had under consideration Article VII, relating to the Impeachment and Removal from Office, and report that they have amended said</p>

<sup>290</sup> Ibid., 306.

<sup>291</sup> Ibid., 326.

<sup>292</sup> Ibid., 364.

	<p>article by striking out Section III, and recommend that the Convention concur in said amendment. In the judgment of your committee the article divested of Section 3, contains all the ordinary check and safeguards, and that the same are amply sufficient for the prevention and punishment of official misconduct and dereliction of duty. The section endangers the stability of the judicial department, and in its provisions exposes its officers to the assaults of individuals who may be actuated by personal spleen and animosity, whilst it leaves an opportunity to convert the Legislature into an arena of strife upon trifling questions and for unimportant causes.</p> <p style="text-align: right;">All of which is respectfully submitted. C.M. BROSNAN, Chairman.<sup>293</sup></p>
Section 3 [of Article VII] was read as follows:	SECTION 3. Provision shall be made by law for the removal from office of any civil officer, for malfeasance or nonfeasance in the performance of his duties. <sup>294</sup>
<p>Delegate Nourse:</p> <p>Delegate Nourse continues:</p>	<p>I say there are so many cases where valid reasons may exist for the removal of an officer, although there may not be sufficient cause for impeachment, that I think there should be a provision of this kind. A stupid judge is as bad as a dishonest one, and so is a judge whose habits are such as to disgrace, not only the bench, but the community in which he lives; and yet you cannot get at such a judge without a provision of this kind, unless he commits some wrongful act in the discharge of his duties. There are innumerable cases of men whose incompetency, or something worse, unfits them for the bench, and prevents their doing any good upon it, and yet who cannot be impeached. Cases of this kind occur more frequently in new States, where men are not generally acquainted with each other, than they do in the old States, and yet I have seen in the old States instances where it was considered expedient and desirable to abolish an entire court and establish a new court, with a new name, merely for the sake of getting rid of one man on the bench, who was thoroughly incompetent, but whom they could not impeach, because they could not show that he had done any act which should subject him to impeachment – such as taking bribes, or any other illegal act, which would be ground of impeachment. . . . there are so many other cases of judges who are unfitted for their places, upon other grounds than those upon which they might be impeached, that it seems to me we should be placing ourselves in a bad fix, for the first few years especially, if we provided for no other way of getting rid of an incompetent judge than impeachment. I say this with a full and perfect appreciation of the proposition, that the judiciary should be placed above the reach of political</p>

<sup>293</sup> Ibid., 537-538.

<sup>294</sup> Ibid., 541.

	influences. No man desires more than I do that the judges shall be in a position to be independent of the other departments of the Government, so far as that may be practicable. <sup>295</sup>
Delegate Brosnan:	I will state, further, that lawyers very often complain of judges in consequences of their decisions. When they get beaten in the courts – and some lawyers do get beaten many times before the same judge – they are apt to be dissatisfied with his decisions, and in such cases you will hear them clamoring on the streets, or in the social circle, and asserting that the judge is an ass, and not fit to be a judge, because he decided so and so, in such and such a case, which decision they will insist is a thing unheard of. In the course of my experience, I have frequently heard such remarks in reference to judges. Now in a case of that kind, the lawyer would be apt to estimate the judge in the same manner as the gentleman from Washoe does, when he refers to some judges as being stupid; whereas, if the decision of the judge had been the other way, the lawyer would have been exactly suited with him, and would have regarded him as a model of perfection. And then, if stupidity were to be made a sufficient cause for removal, the opposite attorney would be liable to turn around and utter the same sort of exclamations, and manifest the same disaffection.
Delegate Brosnan continues:	In whichever way the judge might decide a case, the disappointed party, or the counsel for the losing side, would be dissatisfied; and they might have friends in the Legislature who would be induced to look upon the decision as a reasonable cause for removal from office, and would be likely to use all the influence which they could bring to bear upon the question. In that way every judge would be liable to be acted upon by political influences, or, if you please, by individual pique or private revenge. . . . <sup>296</sup>
Delegate Johnson:	Now as to the matter of keeping persons occupying judicial offices free from accusations, we know that is simply impossible, whether the Legislature shall or shall not be clothed with this authority. No man, sir, who has ever occupied a judicial position in this Territory, has been free from envenomed shafts assailing his character, whether justly or unjustly, it is not for me to say. I will only say that such has been our experience in respect to judges. . . . <sup>297</sup>
Delegate Johnson:	[B]ut there are causes for removal which should not be made reason for impeachment. I will give an illustration of my meaning: suppose an incumbent of a judicial position, by reason of impaired health, is not able to perform his duties, but yet he may have a desire to retain the salary or emoluments of his office.

<sup>295</sup> Ibid., 542.

<sup>296</sup> Ibid., 542-543.

<sup>297</sup> Ibid., 544.



	<p>provision for impeachment by reason of malfeasance, and still that a judge may have utterly lost all his influence, and to all intents and purposes may have become entirely worthless as a judge. There are a hundred cases that I might cite to illustrate this point. For instance, a judge may be in a state of ill health, languishing with incurable disease, but he may not see his own condition as other see it. . . . in such a case there should be some provision. . . [for]. . . the power to remove that man; because to allow him to remain, would be practically to destroy or annihilate, for the time being, the Court of whose bench he was the incumbent. I have not so much fear that the Legislature will do injustice to a judge, as I have that a judge, by the improper exercise of his power, may do injustice to the people. On the whole, I want this section to remain, because I want to put the judges on their good behavior – because I want to put power behind them which they may be made to feel – to let them know that there is a power which may be invoked, and which is competent to effect their removal. It makes a very great difference with some men, in regard to their actions, whether or not there is such a power behind them.<sup>300</sup></p>
<p>Delegate Frizell:  Delegate Frizell continues:</p>	<p>We are perfectly well aware, Mr. President, that desperate diseases require desperate, or at least adequate remedies. It is well known that a physician may study a life-time to make up a theory of the treatment of some particular disease, and the discovery may, perhaps, be extended over a whole continent. But then, sir, the same physician may afterwards locate in some particular district where he meets with a form of that disease that is extremely virulent and dangerous in its nature, and after all his theorizing he then finds that he is compelled to change his tactics, and to abandon his theory of practice, which he had adopted after life-long study. Now I need not say to you, Mr. Chairman, and members of this Convention, that this disease which we seek to reach and control, or cure, the disease that has prevailed in this locality heretofore, and which I fear will continue to prevail in the future, is one that is dangerous and difficult of treatment. It is a disease, Mr. Chairman, which attacks the brain, the heart, and the stomach of men, and I almost fear, sir, that it contaminates the soul. And, sir, as an application to such a disease, I know of no better remedy than this Section 3. I hold that when we get good and upright judges on the bench, this section will operate as an incentive and inducement for such men to do their duty boldly and fearlessly. And on the other hand, it will hang like a sword suspended by a single hair over the heads of those men who</p>

<sup>300</sup> Ibid., 547.

	would deviate from the path of duty, or do that which is evil and wrong. <sup>301</sup>
Delegate Chapin:	I appreciate the objections which gentlemen have urged against this section, but our situation in the country, it appears to me, is a peculiar one, and altogether unlike that of the older States of the Union, where the judges may be men who have been known in the community from their youth up, and where the people are able, therefore, to select their judges from among men who have been long known and tried. There they can select men to whom they dare to intrust [sic] their lives, their property, their honor – everything. We cannot, for a long time to come, anticipate such a state of affairs here, and therefore I am in favor of retaining this section, so that we may be able to reach those judges whom we may chance to select, in case they should be found unworthy or incompetent, because we shall be compelled to take men about whom we know very little, and in regard to whom we shall be very liable to be deceived. If we are deceived, I want a provision here, by means of which we can reach and remove them, and not be compelled to suffer ruinously, from year to year, in consequence of their malfeasance in office. <sup>302</sup>
Delegate Dunne:  Delegate Dunne continues:	Here in this Territory, and proposed State, we are differently situated in regard to our society from those other States, whose Constitutions have been quoted to us upon this point. They have in those States no gigantic monopolies like ours, one or two of which, and possible one alone, may be the owner and director of perhaps a fifth part of the whole amount of property in the State. By the incorporation of this section we place it in the power of any one of the powerful mining companies existing amongst us to ruin forever any judge who shall dare to stand opposed to it, on any issue that may be raised in his Court. They may not be able to impeach him, or to secure the vote in the Legislature requisite for his removal under this provision, but they can nevertheless ruin him forever, irretrievably, by raising this clamor against him. <sup>303</sup>
Delegate Nourse:	I do not fear that a mining company, or any other interest, can any more readily or easily buy two-thirds of the Legislature, than it can buy one judge. I do not think that argument is entitled to [sic] much weight. For the purpose of having our judges feel their responsibility for the faithful and diligent performance of the duties of their office, and not to have merely a means of impeachment in case they should prove unfaithful. I think this Section 3 as it stood in the original article is a desirable one. . . <sup>304</sup>

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<sup>301</sup> Ibid.

<sup>302</sup> Ibid.

<sup>303</sup> Ibid., 548.

<sup>304</sup> Ibid., 549.

Delegate Dunne:	The point I wish to present was, not that the Legislature by a two-thirds vote could secure the removal from office of a judge, but that men could, for their own ends, raise the question of the removal of a judge in the Legislature, and then, by means of the press, they could raise a clamor about his ears, and in that manner ruin his reputation forever. <sup>305</sup>
Delegate Nourse:	If they can raise any more clamor about judges than has been raised during this last year, they will do pretty well. <sup>306</sup>
Delegate Johnson:	[We may not find precedents in older State's Constitutions because] the state of affairs at the time their Constitutions were framed, was of a very different character, I regret to say, from that which has existed in more recent years. In the earlier days of the Republic, judges were generally found to be men unlike those who in later times are unfortunately aspirants for judicial honors. In later times, under circumstances which we can well appreciate and understand, men have been found successful aspirants for those positions who have brought discredit and distrust upon the judicial ermine. <sup>307</sup>
Delegate Lockwood:           Delegate Lockwood continues:	Now, sir, I believe that a judge is a man. I believe furthermore, that a great many judges are corruptible men. I also believe that there is not a Territory in this Union where the incentives to corruption are anything like as numerous or as strong as they are in this Territory. And I believe, sir, that we ought to adopt this simple and summary way of remedying the evils which may arise in consequence of these facts. When we find that we have a judge who is corrupt – when we learn that fact upon evidence which is uncontradicted [sic], and which is satisfactory to a body of men as intelligent as is likely to be assembled to constitute the Legislature of this State – and I trust, and have confidence to believe, that no man will ever be convicted, unless upon evidence so plain and palpable as to leave the matter beyond a doubt – I say that under such circumstances, I believe the people ought to be promptly relieved from the sway and authority of such a judge – the greatest nuisance, and the most damnable curse that ever afflicted a people. <sup>308</sup>
Delegate Frizell:	I say, disregarding all these precedents, we do surely need to apply radical remedies in this State. Supposing that we had not a single precedent, yet I hold that in this State our situation and our wants are peculiar, and we need to make provision in our Constitution to correspond with our peculiar circumstances. <sup>309</sup>

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<sup>305</sup> Ibid.

<sup>306</sup> Ibid.

<sup>307</sup> Ibid., 552.

<sup>308</sup> Ibid., 556.

<sup>309</sup> Ibid.





<p>Delegate DeLong continues:</p>	<p>permitted to use that expression, concocted and carried on against the judiciary, and against every man who has occupied official judicial position in this Territory. Not a man has been so unfortunate as to occupy a seat upon the bench of Nevada Territory, but has been charged with corruption and wrong-doing, in one way or another. And why? There are a good many reasons which might be assigned. In the first place, there are many bad, unprincipled men here – men who have come here with the design of snatching a fortune by some means, and then leaving the Territory; and when such men have seen the coveted fortune within their immediate grasp, and then failed to obtain it, because they had no right to it, they have turned around, and out of revenge have endeavored to blast the character of the judges by whose decisions their designs have been thwarted. There are also other reasons for such a state of things. Good men are often divided in their interest and their opinions, upon questions which the judiciary are called upon to settle; and it is almost impossible to convince a man of that class, in this Territory, who has lost a case in Court upon a question on which he, like other citizens, has formed and cherished the most decided opinions as to what are the real merits involved in the issue, that the judge who has decided against his view, is anything but corrupt and unworthy. Such men think that the whole world should view everything through their eyes, and they are not disposed to charity in regard to any man who may differ with them. Mining suits are commenced or conducted by learned counsel, surrounded all the time by men who are interested and engaged in preparing it, and during its progress of preparation, for six months or a year, they see only their own side of the case. Being wholly absorbed in that, they never get a glimpse of the other side. Go to one of them in such a case, and you will find him perfectly sanguine – not a doubt in the world that he is going to win, there appears to be such an abundance of proof, and such a clear case. Not looking at the case at all from the stand-point of the other side, they are perfectly surprised and astounded by a judgment against them, although the other side, with their view of the case, would perhaps have been equally surprised by a judgment the other way. What is the consequence? Why, that not one case in a hundred of this class is decided, but the party defeated comes right out and charges the judge with corruption. That is almost inevitably the case. Sir, I have come at last to regard the complaints of these parties as scarcely worthy [of] an instant's attention, and much less would I allow them to shape our institutions, in a matter of such vast moment as the judicial system of the State. I know that preparations are going on to array a party against certain decisions of the courts affecting the mining interests, and</p>
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Delegate DeLong continues:	<p>public meetings are to be called to ascertain how many are in favor of one theory or another; and the decisions of the judges, one way or another, are to be discussed in public meetings, as they are in the public prints. What is the object? It is simply to show the opposite side, and the judge who might possibly be inclined to decide in their favor, that if they do so they are in danger of public condemnation – that they cannot decide in a particular way without great danger, because the voice of the community is the other way. Now I do not charge these people who are engaged in getting up such public demonstrations with doing wrong, for it is the right of the people at all times to assemble together and discuss questions of public interest. I admit that such is their undoubted right, but I refer this matter merely as an instance in point, as an illustration, to show the great danger of leaving the judiciary, above all other departments of the government, in a condition to be swayed by every temporary popular excitement, instead of by their own convictions of right. It is different with the Legislature, coming fresh from the people every two years. I know it has passed into a fashionable custom throughout the United States, and in every State in the Union, for the people to charge the Congress of the United States, and their several State Legislatures, with corruption and dishonesty. It is fashionable everywhere in this country to accuse the great mass of legislators of being corrupt. It has been my pleasure to be for four years a member of the Legislature of a sister State, and I know that it became so common to speak of passing “thieving bills,” and of buying up the votes of members, that it was not regarded as an insult, even, when referred to in the presence of members of that legislative body. The thing became so customary that it ceased to attract attention, no matter how broadly the assertion might be made. I do not, for myself, believe there is generally good grounds for such sweeping charges against legislative bodies, but although the fashion of making them is undoubtedly fraught with evil, yet they are charges which do not strike so deep, as when men come to attack the character of the judiciary, by charging the judges on the bench with corruption. The people are content as to the Legislature, because they know that if they pass laws that are wrong they have their remedy in reserve, by an appeal to the courts. They have a right go to the courts, and, if error has been committed in the passage of any law, they can there find relief. But carry these popular denunciations a step further, and impress upon the people the idea that not only the Legislature, but the Judiciary also, are corrupt, and that moment you instill in the public mind a contempt for all law, and a strong tendency to anarchy – an end which bad men among us may desire, and perhaps hope to accomplish.</p>
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	<p>I tell you, sir, that we cannot be too careful to preserve the public respect for the judiciary, and hence it would be dangerous to attempt this proposed innovation, especially now and here, where the community is made up of men who have met together from every land, for the most part strangers to each other, not knowing who is to be trusted, where interests involving millions are often to be decided in a single case, and where consequently the passions of men are more inflamed, and hence the hazards of the State are greater. I maintain that our safety lies in preserving the public respect of the judiciary, and I hope to see the time when it will not do for public journals of any class, or in any quarter, to bruit a rumor against a man holding judicial position, until the facts can be shown as the foundation of the rumor, until the specifications can be made public in connection with the charge, so that the man accused may know what he has to reply to. Why, sir, to-day the papers are teeming with charges against one whom I believe to be as high-minded and incorruptible as any man in our community, and as high above his accusers as the sun is above the earth; and yet, though you may answer and deny these charges, you call in vain upon the papers uttering them, and their correspondents, to specify the basis of a single charge, or to name any particular instance in which he has been corrupt or has done wrong, in order that it may be answered. The paper and the correspondent are silenced by such demands, but yet only a few days will elapse before the stream of invective breaks forth again from a new source, and again challenges reply; and so the thing goes on, until the man assailed, and his friends, are sick and tired of noticing it. I hope that at this time, when we are suffering under so many evils, we shall not so far lose sight of our duty as to place the judiciary within the power of public opinion, so that men filling responsible and honorable judicial positions will be compelled to forget the cause of the culprit at the bar, or of the party who happens to be engaged in the defense of an unpopular issue, and yield to public clamor in order to save their judicial ermine. I hope we shall not place our judges in a position where they will be forced to mete out what the popular party calls for, right or wrong. It is because I am afraid this innovation would have that effect, that I think it is dangerous, and I cannot see that, on the other hand, there is any compensation by securing an uncertain good.<sup>312</sup></p>
Delegate Collins:	<p>[W]ith all the declarations that have been made against members of the judiciary of this Territory, it would be possible to get two-thirds of any legislative body to pronounce against any one of them.<sup>313</sup></p>

<sup>312</sup> Ibid., 558-559.

<sup>313</sup> Ibid., 559.

<p>Delegate Johnson: Discussing the Article organizing the Judicial Department</p>	<p>I now warn those gentlemen who are the earnest advocates of a State Government, not to take hasty action on this matter. Let them not in the last hours of our session, thus hastily pass over the most important parts of the instrument they are preparing – that portion, upon the proper construction of which, depends the future security of our fortunes, our liberties, and our lives. I regard this article as being quite as material, and transcending in importance, any which we have considered, or can be called to deliberate upon. Let us, therefore, give it that consideration which its importance requires and merits. I hope it will be postponed until we can have an opportunity of ascertaining from the printed sections, the defects which may exist in this or other particulars.<sup>314</sup></p>
<p>Many delegates and the President</p>	<p>Discussion about staying and not ramming the judiciary article through.<sup>315</sup> Gentlemen well understand that we have met here daily at nine o'clock in the morning, and with the exception of a recess from twelve until two o'clock, and another from five till seven, have remained in session very often as late as ten or eleven at night. . .<sup>316</sup></p>
<p>Delegate Mason:</p>	<p>I want to see it carefully, sir, in the consideration of this judicial article, that there is no encroachment of one of the coordinate branches upon the other – that the legislative, executive, and judicial departments are kept entirely distinct and separate. For I wish to say – and I have not heretofore occupied much of the time of the Convention, nor do I propose to now – that I hold to the doctrine advanced by John Jay, one of the most eminent statesmen who ever breathed in the United States of America, that whenever there is an encroachment of one of the coordinate branches of the government upon another, liberty is in danger. I want no such encroachment, but I want to keep each department separate and distinct from the other, and consequently I want to exercise care and circumspection in the investigation of this judicial article, wherein our rights of persona and property are involved.<sup>317</sup></p>
<p>Delegate Johnson: Advocating for five Supreme Court justices</p>	<p>I desire to discard as much as possible the idea of the corruptibility of judges, for I would be indisposed to make a suggestion of such character in this Convention, lest it might seem to betoken an acquiescence in, or endorsement on my part of certain charges which have lately appeared in the newspapers, more especially within the last few days. On that subject I do not propose to speak. I do not propose myself as a defender of the Supreme Court, nor of any judicial officer; neither do I propose to</p>

<sup>314</sup> Ibid., 618-619.

<sup>315</sup> Ibid., 619-621.

<sup>316</sup> Ibid., at 621.

<sup>317</sup> Ibid.

Delegate Johnson continues:	become a participant in any charges of the character of those which have been made public. But the important matter is this. . . – not a question whether two judges or three judges can be the more easily purchased, but that a character of stability and fixedness should be given to the decisions of our Supreme Court. And that end, I believe, can more certainly be attained by placing five judges on the bench than by limiting the number to three. <sup>318</sup>
Delegate Mason: Discussing county courts	I look upon the whole system, as it has existed in this Territory, as little better than a nuisance, which should be abolished, not only in Washoe and Ormsby, and other small counties, but in every county. <sup>319</sup>
Delegate DeLong: Discussing the number of judges in Storey County	I have a word to say before the division is taken, and it is this: I express it as my opinion, as a member of the bar of Storey County, that two district judges, working constantly from this time on for one year, could not try all the causes which are now on the calendar. There are about four hundred causes on the calendar, besides a number which have been commenced since the calendar was printed. Then, in addition, they are to have all the business now done by the Probate Court, which will occupy a great deal of time every month. Therefore, I say, if you limit it to two judges the court will be blocked up just as it is now. We have some mining suits which will take two, three or four weeks each to try, and then all the County Court business and criminal cases are also to come in. We require the services of three judges, and cannot get along with a less number. <sup>320</sup>
Delegate Johnson:	If you limit the jurisdiction of the District Courts to a given sum, unless there be a further provision investing the District Courts with authority to try all cases, civil and criminal, that may be existing in the Probate Courts, irrespective of the amount, I will not say that I question the authority of any Court, but I hold, without hesitation, that there is no court which would have any jurisdiction over such an action, and it must die with the former Court, in a way similar to that which occurred when the Territory of Nevada was created. We had at that time the judicial district of the County of Carson, and no provision was made for the transfer of cases involving these small amounts. Some of the records existed, but there was no provision for their transfer, and the records were claimed as private property, and were retained by the clerk of the Court. Those cases therefore died with the Court, and no attempt was made to resist or prevent that result, for the simple reason that there was no power to prevent it. <sup>321</sup>

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<sup>318</sup> Ibid., 642.

<sup>319</sup> Ibid., 647.

<sup>320</sup> Ibid., 651.

<sup>321</sup> Ibid., 720.

<p>Delegate DeLong: Speaking about imposing a filing fee</p> <p>Delegate DeLong continues:</p>	<p>I believe it is best – and not only best, but exactly right – that those who dance shall pay the fiddler; in other words, that those who go to law shall pay the expenses of adjudicating their right, and not ask that a part of their burden shall be sustained by those who do not enter at all into litigation. Now it will be, and is already, one argument urged against the change from the Territorial to the State form of government, that our courts are going to be a great burden in the way of taxation upon the people. It is said that they are very generally monopolized by litigants in mining cases, nine-tenths of whom are residents of San Francisco, or, at any rate, non-residents of this State; that whilst they monopolize our courts, the judges, who are maintained on the benches at high salaries, are to be paid by direct taxation, wrung from the people of this State; and that those who are asking for the change, and who require the services of the judges and courts, are either non-residents, or non-tax-paying residents of Nevada. . . . Now a word as to the argument relative to the hardship upon litigants of such a provision. He must be a very poor man indeed, or a very penurious one, who is not willing to pay a fee, say of ten dollars, upon the institution of his suit, knowing that he will get it back with other costs, if his case is gained. And it is not much to require a man to pay, after he has been prosecuting or defending a bad cause for a long time, and so consuming the time of public officers at the public expense. And I trust that under such a provision the Legislature will regulate things a little differently from the way they are managed at present. A man who now goes into court, and wants to commence a suit, is required to pay down a certain sum in advance, say for ordinary cases, fifteen, twenty, or thirty dollars, as a deposit for the clerk’s fees; and then he also has not only to pay the Sheriff for the work he does, but also to make a deposit ahead. Now we might relieve litigants a little by providing that they shall only pay the officers as fast as they do the work. For instance, for issuing summons, one dollar, for filing complaint, one dollar, and so on. Now when complaint is filed, and summons issued, the plaintiff has to pay the clerk ten dollars, and let him hold the remaining eight dollars until the case is determined, whether the other side make any defense or not. We can relieve poor litigants from this tax, and then, if they are required to pay the docket fee, they will nevertheless not be called upon to pay a dollar more, at the commencement of a suit, than they do now. In that way we can obtain an income, from this source, for the payment of the judges [sic] salaries, and at the same time no hardship will be inflicted upon poor men.<sup>322</sup></p>
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<sup>322</sup> Ibid., 734.

Delegate Whetherill:	We need this tax [paid by a filing party to initiate a case or appeal] at the outset. After a while, as the gentleman from Ormsby, (Mr. Johnson) suggests, we may not need it; but at the outset, while our financial affairs are in a crippled condition, it is a matter of necessity. <sup>323</sup>
Delegate Whetherill: Delegate Whetherill continues:	If a fee of ten dollars is not going to be sufficient, I hope the Legislature will make it twenty, and, as the gentleman from Storey (Mr. Delong) says, let those who dance pay the fiddler. That is the correct principle. If you want the people to pay the expenses of private litigation, then, upon the same principle, the people in a body should be called upon to come up and pay the clerk's and Sheriff's fees, and all the other expenses incurred in conducting a law-suit. Now the party who loses the case is presumed to have been in the wrong – the one who improperly prosecutes, or improperly defends an action – ought to be required to pay the expense which he has incurred, and should not be allowed to call upon others to share the expense with him. I think that is just and right. <sup>324</sup>
Delegate Collins:	I am decidedly in favor of this fee, and I am in favor of it on principle. I do not believe that well disposed people, who try by every possible means to keep out of litigation, should be taxed to support litigants. And I never could see the justice, myself, of exacting a docket fee from the humble litigants in the Justices' Courts, while the great litigation which occupies the time of the higher courts is sustained by taxes paid by the public at large. If that kind of sauce is good for the goose, it should be good for the gander. If it is proper, just, and right to tax a humble litigant who goes before a Justice's Court to enforce a demand for five, ten, or twenty dollars, or more, it certainly seems to me to be eminently proper that the litigant who goes before the higher court, with his claim of two thousand, ten thousand, or twenty thousand dollars, should, upon the same principle, be called upon to pay something toward the expense of sustaining the court. <sup>325</sup>
Delegate Warwick: Discussing providing protection against libel and slander	There are men in this community, more especially at this time, who must feel the shafts of slander, of which the gentleman has spoken, ought to be placed within the reach and control of the law. A man's character is dearer than his goods, dearer far than life to many men, for they are ready to sacrifice life itself rather than honor. I therefore hold that it is the duty of this Convention – and I honor the gentleman from Storey for making this last effort – to throw the shelter of the law, as is proposed by this amendment. <sup>326</sup>

<sup>323</sup> Ibid., 735.

<sup>324</sup> Ibid., 737.

<sup>325</sup> Ibid., 737 – 738.

<sup>326</sup> Ibid., 778.



## Appendix E

### Russell McDonald's Territorial Judge Biographies

The following biographical summaries are excerpted from the Russell McDonald Papers at the Nevada Historical Society.<sup>327</sup> Most citations are omitted but can be found in the original McDonald Papers.

#### GEORGE ENOCH TURNER

Born Ohio 12-5-1828 and died 8-12-1885 in San Francisco at his residence, the Lick House, having committed suicide by shooting himself through the head, in a closet on the second floor of the hotel.

Wife: Sarah R. Turner, born 1831; daughter Ellenora (Nellie), an invalid at the time of Turner's death who would have been about 35 years old at the time; one grandson. Turner probably married Sarah in 1848-1850.

Father: John R. Turner, a Methodist Episcopal minister in addition to his regular business and political pursuits; mother, Vienna P. Scarborough.

George was one of ten children. Republican.

Mack – Mark Twain in Nevada, p. 89:

“Turner, a young fellow from Ohio and a Nye appointee, was a small man, but what he lacked in height he made up for in oratorical vim and egotistical demeanor.”

Portsmouth Times 8-1885:

“In personal appearance Judge Turner was tall and spare, with jet black hair and eyes, and red lips. He was a man of audacity and self-possession, perfectly free from embarrassment.”

Note: The will of Turner's grandmother, Mary Scarborough, dated July 7, 1852, indicated she had loaned him and his wife \$1,100 on November 24, 1851, secured by mortgages on his property; she bequeathed one-half the amount plus interest to him, and specified that the mortgage be canceled upon his payment of the other half with interest.

1845-1848: Attended regular collegiate program, Ohio Wesleyan University, Delaware, Ohio; from Portsmouth, Ohio; did not graduate.

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<sup>327</sup> See Russell W. McDonald, Biographical Summaries: Nevada's Territorial, District, Supreme Court, and Federal Judges: 1856-1993 (unpublished manuscript), Reno: Nevada Historical Society.

- 1849: Studied law under W. V. Peck, "Portsmouth's able jurist."  
 1850: Daughter Ellenora born, Ohio.

**Comments and Descriptions:**

- 1851-1861: A "prominent figure" in Portsmouth, Ohio, active politician, "an energetic lawyer, and being full of push and alive to all that was going on, in politics, business, or society, he was especially much in peoples' minds. His health was always feeble, and he is thought by many to have greatly resembled Judge Pollitt in features."
- 1855: Elected Solicitor (Scioto County) on American reform ticket by 460 to 320.
- 3-19-1855: Under heading "United States' Agency for Bounty Land Warrants," Turner advertised in the Daily Tribune (Portsmouth) that he would obtain land warrants up to 160 acres with "no charge made for applying in case of failure." Warrants would be obtained free for all indigent widows and soldiers. Turner added a P.S.: "As many of my clients under the former law had some one and others two or three agents to apply and fail before they came to me, I presume it is hardly necessary to suggest to them that they will save both time and money by coming to a competent attorney at the start."
- 1860: Portsmouth, Ohio, census record: George Turner age of 32, attorney; Sarah Turner age of 29, wife; Ellenora age of 10, daughter; property valued at \$3,000.
- 1861: Boarded at Penrod House, Carson City. (Kelly Directory?) Member board of trustees, Carson City Methodist Church.
- 3-1861: Nevada, The Centennial of Statehood, Library of Congress, Washington (1965) stated Sam Milligan was Lincoln's first choice for Nevada chief justice; Milligan's name crossed out in hand-written notes and Turner's written in. Nominated 3-25-1861, Turner was commissioned Chief Justice on 3-27-1861. Turner was residing in Ohio at the time. Richard G. Lillard in Desert Challenge (Lincoln: Nebraska Press, 1942) says Turner, on Governor Nye's direction, held court in Aurora, thought to be in Nevada, and found that Judge Baldwin of Mono County in California was also presiding over court there. Neither interfered with the other. Litigants took their cases to the court they preferred.
- 7-11-1861: Governor James W. Nye declared that the Nevada Territorial government "to be organized and established," and named the new officers of the territory who had been appointed and commissioned under the provisions of the congressional act creating the Territory of Nevada. Appendix to Journals of the First Legislative Assembly, N.T. 1861. Turner was chief justice. In a second proclamation, Nye, pursuant to the same act, created three judicial districts and assigned Turner to the Second, which consisted of "all that portion of [Nevada] Territory lying between the 117th and 118th degrees of longitude west from Greenwich \* \* \*."

- 9-12-1861: Signed oath of office as Justice of Supreme Court, N.T., countersigned by Orion Clemens, Secretary of the Territory. On 9-16-1861, sworn in by a second oath, differently worded and longer, again signed by Turner and countersigned by Orion Clemens. Papers of Attorney General prior to 1870.
- 9-28-1861: “George Turner, Chief Justice of the Supreme Court of Nevada,” witnessed Governor Nye’s oath of office as Governor of Nevada.
- 10-1-1861: In the council of the territorial legislature, “\* \* \* the Chief Justice of the Territory, George Turner, late of Ohio, administered the oath of office \* \* \* to each member, requiring each to subscribe his name to it. The Chief Justice is about thirty years old, and a small man in size, but chock-full of patriotism, as was evinced by the immense vim and relish with which he read the oath of the Councillors [sic].” And in the House of Representatives, “The oath of office was then administered by Chief Justice Turner, separately and in an impressive manner, to each member present, each member subscribing the oath after receiving it.” Marsh Letters October 5, 1861, pp. 6, 10.
- 10-17-1861: In post script to letter of 10-16-1861, written at 2 a.m. next morning, Marsh penned, “I have just returned from the great Legislative Ball, which, all things considered, you may set down as decidedly a big thing. Governor Nye, Territorial Secretary Clemens and the Chief Justice were among the big bugs present, and tripping it with as decided vim as any of the old settlers.” Marsh Letters Oct. 16, 1861, p. 84.
- 1862: Chief Justice Nevada Territory, boards Penrod House, NW corner Telegraph and Carson, Carson City. 1862 Kelly Directory.
- 1862: Turner gave 4th of July oration, Aurora. Probably following this oration, Joe Goodman received a communication from “Josh,” a miner, soon to be a magnate [Samuel Clemens], which he published in the Enterprise, about George Turner, the new chief justice “whom President Lincoln had foisted on the new Territory. Already Turner had earned a reputation for being the shallowest, most egotistical and mercenary occupant of the supreme bench. It was known that when he signed his name on a hotel register it was invariably as ‘Honorable George Turner, Chief Justice of the United States.’ It was known that when he was about to render a decision he always favored the side that could pay the most for it. It was known that when he delivered a lecture in Carson on some apparently important subject, it turned out to be merely a rehash of his own vainglorious achievements. It was evident, then, that the chief justice was riding for a fall. ‘Josh’ \* \* \* referred to [Turner] as ‘Professor Personal Pronoun.’” The article was a scorching exposition of Turner’s vanity, egotism, and emptiness. It closed by saying that it “was impossible to print his lecture in full, as the type-cases had run out of capital Is.”
- 2-28-1862/

- 7-21-1862: Records of Board of County Commissioners, Ormsby Co., N.T. Various arrangements were for the judge's accommodation and conduct of the court: small room in SW corner of courtroom building set apart for judge's use in chambers; members of bar petitioned, recommending approval of sheriff's action in procuring and furnishing chambers occupied by district judge; various purveyors provided desk (\$75), lounge and washstand (\$32.50), wall paper (\$12), painting (\$20), furnishings (\$173), making a door (\$25), for chambers; rent for judge's and clerk's rooms, \$50 per month; furnishing paper and papering Judge Turner's room, \$26.25.
- 2-28-1862: A Virginia City paper reported that Judge Mott "enjoys an equal jurisdiction with the Chief Justice, who presided at the trial of Mayfield in Carson for murder. Mayfield was sentenced by Chief Justice Turner to be hanged today (Friday). But our judge has suspended the sentence of Mayfield until June next. Judge Turner refused to grant the order called a supersedeas, but our judge does it. He grants the writ as a right, like the writ of habeas corpus. It presents some anomalies in juridical, affairs. \* \* \*"
- 7-8-1862: Turner was absent from district; Horatio M. Jones, judge of Third District, appeared and opened court.
- 10-19-1862: "The only piano as far as I know is at the White House [in Carson City]. A little girl there plays on it every day. She is a daughter of Judge Turner and plays well for a little girl." (Letter from Dr. Charles Lewis Anderson to his wife, appearing in Olga Reifschneider's "Dr. Anderson in wild and Woolly Carson City," Nevada Highways and Parks, Fall 1966).
- 11-11-1862: "The new members [of the territorial Council], on motion, presented their credentials, and were sworn in by Chief Justice Turner, who required each man to take and subscribe a very positive and binding oath of allegiance to the United States Government." Marsh Letters, p. 411.
- 12-20-1862: Salaries of territorial judges raised to \$6,000 by legislature. Vote was 16 to 4. During discussion, there was a motion to strike names of Turner and Jones from the bill, which lost.
- 1863: Lyman's Saga of the Comstock Road: "By 1863 Judge Turner was playing the legal game in a regal way. Through his broker, a near relative, he would notify litigants what a favorable decision would cost. In the first skirmish of the famous Chollar-Potosi trial he demanded \$60,000 and got it." (Note that Lyman, whose remarks about Turner were particularly vitriolic, obviously used Stewart's Reminiscences as his best source). Thereabout occurred the famous incident when Mrs. Turner accepted the judge's "payment" for a favorable decision at the front door late at night, clad only in her night gown, which payment consisted of 40 or 50 pounds of gold. The coins, poured into her gathered-up skirt, by their weight tore the night gown off, leaving her standing nude in the lighted doorway. Cited in

NHS Q XIII/1 “American Colonial System in Nevada:” “[When] Nevada suffered a severe depression. \* \* \* The territorial judges became the scapegoats and full blame for the collapse of prosperity fell upon their shoulders. An editor charged that Locke received a large bribe from the Potosi Company, and the judge did not deny the accusation.”

Others attacked Judge Turner for holding stock worth \$50,000 in two mining companies. No one, the editor of the Territorial Enterprise claimed, “had ever spoken well of Turner; his very presence was suggestive of ‘flattery, fawning, treachery, and dishonesty. \* \* \* ‘For Sale’ is written on his countenance as plainly as on a house, and he has grown wealthy by virtue of that sign. If the balance of our lovely Judges can be induced to retain their seats we shall be a stout advocate for Judge Turner remaining in his for in such a body of Judicial excellence, the Chief Justiceship, as a matter of right, should be filled by a low, slimy, intriguing imbecile like himself.” This same editor concluded that the territory was fast approaching ruin, and “a thousand evidences tell that the distrust and corruption of our Judges are the principle causes that are sinking us.” It was generally agreed that the indecision, vacillation, and corruption of the courts, “had more to do with the present depressed condition of the territory than anyone cause.”

Although the territorial judges in Nevada were inexcusably corrupt, inefficient, and ineffective, much of the blame for their failure must rest with the territorial system and with the people in Nevada. Territorial judges drew an annual salary of \$1,800. Little enough thirty years earlier, in Nevada in the 1860s it became a mere pittance. In this situation the judges turned to obvious expedients to supplement income.

- 3-31-1863: Records of Board of County Commissioners, Ormsby Co., N.T.: Commissioner Sanderson was ordered by commissioners to oversee, as a committee of one, the papering of the room in the county building to be occupied by Judge Turner as his chambers. On 9-16 Sanderson was appointed committee of one to furnish Chief Justice Turner with a suitable bookcase. On April 22nd the board approved bill of Upton & Co. for merchandise for the county hospital and paper for Judge Turner’s chambers in the amount of \$35.50.
- 5-28-1863: General Records of the Department of Justice Appointment File Nevada 1861-1865: Turner addressed a letter to President Lincoln indignantly protesting an article in the Sacramento Union concerning rumor that he was to be removed from office (and another to U.S. Attorney General Bates in the same vein): “Now I have labored hard here, drawn most of the laws, prepared union Resolutions, attended public meetings and made speeches in defense of the Government and in support of the Administration. Furthermore have held court almost monthly for two years here and [all this for small pay] and I know that no federal officer here is more acceptable to the people, none have been endorsed more fully by the press and Legislature, nor the population generally and while I would not have lost much to have remained in my own good home in Ohio in full practice [sic] and

prosperously pursuing my profession yet now after leaving there and bringing my wife and family here to discharge the duties of my office, I could not sit lamely by and be decapitated and disgraced without notice or cause. \* \* \* I ask it of you as one who is every way entitled to it that any charges made against me may be treated with the scorn they deserve or notice given me before any action be taken. I hope however this is groundless as I can bring to Washington from this Territory overwhelming proof of my acceptability among this people.

Did the labors of the Executive Office allow time for a line or two in reply it would be thankfully received by an old friend, advocate and supporter in every way?"

- 7-1863: Turner opened a term of District Court for Nevada in Aurora. Judge Baldwin of Mono County held county court at the same time, and "the novelty was presented of two courts sitting concurrently, exercising jurisdiction by virtue of authority derived from distinct sources. \* \* \* Causes were brought in either court as the litigants preferred, the majority being taken before Judge Baldwin, his court being held there regularly."
- 7-11-1863: Turner sent worried message to President Lincoln: "I implore you, Sir, in the name of the loyal people of Nevada, to do nothing toward taking possession of any mines on the Pacific Slope."
- 8-1-1863: Reese River Reveille 1:1-2. A. P. Hereford wrote editor of Reveille saying "Turner has visited California several times."
- 8-18-1863: Marysville Daily Appeal 4:1. In his charge to the Ormsby Co. grand jury on August 10, Turner called attention to the large number of criminal cases, including murders, which had faced him during first term of court two years previously. "Surely a patriot and good citizen can see much to rejoice over" in the rapid strides which had been taken toward social improvement, not only in the area of criminal cases but also in the civil docket. The other Judges, said Turner, agreed. The case load had been growing "heavier and more important" while the population had advanced from 15,000 to 75,000. He concluded, "And if in the wisdom of our representatives and the permission of the parent government, we are destined soon to enter the family of states, these facts prove Washoe will come in, as orderly, moral and loyal as any of her sister States."
- 10-2-1863: Virginia Evening Gazette 2:2. In an article entitled, "Interregnum of Laws," Turner delivered an opinion of the court that the laws of Utah were in force in N.T. after the passage of the Organic Act by which N.T. was created, until supplanted by the laws of the new territory. "The act of Congress being silent on the subject, the question was left to be determined by the general principles of law. The general principle is that when a certain law or system of laws has attached to a country it still continues until directly abrogated or until some other system has been adopted in its stead by competent authority. \* \* \*"

- 10-5-1863: Turner, with Orion Clemens and Governor Nye, signed certificate of canvass of vote for state government 6, 660 for, 1,502 against. Records, Proclamations, Appointments and Messages of the Governor, T.N., 1861-1864.
- 10-17-1863: Howard K. Beale, Ed., The Diary of Edward Bates 1859-1866 (New York: Da Capo Press, 1971). "In the Judiciary, [Salmon P. Chase's]\* appointments seem to me particularly unfortunate, made without any reference to legal and judicial qualification. e.g. Chief Justice Cartter of the Supreme Court, District of Columbia, is a fierce partisan, an inbred vulgarian and a truculent ignoramus. Chief Justice Turner of Nevada Territory., I do not personally know, but I hear from others, that he is an abridgement of Cartter."
- \*Chase was Secretary of the Treasury 1861-64, later a U.S. Chief Justice of Supreme Court, had lived in Columbus, Ohio as a young man. He obviously influenced Lincoln in Turner's appointment.
- 10-27-1863: Signed a petition to Governor Nye asking his approval "to raise and offer to the General Government one full and complete Volunteer Infantry Company for immediate and active service in the Atlantic States." Secretary of War in response to Nye's telegraphic inquiry said, "Will accept volunteers to go to Salt Lake, but there does not seem to be any propriety in raising them in Nevada to send them to New York."
- 11-3-1863: Administered oath to delegates to 1863 constitutional convention en masse.

1-11,  
5-5,  
11-28,

12-7-1864: Minutes of the Board of County Commissioners, Ormsby County, N.T. Commissioners allowed \$100 claim for Judge Turner's desk; allowed \$4.50 for lock for Turner's door; rejected a bill for a cushion for the judge, as well as one for stationery; again rejected a \$10 bill for stationery; ordered "that the Honorable George Turner be notified that the room occupied by him as judge's chambers is required for public use and that he be requested to deliver to the clerk of this board the key of said room and also to turn over to him, said clerk, all the property belonging to the county in his possession.

Spring 1864:

Stonehouse John Wesley North and the Reform Frontier. Quotes Henry W. Bellows, head of the Sanitary Commission, as writing after his arrival on the Eastern Slope to collect funds for the commission: "\* \* \* No decision, therefore, is made that does not create virulent enemies, who use the local press to blacken the character of the judges. Judge Turner is charged very commonly with corruptibility. He is alleged to be worth \$75,000 made in three years without business or resources; and it is said only by direct bribery could he have secured such an amount of property. Judge Turner is a vain man of bright manner, and little seeming weight of character \* \* \*." Stonehouse infers that North and others close to Lincoln had gotten to the President as well as to Bellows. Bellows was charitable in his comments about North.

6-15-1864: Daily Independent [Gregg's Scrapbook]. The session of District Court was to be opened "this morning," Judge Turner having returned from recent visit to San Francisco "with renewed health and vigor, and we congratulate him on his reappearance in our midst. He enjoys a large measure of public confidence, and is well worthy of it as a citizen and a judicial officer."

6-16-1864: In a charge to the grand jury, Turner cautioning against use of the knife and the pistol, advocating protection of social rights and privileges, deploring recklessness and disorder, saying,"\* \* \* Our citizens have trusted more than was necessary to ideas of self-protection by their own weapons, and thought far too little of the efficiency and majesty of the law." Said the newspaper, "Judge Turner is entitled to public gratitude for his noble and patriotic conduct. Every true man will applaud him and welcome his views, not only as the expression of judicial propriety, but as a faithful indication that the reign of order will henceforth prevail throughout the limits of Nevada."

6-29-1864: Carson Daily Independent 2:1. Newspaper took issue with Territorial Enterprise's criticism of Turner's jury charge in Connor v. Corbett, saying "\* \* \* the whole spirit of the criticism is unfair and unsupported by the facts \* \* \*. The charge was one of the best we have ever listened to from that officer in this city, and met with



almost universal commendation. The case was an aggravated one, and the verdict we conceive to be righteous.

The decision tends to promote public morality, and deter the unprincipled from securing the confidence and affection of the confiding girl, that he may abuse and crush her dearest hopes in life; and when a judicial officer exercises his prerogative in accordance with the law and the testimony, let not the righteous tendencies of his action become impaired by unfair criticism.

The article in the Enterprise charges that too much feeling was thrown into the charge, as it intimated the guilt of the defendant. To support this proposition, it quotes this language: ‘That man who deliberately robs an innocent woman of her most priceless jewel, her virtue, and slanders her afterwards, is unfit for earth and too bad for hell.’ We look upon the man who commits a foul murder as far better than he who would seduce and slander his confiding victim; and therefore feel that the Judge’s charge was not only true in spirit, but sensible, logical, lawful and worthy of utterance from a kind and just heart, \* \* \*.

But the Enterprise seems to intimate that the Judge charged the defendant to be guilty. Would the Enterprise deal fairly? Why take garbled extracts? Why did it not go on and quote the next four lines. They are as follows: ‘But if the defendant is not so guilty; if he has made out his case before you, then he should be discharged.’ \* \* \* The Enterprise \* \* \* should not condemn a judge who only demands that a jury should convict or discharge those brought before them in accordance with the law and the facts. \* \* \*”

Minutes of District Court, Second Judicial District N.T., 12-16-1861/ 11-29-1864. Samuel B. Martin was adjudged guilty of contempt of court and ordered to pay \$500, after he “exhibited disorderly, contemptuous and insolent behavior towards the judge \* \* \* in standing up and interfering with the proceedings of the court after repeated orders to sit down and remain silent \* \* \* , charging the said court with prejudice and bias after repeated explanations to his counsel \* \* \* by the judge thereof that the same was unfounded \* \* \* , in the exhibition of a bravado manner right in the bar and presence of said court, talking to counsel, standing up, marching around and evidently attempting to overawe the court and prevent the administration of justice \* \* \* , etc.”

7-4-1864: Turner, having been welcomed by citizens and the military in Aurora with a “grand display of flags and music,” as well as speeches, gave the oration for the day. The Daily Independent of July 10 reported that “we learn that the oration of the Honorable George Turner was a splendid performance, and judging from the extracts which are published, we do not think it is exaggerated. Its language was elegant and classic; its sentiments patriotic, and its arguments against rebellion, scholarly and conclusive.”

- 7-21-1864: Gold Hill Daily News 2:2. "The ax began to fall!" Said the News: "\* \* \* The Chief Justice of [the Supreme Court] came to this Territory poor. That is a fact beyond contradiction and one which he would undoubtedly admit upon inquiry. The salary of the position is a mere pittance\* \* \*. What is his present financial condition? A very brief time since, Judge Turner owned six feet in the Gould & Curry mine which cost him, in round numbers, \$4,000 per-foot. He owned also twenty-five feet in the Yellow Jacket which cost him \$1,000 per-foot. The stock in these two mining claims, constitutes in itself a very handsome property, more than twelve years of Judge Turner's salary would have bought, had he clothed himself and family in fig-leaves and fed on air in the interim. He has been on the bench but a fraction of that time. \* \* \*" The judge was also said to be in possession of large amounts of cash, a fact which he tried to conceal, and the paper accused both the judge and his wife of loaning money from time to time "clandestinely" by having a well-known "money operator" in Carson City effect the loans while concealing whose money it was. The paper fixed Turner's estimated wealth at \$75,000 to \$100,000, and suggested that the judge had "sources of revenue" other than compensation received from the Federal Government.
- 7-22-1864: The Territorial Enterprise cited the Gold Hill Daily News article, reviewed its statements, and continued: "Have our Judges, aside from their arduous public labors, been so sagacious and diligent as to acquire an amount of wealth not to be obtained by one in a thousand more shrewd and active who devote their entire time and energies to money-making? The idea will be universally rejected as preposterous. It will be rather believed that they have made a harlot of Justice \* \* \*."
- 7-26-1864: Territorial Enterprise. The newspaper again denounced Turner in the most spiteful language, and recounted an incident which had occurred in the fall of 1861 concerning one Rufus E. Arick, the mayor of V.C. in 1864, a well-recommended applicant for the clerkship of Judge Turner's court. The judge wrote to Arick in November 1861 professing his pleasure at receiving his application and suggesting that Arick call on Smyth Clark and look at the Sacramento ledge, telling Clark "what he says to you will be in sacred confidence and kept from all but me. I think of buying some with him in that ledge. Show him this; write to me \* \* \*." Arick subsequently ascertained that the judge had been interested in buying into the Sacramento with Clark, but wished to delay until some of the pending litigation concerning the title to the ground had been settled. Turner urged Arick to join them in buying, assuring Arick, who had no money, that he (Turner) would make them both rich. Arick quoted Turner as saying, "I have done you a favor, and now want you to work for my interest; I will buy the ground in your name, and you hold it until the title is settled, and then you can deed it to me, and I will make it all right with you." Arick refused the proposition, stating his relationships with the judge as clerk of the court would have to be purely of an official character and Arick was not appointed. The implication was that Turner from the beginning had purchased stock in properties whose titles depended upon

his decisions. The newspaper also printed a letter from Turner to Thos. Fitch dated 12-23-1863, in which Turner openly demanded Fitch's support in Turner's behalf at the convention held in Carson city where Turner was a candidate for the supreme bench, and promised that he, Turner, would be "of more benefit to [Fitch] than Attorney-General's salary." Concluded the newspaper, "If the balance of our lovely judges can be induced to retain their seats, we shall be a stout advocate for Judge Turner's remaining in his, for in such a body of Judicial excellence, the Chief Justiceship, as a matter of right, should be filled by a low, slimy, intriguing imbecile like himself."

- 7-30-1864: Gold Hill Daily News 2:2. "Not only has Judge North a brother-in-law, in quartz transactions," said the paper, after giving details of North's alleged dealings, "but so has Judge Turner. Ordinarily, the operator in argentiferous rock has either a mine where the same is excavated or a mill where it is ground. Judge Turner had neither of these, but with talent and a brother-in-law, all obstacles can be surmounted. Turner's brother-in-law, known among men as 'Johnson,' has been and may be still, an operator in sulphurets. Without either mill or mine, Johnson has been able to do a 'Custom-House business' in quartz that is calculated to excite the envy of miners and mill-men who have no brother-in-law on the Supreme Bench." Johnson, said the paper, had consistently been able to purchase from the Gould and Curry company rock, which he was able to resell "on the wagon" at a profit of from \$5 to \$25 per-ton. It was implied that Turner received his share of the returns, and repaid the Gould and Curry in kind with decisions friendly to the Gould and Curry.
- 8-1864: According to the North biography by Stonehouse, North had in the spring of 1864 attempted to have Stewart disbarred. Stewart struck back by denouncing the entire Supreme Court, saying North and Turner were corrupt, and Judge Locke "was too ignorant for denunciation." When a notice was published stating that Stewart's name would be struck from the bar, after Stewart had obtained an injunction through his friend Abe Meyer (president of the Hale and Norcross) to stop illegal removal of ore from the Hale and Norcross, Meyer furnished receipts indicating he had paid Turner \$5,000 for the injunction. Stewart flashed the papers in court, whereupon North and then Turner resigned. Further details concerning resignations follow, culminating on July 22. During heat of public dispute over reduction of miners' wages, Frank Tilford (on side of miners against mine owners, represented by William M. Stewart) averred that thousands of dollars had been "lavished in the bribery and corruption of the judiciary," causing much of the financial difficulty resulting in the wage reduction proposal, and recommended that miners advocate resignation of judges, including Turner. Miners' dispute was eventually settled peaceably.
- 8-4-1864: Territorial Enterprise excoriated all the judges and advocated the circulation of a petition demanding their resignations.

8-5-1864: The Territorial Enterprise called the era of Judges Turner, Locke and North “the ‘dark ages’ of Silverland.” An example cited was the case of Chollar v. Potosi, which, said the paper, was commenced in December 1861, tried twice by a jury, and finally decided in the Supreme Court in January 1863. Both District and Supreme Courts showed a remarkable bias in favor of the Chollar Company. To succeed in the second controversy the Potosi, which had found a “rich chimney” also claimed by the Chollar, had to get rid of Mott and supplant him by a “friend” (North). Turner was known to be pro-Chollar, North pro-Potosi. This was the basis for the maneuvering which followed and the eventual resignation of all the judges.

On the same date Gold Hill Evening News 2:1 called attention to the resignation petition being circulated, and urged citizens to sign it, saying, “It is a matter that interests every citizen who has a dollar’s worth of property in the Territory, or who breathes the air polluted by this political corruption, and it is the duty of every citizen, by signing the petition, to affix the seal of his condemnation upon this official rottenness. \* \* \* Unless endorsed by such a popular demonstration \* \* \* [the] Judges will claim a triumph, and corruption, outrage and wrong, will stalk in pride and insolence upon the prostrate necks of the people.”

8-8-1864: Gold Hill Evening News 2:1, 3. The News reported that there were 3,000 names affixed to the petition to date. Also, it reprinted comment by the S.F. Argus: “It would be a difficult matter to say which is the most to be regretted\* \* \* the gross corruption of the judges; or if the charge be unfounded, the unblushing effrontery of the press.” Also reported was comment by the Aurora correspondent of the S.F. Flag critical of Turner’s handling of court sessions there in which it was implied that Turner favored the Antelope Co. over the Young America Company and deliberately adjourned court while a vital case was pending between the two, to the detriment of the Young America Company.

8-26-1864: Gold Hill Daily News 2:3. “\* \* \* Judge Turner, it is said, having got beyond the frowning gaze of the indignant attorneys who filled the Bar of the Supreme Court last Monday, has retracted his resignation, and still presumes to hold his office of Chief Justice of the Supreme Court. We have heard it stated that, so conscious is he of the utter detestation in which he is held by the people, he has expressed fears of suffering personal violence, and that his Carson friends, joining in that apprehension, have stated that ‘two hundred armed men would defend Judge Turner from assault.’ Verily, ‘the wicked man fleeth when no man pursueth.’ The people have had enough of Judge Turner, but he will suffer no violence at their hands, save such violence as his feelings may sustain from the vote which they will cast on Election Day. They will overturn the miserable shadow of government under which we suffer, and with it will overturn the rotten bench which Judge Turner occupies. That will most effectually ‘let out’ the whole concern, and the matter of ‘resignations’ will amount to nothing.”

- 8-27-1864: Washoe Weekly Star 2:3 inserts a rare voice of reason into the boiling discussing among the various members of the press and newspapers: “Judges North, Turner, and Locke, composing the Supreme Bench of this Territory, have resigned and left us without a Court. We cannot but regret that they should do so at this time, and under the attendant circumstances. Whether the charges so industriously and vehemently circulated by certain parties, for the purpose of compelling their resignation, were true or not, we do not see how the public is to be benefitted by such resignations at a time when a new judicial system, with new judges, is about to be inaugurated under a State government. \* \* \* We can only regard the proceeding as disgraceful, from the beginning of the malignant personal attack upon them, down to their resignation night before last, after being badgered all day by certain members of the bar. Virginia Union.” The Washoe Star discussed with relish Stewart’s (as well as his associates’) discomfiture at the interference of California politicians with their efforts to get the man of their choice, Richard Mesick, appointed to fill the vacancy left by North. The Carson Weekly Independent told of a meeting of the Ormsby bar on August 24, augmented by “An immense concourse of citizens,” where a resolution was passed deploring the loss of Turner and extolling his many virtues. “\* \* \* The Honorable George Turner has for over three years acceptably served us as judge of this district, and as such having himself held every term of Court provided for by law, having also held sundry Courts in their districts, having disposed of all the business as fast as it matured, and having so fully and satisfactorily transacted the same, that today the public business of this district is completely done, and no causes at issue anywhere are awaiting trial on account of any delay of the Court, and our said judge having himself performed a very large majority of the labors of the Supreme Court as is well known to all our people \* \* \* we regret the unexpected resignation of the Honorable George Turner at the time it occurred, \* \* \* we tender our thanks to Judge Turner for the industrious, impartial and able manner in which he has discharged his judicial labors \* \* \* we respectfully request him still to take care of the Judicial business in our District, so far as he can, until his successor is appointed \* \* \*.” The resolution was adopted. Judge Turner was brought to the meeting, presented with the contents of the resolution, and requested to continue his duties until his successor appeared he gave a speech, concluding that he would not desert a people who had been so kind to him, but would take care of the business until his successor qualified.
- 9-16-1864: With H. F. Rice, Alfred Helm, J. Neely Johnson, Thos. E. Haydon, Chas. L. strong, Turner was an incorporator of Lake Bigler Road Co.; purpose: building, forming, ditching, milling, constructing, repairing and managing a toll road or roads. Capital stock \$130,000.
- 10-29-1864: Virginia Daily Union 2:4-5. Turner was orator of the day at Genoa on the occasion of the laying of the cornerstone of the new Masonic building on the 25th. His speech is published in full in the cited issue.

- 2-9-1865: Ad appeared in Virginia Daily Union stating Turner would practice law in the Supreme and District Court, office in courthouse, Carson City, soon to be in Virginia.
- 9-1-1865: In San Francisco, Turner wrote Senator Benjamin F. Wade of Ohio, a former Ohio friend and patron, describing western geography and landscape, including graphic description of Yosemite Valley. Turner told Wade he had “continued to discharge my duties as Chief-Justice as long as the Territory remained,” boasted that the new state legislature had appropriated “several thousand dollars” to enable Turner to prepare a volume of Supreme Court decisions. “This I regarded as a kind of endorsement after four years labor among them in trying the most bitterly litigated suits in the world to wit mining suits. They also paid me \$4,200 per-year extra in Gold, over the government pay for each of the four years. This also was considered a very kind endorsement. \* \* \* I am compelled to remain on this Coast until some heavy suits in which I have been recently employed as Counsel are tried \* \* \* and then I expect to return to Cincinnati, Ohio, to spend my days. \* \* \*” Terry said he had an office at San Francisco and Virginia City “for the present” but expected to sail for home with his family “this winter or spring.”
- 2-25-1865: The Humboldt Register reported that the legislature had passed the bill to pay Turner \$5,000 for publishing 300 copies of 69 decisions of the territorial Supreme Court. The Governor vetoed the bill, giving an explanation that authentic copies of only 18 of the 69 opinions were available, the other 51 being obtainable but probably of doubtful authenticity, and publishable at far less cost. The Register applauded the Governor’s action. In view of such comment as appeared in The Register on February 11, which was doubtless echoed elsewhere, about the events leading to Turner’s resignation, the judges’ corruption and Turner’s questionable character, concluding with the question, “If the judges were so obnoxious as not to be tolerated, how much respect will their book of decisions command?” It is possible the Governor was influenced to some extent toward his decision to veto the bill.
- 8-24-1865: Daily Alta California 1:1. The paper announced that Turner had opened an office in San Francisco (S.F.) for the practice of law. “Judge Turner will be a great acquisition to the Bar of San Francisco. A man of deep legal research, classical attainments of the highest order, and justly distinguished as a forensic speaker, Judge Turner can but succeed in attaining an enviable reputation amongst the many distinguished lawyers of the Occidental Metropolis.”
- 9-13-1865: Gold Hill Daily News. Turner was elected President of the third ward Union club for the ensuing year. Gold Hill Daily News [New York corresponding to the Alta] was in New York. “A few days since, a number of well-known gentlemen who are interested in the development of the mining interests of the Pacific states gave him a sumptuous dinner at Delmonico’s.” The judge had exhibited gold and silver quartz and small bars of silver ore from Nevada’s mines. Turner, after the toasts,

gave a speech. “\* \* \* He said that there was an old legend that he who would follow to the foot of the rainbow would find a pot of gold and that he and his western friends had found that wealthy place near the gardens of Hesperides.” Turner extolled the virtues of America and the West; he was to remain in the East for two months and would deliver several lectures upon the resources of the Pacific Coast.

- 1867: Langley Directory 1867. Attorney, 695 Clay Street, San Francisco.
- 1869: S.F. Directory for the year commencing Dec. 1869 – Henry F. Langley, S.F. 1869. Geo. Turner, attorney at law, office 16, 17 Wells Bldg., SW corner of Montgomery and Clay. Dwells in the Lick House.
- 6-13-1870: Turner demitted Aurora Lodge No. 48, F&AM, Portsmouth, Ohio. Grand Lodge F&AM of Ohio, Worthington, Ohio.
- 1871-1885: Counsel in 12 California Supreme Court cases. Years were 1871, 1873, with a gap until 1880.
- 1871-1872: Attorney, 408 California, S.F. Langley Directory 1871, 1872.
- 1875: To S.F. to practice law.
- 5-13-1878: Gold Hill News 5-14-1878 2:2. Territorial Enterprise reported Turner had appeared in V.C. District Court as counsel in important mining case. Newspaper reported Turner had spent “some years in Europe” between departures from Nevada in 1865 and 1878. Turner was practicing law in S.F.
- 5-14-1878: DTE 3:4. Turner had “put in an unexpected appearance before the District Court, in this city, yesterday, as counsel in an important mining case. He has been absent from here since 1865, during which time he has spent some years in Europe.”
- 5-28-1878: DTE 3:2. Trial of North Consolidated Virginia Mining Co. v. J. B. Treadwell commenced May 21, concluded May 27, before jury. Judgment for defendant, represented by Turner and Lewis and Deal.
- 1882: McKenney’s Directory 1882. Attorney 331 Montgomery Street, S.F.
- 8-12-1885: Law office at 331 Montgomery Street, S.F. S.F. Morning Call 8-13-1885.
- 8-13-1885: S.F. Morning Call; The Portsmouth Times 8-29-1885; S.F. Chronicle. Turner committed suicide in the water-closet on the second floor of the Lick House, S.F., where he had been living with his wife. When Turner did not turn up for breakfast, his wife had become alarmed, ascertained that he was not at his office, and after waiting all day instituted a search. Examination of the body after the suicide disclosed a certificate of deposit for \$318 in Anglo-Californian Bank

dated June 23, payable to Mrs. Sarah Turner; papers on the body showed that Turner had contemplated suicide several months previous. Turner had shot himself with “an ivory-handled, silver-plated XL five-shooter, which was found at his feet.” A letter dated March 24, 1885, was addressed to Honorable Leland Stanford: “My Very Dear Governor: You were always a good kind friend to Mrs. Turner, who lived for years next door to you, and enjoyed your society and that of your dear good wife so much. Your precious child *is* gone, and you and your good wife are nobly looking around to such acts of goodness and kindness as Providence puts in your way. I believe in a good God, the Father of all, and being in such ill-health, I am sure I can go to Him without fault. Do all you can for Sarah, who loved you all so well. Mrs. Stanford, yourself and Mrs. Lathrop, as well as your dear departed boy, she is noble, KIND and GOOD, and in all the world you could not find one more worthy of your care. God bless you all. Adieu. Geo. Turner. P.S.: Whatever property there is, all hers. I have nothing.” Another letter, written on the back of an envelope, was found for his wife: Dear Wife: In Sutro’s bank, two or three doors north of the northeast corner of California and Montgomery streets, is your certificate of Commercial Insurance Company. Pay two little notes he has for about \$100 to \$150 each, and draw your certificate. Kind Mr. Brounell will sell it for \$2,200 to \$2,500, for your money is in my bank. God bless you and Nellie and grandson and all. You were always a good and loving wife. HUSBAND.” Turner went on to say he was a member of Harmony Lodge, A.O.U.W., benefits \$2,000; Pocahontas Tribe I.O.R.M., benefits \$500; regular admitted Mason, often having visited Occidental Lodge of Masons in San Francisco. “Don’t grieve for husband,” Turner went on. “Take what you have and go to Nellie; we all be soon together. Believe me this is best. I am so very, very sick. Christ died for us, and must love and deal gently with his own children. \* \* \* I owe only for office hire. To hotel \$50, and, say, two notes to Sutro for \$100, and one for \$150. That is all. Your loving husband, George Turner. I am very sick, Regards to General Miller, Governor Stoneman, Col. Andrews, Robert Scott, and all friends in Livingston. Also thank God for last Sunday’s sacrament. Tell Nelly and the boy to serve the Lord. God is love, and I feel sure he will receive his own child, who is too sick to remain longer here.”

The paper said Turner had come to California about 10 years ago, engaged in law practice, but of late years had not been able to devote much attention to business on account of ill-health. The obituary noted that Nellie, his daughter, had been an invalid for many months.



## POWHATAN B. LOCKE

Born Kentucky in 1830. Died Louisiana, Pike County, Missouri, 6-13-1868, of consumption. There is no record of probate in Pike County.

Father: David Locke, b. Kentucky 9-3-1799, living in Louisiana MO at time of Locke's death. David served in War of 1812 from Limestone KY, from 8-31 to 11-2, 1813.

Brother: Morris R. [M.E.B.] Locke, living with Locke and family at time of 1860 Buchanan Co. MO census. (He attested Locke's oath of office in the capacity of Clerk, Third District., N.T. when Locke became judge.) Morris was 17 years old in 1860 and his occupation was listed as a clerk.

Wife: F. Locke, b. Virginia c. 1831.

Sons: C. B. Locke, 6 yrs. old in 1860.  
L. M. Locke, 3 yrs. old in 1860.  
A. Locke, 1 yr. old in 1860 (all born Missouri).

Resolutions from the Louisiana bar prepared upon Locke's death and published in the Lexington (MO) Caucasian indicate that Locke had a "bereaved widow and desolate orphans" at the time of his death. The newspaper indicated that Locke was "of this city." It would appear that he died at the home of his father in Louisiana, and either worked or lived in Lexington.

### **Quotes and Comments:**

William M. Stewart, Reminiscences: "[Judge Locke] was too ignorant for denunciation." After Locke had resigned at the instigation of Stewart, he "imbibed so freely that he became more stupid than usual \* \* \* was probably the most ignorant man who ever acted in any judicial capacity in any part of the world."

Bar of Louisiana, MO, resolution of condolence upon Locke's death regretted the loss of Locke, a "brother, who was cut off in the prime of manhood, whose fine social qualities, whose correct moral bearing not less than the profound morality and intellectual powers, endeared him to us all \* \* \*".

1850: Lawyer, 31 years old. Res. Caldwell Co., MO, with John Ardinger household. 1850 Census Caldwell Co., MO.

6-2-1852: Locke was a delegate from Andrew Co. MO to Whig Congressional convention in Gallatin MO. Liberty Tribune (MO) 5-28-1852, 6-2-1852.

5-14-1852: Whig District Convention (4th congressional district), was poorly attended and rescheduled at Gallatin for June 2, 1852. P. B. Locke of Andrew County was member of committee to announce rescheduling. Liberty Tribune (MO).

- 5-1854: Locke chosen Mayor of Savannah, MO (Andrew County) in May election, was reelected in 1855. Goodspeed's History of Andrew and DeKalb Counties.
- 6-24-1864: Locke was a delegate at a mass meeting of Whigs of Andrew County held June 24 to elect delegation to Whig Congressional Convention to be held in Plattsburg on July 8, 1854. Liberty Tribune 6-30-1854.
- 7-14-1854: Locke was a delegate to Plattsburg Whig Convention from Andrew County. After he had moved that a committee composed of one from each county be appointed to nominate permanent officers, he was appointed to the committee from Andrew County. After a motion by Locke that a committee be appointed to draft resolutions expressing the wishes of the convention concerning nomination by the Whigs of a candidate for Congress from this district, as well as other matters, the committee reported several recommendations, including its support of a candidate who would oppose the repeal of the Fugitive slave Law. Locke was active in making other motions. Liberty Tribune.
- 1857: Locke was an attorney in St. Joseph, Buchanan Co., MO. He, with others, was among first to organize an anti-slavery organization in Missouri and the northwest. 1860 Buchanan County Census; History of Buchanan County, publish by Union Historical Company.
- 2-20-1857: Advertisement in Liberty Tribune P. B. Locke, Attorney and Counsellor at Law, St. Joseph, Missouri, will practice in the counties of Buchanan, Platte, Clinton, DeKalb, Andrew, and Holt.
- 1859: Lawyer, Jule Street, between 2nd and 3rd, res. Main between Franklin and Main, St. Joseph MO. 1859 City Directory St. Joseph. MO. 1859 City Directory St. Joseph.
- 1860: P.B. Locke, lawyer, Jule between 2nd and 3rd, res. Poulin between Main and 2nd. Value personal estate, \$160. St. Joseph, Buchanan Co. City Directory 1860; 1860 Census Buchanan County.
- 6-29-1860: Liberty Tribune. Locke recommended as a sub-electror by the Tribune for Buchanan, Andrew, and other counties. "[Co]l. P. B. Locke, of St. Joseph] is a gentleman of fine ability, and a true Union man."
- 8-3-1860: Appointed assistant presidential elector by Constitutional Union Party of Missouri. Liberty Tribune.
- 1861: P. B. Locke, N. S. Jule between Jule and Faraon. St. Joseph City Directory.
- 1862: P. B. Locke, lawyer, s. of Jules between 2nd and 3rd; res. Main between Franklin and Poulin. Locke, Morris E., boards with P. B. Locke. St. Joseph City Directory 1862.

- 1862-1863: County Court, P. B. Locke presiding judge. There were two other judges. Salary of presiding county judge was \$5 per-day. History of Buchanan County and St. Joseph, Missouri, From the Time of the Platte Purchase to the End of 1915.
- 1862-1864: Member of Board of Curators, the governing agency of the University of Missouri. He was not a very active member, according to the Director of the Archives. Archives, University of Missouri.
- 2-7-1862: Locke was appointed Curator of the University of Missouri for the District. Liberty Tribune.
- 3-7-1862: Locke had been appointed one of the justices of the Buchanan County Court. Liberty Tribune.
- 4-22-1862: [P.B.] Locke and [Morris R.] Locke, Attorneys and Counsellors at Law, office corner of Second and Francis streets, St. Joseph, Missouri, will practice in the Courts of the 12th Judicial Circuit.
- Prompt attention given to procuring of pensions, back pay, and bounties and the prosecution of claims arising out of the war.
- 5-16-1862: Judge Locke spoken of as a probable candidate for the legislature (St. Jos. Jour.) Liberty Tribune.
- 11-6-1862: Candidate for Buchanan County judge. Although votes counted gave him a comparatively low number, the newspaper opined that the regiments would probably elect Locke and Schreiber. The Morning Herald (St. Joseph).
- 8-31-1863: Temporary appointment to serve at pleasure of President as judge, Nevada Territory. Locke from Missouri. U.S. Dept. of State, Appointments Division, Commissions of Judges, vol. 2 (1856-1879); Pomeroy.
- 9-9-1863: Oath of Locke as judge, N.T. before Orion Clemens, Sec. of State, to Edward Bates, U.S. Attorney General. Papers of Attorney General Prior to 1870.
- 9-11-1863: Judge Locke of St. Joseph MO appointed Associate Justice of Nevada Territory, "A first-rate appointment. Mr. Locke by dint of hard labor is making himself an enviable reputation \* \* \*. He is a man of fine general information, a good lawyer and a courteous gentleman, and the people of Nevada have been fortunate in his appointment." Liberty Tribune. An article dated September 12 in the Reese River Reveille reported the appointments of Locke and John W. North to replace Judges Jones and Mott.
- 10-3-1863: Reese River Reveille anticipated Locke's arrival in Austin in 3 or 4 days. "Believing this county will soon constitute the major portion of his judicial

district, in point of business, we hope he will consider the propriety of settling among our rich mines.”

- 10-14-1863: Oath of office as associate justice, N.T. before Silas Caulkins, Clerk, Probate Court, Ormsby Co., N.T. To Orion Clemens, Sec. of N.T. Original document.
- 11-2-1863: In People v. Wm. Pitcher, who had fought a duel with John Hunter, witnesses for the prosecution, Dr. Owens, Dr. Bronson, Isaac Anderson and Frank Healy, refused to testify, whereupon Judge Locke committed them to jail for contempt of court. Gold Hill News 11-13-1863, 3:1; Reese River Reveille 11-21-1863.
- 12-8-1863: Locke entered judgment in Washoe County in People v. Horace F. Swayze, found guilty of manslaughter. Sentenced to 3 years in territorial prison.
- Same date Locke signed judgment, acting judge, First Judicial District; confession of judgment, recovery of real property, case of T. G. Negus v. John McDonald et al. Judgment Record Book A, March 26, 1862 to August 7, 1877, Washoe County.
- 12-19-1863: Reese River Reveille 4:3. Locke was hearing application by Mills, Post, and White Company for injunction against Black Swan Company in argument over processing rock from Black Swan ledge.
- 1864: Morris Locke designed the great seal of the Town of Austin, which was used by the Common Council. The coat of arms was a sack of flour bearing the motto, “Sanitary Fund \$5,000,” surrounded by a wreath with the words “Common Council, City of Austin, incorporated February 20, 1864,” commemorating “a singular and pleasant scene that attended the inauguration of the city of Austin.” The seal was in use for about 10 years, was lost after town was disincorporated in mid-70s. Oscar Lewis, The Town That Died Laughing.
- 1-5-1864: Nominated for judge in Nevada. Earl L. Pomeroy, The Territories and the United States 1861-1890 (Seattle and London: University of Washington Press, 1969).
- 1-19-1864: Washoe County, second precinct, gave Locke two votes for Supreme Court judge. (No source.)
- 1-20-1864: Appointed as Associate Justice, N.T., 4-year term. U.S. Dept. of State, Appointments Division, Commissions of Judges vol. 2 (1856-1879), Pomeroy.
- 2-18-1864: Humboldt Register. Alfred James, Clerk of U.S. Third District Court, had resigned; Morris R. Locke, brother of the judge, was appointed in his place.
- 2-24-1864: Oath of office as Associated Justice, N.T., subscribed and sworn to before M. R. Locke, Clerk of Third District Court, N.T., by Chas. C. Conger, Dep. for Lyon County. Filed 2-27-1864, with Orion Clemens, Sec. N.T. Original document.

- 2-27-1864: Locke was 34 years of age. Papers of U.S. Attorney General Prior to 1870.
- 3-10-1864: District Court, Third District, commenced first session, Locke presiding. Reese River Reveille. The Humboldt Register of March 19 reported that Locke would hold a term of court in Unionville commencing first Monday in April.
- 4-2-1864: Reese River Reveille 4:1. Newspaper expounded on the dangers of forming an opinion of any person upon a slight acquaintance. "It is not to be denied that a strong feeling was engendered against him [Locke] during the first few days of the court, occasioned by what were considered arbitrary proceedings. These prejudices were gradually worn away by the urbanity of manner, the learning, dignity and firmness displayed as a presiding officer, and the uprightness and determination displayed in bringing criminals to justice. With such an officer as Judge Locke there will never be the need of a Vigilance Committee in this district \* \* \*. Attorneys may be faithless, and other officers negligent or purchasable, crime cannot escape unscathed, when a Judge presides, who is capable of directing, and determined that justice shall have its course. \* \* \*"
- 4-9-1864: Locke was holding court, taking care of a "considerable amount of business [which had] accumulated on the calendar on account of the former judge showing no disposition to clear it." And on April 16 the paper commented that the "new judge" was "an affable gentleman, socially sound. From the Bar we hear but one opinion as to his qualifications for the position he occupies and that is a perfect indorsement [sic]."
- 4-23-1864: Reese River Reveille 3:2. Brother Morris purchased Gridley sack of flour for \$25 in Austin for Sanitary Fund.
- 6-18-1864: The Daily Old Piute 3:2 noted that Locke had failed to appear to conduct a scheduled court session. He was unwell.
- 6-21-1864: Journals of Alfred Doten, vol. I. Doten, in Como, refers to a celebration which resulted from the decision of Judge Locke in the Third District Court in Dayton in the case of Orion Co. v. Roger Sherman Co. on the Whitman ledge, in favor of the Orion.
- 7-3-1864: Reese River Reveille reported Locke had arrived preceding morning from Virginia City and "is looking remarkably well." Locke would open court next Tuesday.
- 7-14-1864: Reese River Reveille 4:2. "We cannot speak in too high praise of his Honor, Judge Locke, for his impartiality, activity and legal ability by him displayed upon the bench."
- 7-20-1864: Locke had adjourned court at Austin and proceeded to Unionville for court proceedings. Reese River Reveille.

- 7-21-1864: Reese River Reveille 4:5 published Locke's opinion in the case of Newfield et al. v. Wormser et al.
- 7-22-1864: In an article entitled "Our Thrifty Judiciary," Territorial Enterprise said, "The opportunities of Judge Locke have not been as numerous [as those of the other judges], and it would be unreasonable to suppose that his nest was as well feathered; but it may be safely estimated, in a general way, that his brief judicial career has netted him a quarter of [\$100,000] notwithstanding he is considered the lowest priced man of the three. \* \* \* The salaries of our Judges are scarcely adequate to their respectable maintenance. \* \* \* [The judges] have made a harlot of justice\* \* \* they have acted as procurers, and in the secrecy of their chambers have sold her virtue and yielded her up to prostitution. \* \* \*"
- 7-26-1864: TE. "[Judge North] begs that no sins of Turner or Locke be visited upon him. It is sad to behold this lack of harmony, of confidence among the brethren judges. It is evidence tolerably strong that all is not right with the bench; that North reviles Turner, Turner recriminates on North, and North and Turner never concur, except in adjudging Locke to be an ass. \* \* \*"
- 8-5-1864: GHEN 2:1 reported that a petition was being circulated demanding the resignation of the three "corrupt" judges. Territorial Enterprise of same date reviewed the progress of the fight between the two litigants, Chollar and Potosi, for the favor of the individual judges. Locke, who had replaced the pro-Potosi Horatio M. Jones, was wooed by both sides. "At different times both parties supposed they 'had him,' but his stupidity and want of backbone rendered all contracts doubtful. North and Turner both plied him for their respective patrons. The night the argument closed, and while the Chollar side was arguing, North declared himself 'too ill to sit,' and the argument closed. Within half an hour afterwards this sick and fainting Judge, with Locke and two others, started for a ride to [Lake Tahoe] (here the paper described the maneuverings of both sides, naming those involved).\* \* \* Afterwards, the Chollar party took possession of Locke, had a big supper at 11 p.m., at which North ate heartily for a 'sick' man. The number of hard-boiled eggs reported by our informant to have been engulfed [sic] in that invalid stomach is preposterous, and shall not be repeated in these columns. Locke is said to have turned himself perfectly loose, got as drunk as a boiled owl, stood on his head, balanced himself on the small end of a champagne bottle and did all those things which a jolly old judicial acrobat might, could, would, or should do, when relieved from the stiff and stern trammels of the bench. They 'didn't go home 'til morning, 'til daylight did appear.' \* \* \* donning once more the ermine, Locke ornamented the bench that day; the Chollar folks in high glee, thinking they 'had him sure.' \* \* \*"
- The narrative continues with a description of Locke's conferences, travels and dealings with both sides. After more partying and a meeting with North, "Locke had arisen from his slumbers, and, after the interview spoken of with North, got drunk as an admiral, and started for Carson in a two seated carriage, accompanied by one of the Chollar lawyers \* \* \*. Locke,

with the confidence inspired by whisky, insisted on driving, and drove as might have been expected. He capsized the buggy over a high bank; the buggy was smashed to smithereens, and the horses ran away. The party obtained two other teams at Silver City and started again, Locke keeping up his lick at the lightning whisky, quarreling with the teamsters on the road and hugging his companions.” More intense activity by the judges and both sides followed. An opinion was filed by North favoring the Potosi, concurred in by Locke. Locke was persuaded to add an addendum mitigating the worst effects on the Chollar (The Chollar folks remained in Carson two or three days, and stuck to Locke like a sick kitten to a hot rock, \* \* \*). Turner concurred with Locke’s addendum and after “a week under North’s tutelage” Locke revoked his addendum to the opinion, ordering that it be withdrawn and ignored. The paper called the matter a “shameful story of judicial partizanship [sic], imbecile weakness, and wretched vacillation; and what is worst of all –it is true!”

- 8-6-1864: Humboldt Register p. 2. Locke held district court at Unionville, opening August 1.
- 8-8-1864: GHEN 2:1 reported that over 3,000 names had been signed to the petition requesting the three judges to resign.
- 8-9-1864: GHN 2:2 reported that North had taken “a bottle of peppermint and scrambled with his bowels for the tall timber of Calaveras. Turner concluded to Westward hoe also. What part of our neighboring State he has ambushed himself in, we have not learned. Where Locke is, we don’t know, and it don’t make any difference. He has not got either of his accomplices here to tell him what to do, and he does not know enough to hatch up any deviltry by himself. \* \* \*”
- 8-13-1864: Locke was on a stage for Virginia; would soon hold court in Lyon County. Humboldt Register.
- 8-23-1864: TE reported that North and Turner had resigned; then that Locke had also resigned.
- 8-27-1864: The Washoe Weekly Star 2:3 deplored the mass resignation. “Whether the charges so industriously and vehemently circulated by certain parties, for the purpose of compelling their resignation, were true or not, we do not see how the public is to be benefitted by such resignations at a time when a new judicial system, with new judges, is about to be inaugurated under a state government. \* \* \* it was not demanded by the public interest that either the judges or the people should be humiliated by the forced resignation of one, much less of all of our judges. We can only regard the proceeding as disgraceful, from the beginning of the malignant personal attack upon them, down to their resignation night before last, after being badgered all day by certain members of the bar.” The Star was quoting from the Virginia Union.

8-1-1865      Gold Hill Daily News reported Judge Locke had, like a convicted felon, retired and kept his head shut, “gone from our gaze” never again to “pollute the honest and pure air of the land of Sagebrush.”



## HORATIO McCLEAN JONES

Born Howellsville, Delaware County, Penna., 8-22-1826; died Vermontville Village, Eaton Co., Mich., from hemorrhage from the bladder, 6-10-1906. Interred in Bellefontaine Cemetery, St. Louis, Mo., in the family plot, by the side of his son.

Of Welsh ancestry; family emigrated to America in the 1600s. Father, John Jones, b. Penna., died 1875 at Phoenixville, Penna., on Schuylkill River. Mother, Mary Anne [Ann] McClean [McLean], b. Penna. or Virginia.

Wife: America Strong; b. 9-7-1828, Portage, Livingston Co., N.Y.; d. 10-31-1917, Canton, Fulton Co., Ill.

Son: Horatio McClean Jones, Jr., b. 1868 St. Louis, Mo.; died St. Louis 10-27-1875, approximately aged 6 or 7. Entire family buried at Bellefontaine Cemetery, St. Louis.

### **Comments and Descriptions:**

Vermontville Echo 6-20-1906:

“The judge was a strikingly attractive personality, even in his old age as known to the people of Vermontville. So much so was he that one wishes that he might have been so fortunate as to have known him when he was in his prime. His was a richly endowed nature. It is very rare that one sees such a happy combination of physical and mental vigor, vivacious emotions, keen sense of the humorous, \* \* \* memory so richly stored with knowledge from all sources. To the last he was a voracious reader, extracting the richest juices from all the literature our little town could supply him. He found the keenest enjoyment alike in the most humorous and the most profound writings. No person was more ready to crack a joke, nor more heartily enjoyed one, though it was at his expense. \* \* \* he was a profound believer in the essentials of Christianity. \* \* \* ‘He was a judge who could not be bought.’ His bright, genial, hearty presence will be missed on our streets and by none more than by the little children, whom it was hard for him to meet, and not stop for a cheery chat and hand out pennies to them. \* \* \*”

Logan Uriah Reavis, Saint Louis: The Future Great City of the World (Centennial Ed.) (St. Louis: C. R. Barns, 1876). cited below as Reavis, St. Louis.

“Judge Jones should be considered more in the light of a jurist than as a lawyer; and although but few men are more thoroughly conversant with the practice of our courts, yet it is upon the bench that he rises, as it were, superior to himself. \* \* \*  
\* A man of remarkable clearness of perception, his decisions and rulings are ever characteristic of fairness and equality, and are delivered in such a clear and minute manner as to seldom fail in giving satisfaction to all parties concerned. \* \*  
\* While he is dignified in his bearing, yet he is easily approached, and his manner is such as to give confidence to even the most humble of citizens. \* \* \* Domestic in his habits, he is genial, social and companionable, and has an entree to the highest and most choice circles of society. \* \* \*”

G. W. Beattie Memoirs.

“Judge Jones was in many respects a remarkable man. \* \* \* He was learned in the law and an able and fearless judge. When on the Federal bench in Nevada he was called upon for decisions in cases where contestants were willing and prepared to resort to other than legal means to win. At one time the sheriff would not permit him to appear on the streets alone, and insisted upon accompanying him personally as a bodyguard.”

Ibid.

“He seemed unable to turn his talents and his really valuable services into money”. One of the St. Louis newspapers remarked, “At last a lawyer has been found who took a \$3,000. fee when he might have asked \$10,000.” \* \* \* He was the type of man who was lost when not on a salary. \* \* \* He was an unusually high-minded man and had no part in, probably knew but little of, the political chicanery going on about him [in Nevada]. His wife once told us how, when the time came for Nevada to be granted statehood, a certain all-powerful politician assured him that he was to have one of the senatorships, and that the necessary action by the legislature was certain to be taken. Trusting the promise as valid he put forward no effort himself, and was stunned when he learned that the man who had made the promise had obtained the senatorship for himself. \* \* \* The judge was a man of unusual culture, an acknowledged connoisseur and a discriminating collector of prints. His collection descended in great part to me. \* \* \* He was an untiring student of philosophy, and a life-long friend of the scholar, William T. Harris, helping him in the editing of some of his books.”

Letter to Mrs. J.H.S. Hammond, 11-21-1916, from G. W. Beattie. “As you are fully aware, Judge Jones was a mere child in the matter of making and holding on to money.”

- 1845: Entered Oberlin College, Oberlin, OH, from Harmony, PA; graduated 1849. Vermontville Echo 6-20-1906; Orbit Record Oberlin College; Reavis, St. Louis.
- 1849: Graduated at Oberlin College, taught school. Bench and Bar of St. Louis; Parkin; Reavis, St. Louis.
- 5-18-1851: Married America Strong, who had graduated in same class as Jones in 1849 from Oberlin College. This was the first class in which a college degree was conferred on a woman. [Couple had been married 50 years at time of census cited below.] Parkin; Oberlin College obit records; Vermontville Echo 6-20-1906; Canton Daily Ledger 10-31-1917 (Ohio); 1900 Michigan Federal Census, Eaton Co., Vermontville Township, Vermontville Village.
- 1853: Graduated from Harvard law school with L.L.B. Vermontville Echo 6-20-1906; Oberlin College obit record; Parkin; Reavis St. Louis; The Bench and Bar of Missouri Cities.

- 1854: To St. Louis, practiced law until chosen supreme court reporter, Mo. Vermontville Echo 6-20-1906; Parkin; Reavis St. Louis.
- 1856-1861: Reporter Supreme Court of Missouri (appointed 1856) [Parkin cites Missouri Reports vols. 22-30 Jones vol. I-IX.] In 1857, listed as Clerk and Reporter, Supreme Court, St. Louis, res. Christy Avenue, office Courthouse. Vermontville Echo 6-20-1906; Reavis St. Louis; Parkin; St. Louis City Directory.
- 1859: Lawyer and Reporter of Supreme Court decisions, office Courthouse, res. 19 N. 12th, St. Louis. Parkin; St. Louis City Directory.
- 1860: Reporter Supreme Court, courthouse, rooms Exchange Bank Building, St. Louis. Parkin; St. Louis City Directory.
- 3-27-1861: Commissioned associate justice (from Missouri) of Nevada Territory by President Lincoln. U.S. Dept. of State, Appointments Division, Commissions of Judges, vol. 2 (1856-1872). Jones had been nominated 3-25-1861; upon his eventual resignation in 1863, he was succeeded by Powhatan B. Locke. Earl L. Pomeroy, The Territories and the United States 1861-1890. University of Washington Press, Seattle, 1969.
- 7-17-1861: Govenor Nye officially assigned Jones to the Third Judicial District. Appendix, Journals First Legis. Assembly, N.T. 1861.
- 8-3-1861: Preface to Missouri Laws, Stats. etc. (St. Louis Co.), published 8-3-1861: This compilation of the laws of St. Louis County was “nearly perfected by Horatio M. Jones, when, on account of his appointment to the Judiciary of Nevada Territory, he found it necessary to leave the completion of it to someone else.” Parkin; Reavis St. Louis.
- 9-12-1861: Papers of U.S. Attorney General prior to 1870. Jones took oath as Nevada Supreme Court justice before Orion Clemens, Secretary of State, N.T. Jones signed oath, which was attested by Clemens. Another, lengthier, oath was signed by Jones and attested by Clemens on 9-14.
- 1862: H. M. Jones boards at Penrod House, northwest corner Telegraph and Carson, Carson City. 1862 Kelly Directory.
- 11-30-1862: Jones wrote Attorney General Edward Bates from Dayton, Lyon Co., N.T. concerning the appointment of a successor to Judge Mott, recently elected to Congress, stating that “a great deal of anxiety exists among the members of the legal profession and the public at large on the subject. Suspicion also exists that moves have been made to secure the appointment of a successor entirely unacceptable to the people here. \* \* \* Nothing whatever has been done here touching the securing of the appointment of anyone in Judge Mott’s place that represents the wishes of anyone but schemers and plotters. \* \* \* Nobody has been

recommended by persons in this territory who is not expected to act in the interest of those recommending them. I mean precisely what I say. Intrigues are going on, of which the public know nothing, \* \* \*.” Jones continued by indicating he suspected California interests of sponsoring Mr. Hillyer (about whom he had heard favorable comment), and added that “the name of J. W. North, late surveyor general of the territory, is also used in this connection, whether with sincerity or merely as a blind I know not. I am sure of this, however, that no expression of desire has gone from any persons who represent the public here in favor of Gen. North. \* \* \* Gen. North is a highly esteemed and honorable man. \* \* \*” Jones suggested that it would be best to appoint a disinterested person from the Atlantic states “who would be entirely uncompromised of any business or professional relationships with [Nevada] territory.” General Records of the Department of Justice, Appointment File Nevada 1861-1865.

- 12-4-1862: Marsh Letters. There was opposition to a proposal in the territorial legislature redefining judicial districts which would have taken Judge Mott away from the Virginia district and placed Judge Jones into it. Sen. Thos. Hannah had been given to understand by Jones’ friends that Mott assented to the arrangement since Mott was to leave for Washington at commencement of next Congress, but Mott had disabused Hannah of this idea, feeling such a change would be a reflection on his character. “Besides, Mott was pure, and he was opposed to having the judicial ermine dabbled in the filthy pool of politics. He asserted that Jones had been lobbying and log rolling with members in a very unjudicial and injudicious manner.” The “dabbling and lobbying business” was denied in toto, and there were similar accusations against Mott. During arguments on both sides, Van Bokkelen stated that Jones was “a pure minded upright man.”
- 12-20-1862: Legislature passed an act to increase compensation of territorial judges. Before the final vote, Mr. Simmons attempted to amend the bill by striking the names of Turner and Jones from it, but failed. Stats. 1862.
- 1863: Kelly Second Directory. Judge, Third District., acting judge First District office 14 S. B Street, V.C.
- 3-1863: Jones’ dissenting opinion in Chollar v. Potosi appeal printed in full. Correspondence between Jones, J. G. Howard and Thomas Hannah about an alleged insult by Jones to Hannah. Also opinion of Jones in Childers v. Farrington, V.C. Daily Union, all in file. Hannah was a councilman from the Fifth District, Gold Hill, in 1861 legislative assembly; same Storey Co. 1862. Marysville Daily Appeal 3-27-1863 reported that text of dissenting opinion in Chollar v. Potosi was published in full in the Virginia Union, and occupied 8-1/2 columns.
- 5-2-1863: Humboldt Register. “The Washoe Times has a complaint from a correspondent that the district judge is damaging interests of the business public by failing to hold court, while litigation involving large amounts is pending. The same is the

case here. Judge Jones summarily discharged the grand jury and started on the 26th for the inside, leaving a great deal of business unadjusted. There is great complaint made by businessmen.”

- 5-11-1864: Daily Union. An article entitled “A Strange Story” reported, “Judge Jones resigned the position of Associate Justice, in which he became unpopular from inaction and wrong headedness, and although no one ever charged him with corruption, many accused him of legal incompetency.”
- 6-13-1863: Humboldt Register 2:4. Judges Turner and Jones held court (Supreme Court) in Carson City. Mott was absent in Atlantic States. Court was adjourned until the 4FMonday of the month.
- 7-1863: U.S. Justice Dept. Records, National Archives, and Reavis St. Louis say Jones’ resignation as federal judge was addressed to Lincoln effective same date (7-20-1863). Marysville Daily Appeal 7-21-1863, 2:3, reported that Judge Mott had returned from his eastern trip, Jones having been appointed to fill the temporary vacancy occasioned by Mott’s absence. Jones, said the paper, had since claimed to be judge in his own right, tried to hold on to the position. “To facilitate this scheme, hearing that Mott was on his way back [Jones] tried to remove the clerk appointed by [Mott], D. M. Hanson, and sent an armed force to take possession of Hanson’s office and hold it. Hanson rose from a sick bed, took the keys and seal in spite of opposition, and advertised to perform duty as District Clerk at his residence, Jones retaining an armed guard in his office. Jones has appointed George A. King as Clerk, in place of Hanson, and has issued warrants with a new seal, which the Sheriff refuses to execute, denying their validity.” Most lawyers, said the report, supported Mott and his clerk, and Mott was expected to put a speedy end to the affair upon his expected arrival in V.C. on July 18. On July 24 the Appeal reported that Mott had arrived, reinstated Hanson; Jones’ appointee had “retired” without resistance. “What course the discomfited Judge will pursue we are unable to say.”
- 7-30-1863: General Records of the Department of Justice, Appointment File Nevada 1861-1865. Jones addressed his resignation at Virginia City to President Lincoln, effective same day, adding, “Accept my thanks for the honor conferred upon me in appointing me.” Powhatan B. Locke was appointed to fill the vacancy on August 3 or 31, 1863.
- 11-21-1863: Reveille: Jones and Brackett practiced law, Austin. See 1-19-1864.
- 1-7-1864: Reese River Reveille announced that Jones, at request of many friends, had consented to announce himself as an independent candidate for the judgeship of the Third Judicial District (Lander and Humboldt). Paper published letter to Jones from 7 prominent men requesting him to run (in conjunction with election to be held to adopt new Nevada constitution), and stating they had “full confidence in your ability, impartiality and integrity as a man and as a jurist.” The letter was

dated January 4<sup>th</sup>. Jones' replied and accepted the compliment as stated that "my name may be so used, sensible of the honor you have done me, in inviting me to announce myself as a candidate for an office of such dignity and importance\* \* \*". Bancroft History of Nevada p. 179 says, "Jones, with William Haydon and T. M. Pawling, was nominated by the constitutional convention held in December 1863 as District Judge under the proposed new state government, and that at the election, although the proposed constitution was defeated, the three were among those receiving the greatest number of votes."

- 1-19-1864: Date of special election, with results noted above. Jones was practicing law in Austin: Horatio M. Jones and William Brackett, Attorneys at Law, office corner of Pine and Union Streets, adjoining Telegraph office. T&W 85; Parkin; Reavis St. Louis; Reese River Reveille 1-16-1864, 1:2; Reveille 1-21-1864.
- 3-1864: Jones admitted to practice in Third Judicial District. (Austin).
- 4-14-1864: Jones and Brackett practiced law same address, Austin. Reese River Reveille 1:2.
- 8-21-1864: Reese River Reveille 4:1. At August 20 meeting on adoption of new constitution, Jones, among others, made "eloquent, impressive and exhaustive addresses," arguing in favor of adoption.
- 8-23-1864: Reese River Reveille 4:2. "Judge Jones who speaks with authority, and whose honor none will doubt, said that he seldom knew of a case that was considered thoughtfully and carefully, and free from partisan influence [speaking of territorial Supreme Court]."
- 9-12-1864: Reese River Reveille reported that Jones had left V.C. for Austin to attend mining suit of Isabella G&SM Co. v. Wall G&SM Co., which has been referred to Thomas Wren, referee, to take testimony, and which would be submitted to Judge Locke "next Thursday." On the same date, Reveille reported Locke's appointment to fill vacancy left by resignation of Jones.
- 10-6-1864: Reese River Reveille 3:3. "\* \* \*The Territorial Enterprise severely comments on (Jones') movements, as follows: "This gentleman, whose abilities have not found a very general recognition in this Territory, is endeavoring to attract attention to himself by addressing Copperhead meetings in favor of McClellan. Thus far, his success has not been very startling. He made a speech at a small gathering of the 'unterrified' last evening, and deluged the skrinking [sic] assemblage with a nauseating torrent of twaddle. The chivalry were ashamed of him, and very generally withdrew from the meeting, and his remarks soon simmered down into a feeble whine, and finally died out with the vanishing audience. \* \* \*"
- 10-7-1864: Virginia Daily Union. Jones was a candidate at Democratic state Convention, Carson City, for Presidential Elector. Jones was one of party nominees.

- 10-15-1864: Humboldt Register. With others, “\* \* \* Horatio M. Jones, who formerly didn’t officiate much as District Judge in this county, will address the people in Star City this evening, in Dun Glen Sunday evening and in Unionville Monday evening next, on behalf of the Peace Democracy.”
- 10-22-1864: Humboldt Register p. 2. Jones admitted Tod Robinson was an “honest, avowed secessionist [and] one of the purest, bravest men, and one of the maturest [sic] intellects on this coast \* \* \*. I shall vote for him cordially and cheerfully.” The paper said Jones had “soured on the President’s hands. \* \* \* For a peace man, he was terribly violent. He was more bitter upon his former patron than any other speaker who has had his bills up here this campaign. He gesticulated terrifically, sawed the air at all lines and angles, stamped till the staging broke; drank a pitcher of water, and expended it in vaporings [sic] about the abolition policy of the Administration \* \* \*.” Jones spoke for 3-1/2 hours.
- 11-10-1864: Virginia Daily Union. Jones, a Lincoln appointee for the territorial supreme court, “made himself quite prominent in the late canvass, and spouted treason all over the state. Horatio has sealed his political doom. A renegade is despised by all honorable men. Go and hang yourself, Horatio, as Judas did of old.”
- 3-4-1865: Assembly Journals 1864-5. Legislature found, after investigation of judges’ accounts, that Jones was still due a balance of \$863.67 on his salary.
- 11-9-1865: GHN 2:1. Judge Jones was “on the Democratic stump in Lander.”
- 1866: Harrington & Angel, Austin Directory 1866. [Horatio M.] Jones, [J.S.] Slauson & [C.S.] Hayden, Attorneys at Law, Office Virginia St. between Court and Union, Austin.
- 1867: Langley Directory 1867. Attorney, Austin.
- 1868: Jones had returned to St. Louis. Son Horatio M., Jr. was born there. Parkin.
- 1869: St. Louis City Directory. Jones & Davis, res. 707 N. 23d, Third, NW corner of Pine, St. Louis.
- 1870: Jones & Davis, res. Webster Ave. near Cass, St. Louis. St. Louis City Directory; Parkin. Elected judge of the St. Louis circuit court; held office for one 6-yr. term. Parkin; Reavis St. Louis; Vermontville Echo 6-20-1906.
- 1871: Parkin; St. Louis City Directory. Judge; res. E side Webster Ave., between Cass and Glasgow Place, St. Louis. Took seat on circuit court in January. Admitted to practice law in Missouri 1-3-1871. Parkin; Reavis St. Louis.
- 1873: Judge, Circuit Court No.5; res. Webster, between Glasgow Place and Casso St. Louis. Parkin; St. Louis City Directory.

- 1875: Judge Circuit Court No.5; res. 1502 Webster, St. Louis. Parkin; St. Louis City Directory.
- 1877: Term as Circuit Judge expired. Harris letters. Lawyer, 414 Olive, boarding at Lindell Hotel. Parkin; St. Louis City Directory.
- 1877-1884: Practiced law in St. Louis. Large portion of business was involved with business difficulties encountered by St. Louis insurance companies which were “tottering and all ultimately fell.” When this business was concluded, Jones was unable to drum up sufficient law business to make a living. He developed kidney stones, with which he suffered for years. Harris letters.
- 1880: Lawyer, res. 2724 Chestnut, St. Louis. St. Louis Dir. p. 544.
- 4-13-1882: Over the years, Jones addressed voluminous correspondence to his long-time friend, Dr. William Torrey Harris. Mrs. Jones, who was also friendly with Mrs. Harris, wrote occasionally to Harris on her husband’s behalf (and without his knowledge). Information in outline, cited as Harris letters, taken from original documents dated between 1873 and 1900. Harris was Dr. William Torrey Harris, Ph.D., L.L.D., an educator and philosopher, who attended Yale, taught and then was superintendent of schools in St. Louis between 1867 and 1880; dabbled in mesmerism, spiritualism and phrenology; life work was “exposition of Hegel’s thought and application of his principles especially to education.” Founded Journal of Speculative Philosophy 1867; in 1873 with another established in St. Louis first permanent kindergarten in U.S.; helped establish Concord, Mass., School of Philosophy 1880; was U.S. Commissioner of Education 1889-1906 based in Washington, D.C.; wrote extensively on subjects of public school education and philosophy.
- 4-13-1883 letter: Harris had apparently made a gift of some facsimiles of some Turner etchings to Jones, who thanked him enthusiastically, writing from St. Louis, saying “[The etchings] show Turner’s vast power. He transcends all landscape painters. I have seen woodcut reproductions of the Little Devil’s Bridge. \* \* \* The facsimile reproduction shows wonderful power and beauty. \* \* \*” Harris letters; Concise Dictionary of American Biography (New York: Charles Scribner’s Sons, 1964); Encyclopedia Britannica, vol. II (William Benton, 1956).
- 11-9-1882: H. K. Jones from this date intermittently wrote letters to Harris on stationery headed “Office of Drs. H. K. & C. G. Jones, Corner of Fayette Street and College Avenue, Jacksonville, Ill.” These letters were interspersed with those of Horatio. There is also a letter to Harris from Lizzie Jones. Hiram K. Jones was president and founder of The American Akademe, “a society \* \* \* devoted to the study of Philosophy, Science and Classical Literature” founded in 1884. There was probably no relationship between Horatio and Hiram and C.G. Perhaps the connection lay with Horatio’s association and correspondence with Dr. W. T.



Harris, whose interests were in philosophy related to education. Harris was a member of the American Akademie.

- 7-1884: Jones departed St. Louis for Little Traverse Bay near Mackinaw, where his sister (who lived in Michigan) had a summer house.
- 9-1884: Accompanied by brother-in-law east to Jones' old home near Philadelphia, where he had been born and where he had an interest in his father's estate. Did not go back to St. Louis, became despondent. Lost touch with friends. Was unsuccessful in attempts to "make a lodgment" in Philadelphia or New York City.
- 11-17-1890: G. W. Beattie Memoirs. Jones and wife America came to live with America's nephew and family in Riverside, California. Beattie commented that "Jones seemed unable to turn his talents and his really valuable services into money. Mrs. Jones made us several visits in California. The judge would give her money for a vacation at some fashionable resort, but she would come to us instead, saving money thereby, and using such of it as she did not need for herself in helping us in the start we were making... \* \* \* her husband was not going to succeed as a practicing attorney, and she began planning for a home in California near us where she and the judge could become self-sustaining. \* \* \* She left St. Louis for California, bringing with her such household effects as she and the judge did not care to sell, and expecting him to follow, after closing up his business in St. Louis, with sufficient funds to make a start in orange growing. His books and bookcases arrived, carpets, chairs, and other personal effects were here, and his collection of engravings, expensively crated for shipment by express, was on the way." Beattie had located reasonably priced, 10-acre with water rights, land which could be planted, turned over to Joneses. When Jones arrived, Beattie took him to lunch and discovered he had not the price of the meal. "To the dismay of his wife and the rest of us, he had brought no money with him, but had spent the \$1,500 he had received from the closing of his business in exchanging some of his old prints for new ones that made the collection he was shipping a better illustration of the development of copper plate engraving." Though America had brought \$800 with her, without the \$1,500 the land deal was impossible and Joneses moved in the Beatties' residence. Harris letters indicate that Jones was very ill (probably with kidney stones, plus depression). Beattie says, "He met all their expenses and they lived with him for seven years [address was North Highlands]." Jones attempted to help on orange ranch during that time and Beattie tried to help him into the orange business, indicating in his letter to Mrs. J. H. S. Hammond of Orlando, Florida, in 1916, that during the time Jones was working in his own interests to get the project started Jones' only really constructive effort was expended.
- 11-17-1890: Jones wrote to Harris from San Bernardino, "The truth is it is the first letter I have written to a St. Louis friend since I left St. Louis in 1884. \* \* \* Since I left St. Louis I have felt almost as if my life were ended. \* \* \* My nephew, George W. Beattie, has just been elected Superintendent of Schools of this county." Jones

requested of Harris recommendations on reading material which might provide Beattie with information on his forthcoming duties in the education administration field. Beattie was to take office 1-1-1891.

Jones was reading two books sent him by Harris, having found the "Dante" a bit deep for his intellectual powers. The other book dealt with the history of logic and Jones commented at length on the attitude of the author, Jones obviously being thoroughly familiar with various schools of thought on metaphysics and philosophy, saying the author seemed to confuse "psychological with pure speculative thinking." The letter is full of discussion of various authors, their philosophies and abilities, including harsh criticisms of some. Jones indicated he had campaigned for Harrison in the last election and hoped the Democratic party would not "give in to the heresy of Free Trade."

- 2-15-1891: Jones wrote to Harris acknowledging receipt of books, with continued discussions of psychology as well as a tract by Harris on immortality, and a discussion by Harris of Hegelianism, of which Jones was most complimentary, saying Harris would "secure \* \* \* recognition as by far the ablest representative of Hegelianism now living unless someone has come to the front that I know nothing of, since I left the world. I say since I left the world, for it is to me a painful fact that I am outside. \* \* \* I hope you will keep up your interest in me so far as to send me such material occasionally as you have already sent. This now constitutes almost my only connection with the world. You don't know how much I value it."
- 3-13-1892: Jones wrote Harris (as he did several times) that he was sending oranges, commenting on the expense of shipment, and adding, "You will find the oranges fine, I think. I picked them myself. \* \* \* First class navels this year are rare." He requested copies of census records and government reports such as Senate and House documents. "I have always taken great interest in public surveys." Jones also requested charts of the various battles of the Civil War. He further said "he would have something to say in the coming national Election in support of the Republican nominee, whoever he might be."
- 5-8-1892: Jones remarked to Harris in a letter that he had received and read some reports of the Geological Survey (at the instance of Harris) in which he was very much interested, including a monograph on the geology of the Comstock Lode and the Washoe District; stated he had been a judge at Virginia City in 1862-3; "When I was at Virginia City, the great question was one of the identity (so to speak) of the Lode as one Lode. I tried cases there and formed theories then. I would so much like to see something from a geologist as scientific as George F. Beeker."
- 6-26-1892: Jones apologized to Harris for time lapse between letters, explaining that he lived almost 9 miles from San Bernardino, though it was his post office address, and hence often did not receive letters until after they had been in the post office for some time. He acknowledged receipt of and great interest in the monograph on the Comstock Lode. "I devoured it when it came; very interesting to me."

- 1892-1894: Continued to live on Beattie's orange ranch, San Bernardino. Assisted Beattie in his work as Superintendent of Schools, helped manage orange ranch.
- 2-13-1893: Jones promised Harris he would soon receive his "annual" box of oranges. "There is nothing to say about my life. I doubtless have a good deal of work in me yet, yet there are few persons so weak in the matter of getting the work to do. I wish I could be in Chicago next summer for a week at least. But I cannot afford it. \* \* \*"
- 11-20-1894: Jones wrote Harris asking his help, perhaps with a job in Harris' bureau (Commissioner of Education, Washington, D.C.) Beattie had failed in reelection as School Superintendent. "I need [help]. The agony of saying this at this moment you cannot know." Subsequent letters indicated that a reply from Harris had gone astray and that no further correspondence had been received Jones remained at San Bernardino (East Highlands). A letter from Mrs. Jones 9-20-1895, written on behalf of her husband, said she had always admired Jones' ability and intellect and stated there must be work for him to do which would draw him out of his despair. In another letter Mrs. Jones told Harris that Jones was so deep in despair he would not write to her. Jones meanwhile had continued to ship oranges to Harris.
- 10-1895: Harris had apparently written Jones with a proposed course of action for him to take (which did not include employment in Washington by Harris). Jones responded with a detailed discussion of the Silver question controversy and probabilities of support by Republican and Democratic parties. And in response to Harris' suggestions he indicated he was "utterly destitute" and did not even have funds to get himself to Washington to proceed with the course of action Harris proposed. "I appealed to you as a sort of last desperate chance. \* \* \* I know the difficulty, I may say the impossibility, of doing anything without my presence in Washington. \* \* \*"
- 1-10-1896: Jones wrote Harris that he was coming to Washington immediately.
- 7-14-1896: Jones was a guest in Harris' house for two years. Mrs. Jones had apparently had something to do with convincing him to go to Washington and arranging to get him there. She apparently spent little time living with him. Harris lived at 1303 P Street N.W., Washington, D.C., discussed political affairs. Jones wrote Harris on 7-20 on Department of Interior, Bureau of Education, stationery concerning various books he was locating for Harris. (It appears that Harris was not living at home at the time.)
- 2-13-1898: While still in Washington, Jones fell off a streetcar and injured himself, so that he had to move to Vermontville, where he lived with his niece. He wrote Harris that he had arrived in Vermontville, Eaton Co., Mich., on the preceding day. On April 21 he discussed the disaster of the Maine in Cuba. Jones felt the Spanish

government had not been responsible and strongly defended Pres. McKinley's policies. He continued to refer to the fact that he was gaining strength.

6-14-1898: Jones wrote Harris that he had been livery sick "and was scarcely able to sit up.\*  
\* \* I have suffered a great deal, been in great pain \* \* \*."

6-21-1900: Mrs. Jones sent "part compensation for [Harris'] hospitality" to Jones, hoping that some time Harris would be "fully reimbursed." On July 10 America wrote Harris saying that to a great extent she had been responsible for her husband's going to Washington. Her letter infers that Harris had refused to accept and returned the draft. Mrs. Jones agreed with Harris that Jones would be better with "some simple work each day, occupying six hours of his time," and added that he had almost always been physically able to work. "When he is happy mentally, his body always responds quickly to any call." She referred to Jones as her "noble husband." She had returned the draft again to Harris, who in turn endorsed it back to Mrs. Jones, saying on September 6, 1900, "I think that he would have come out all right had he not weakened himself by a fall from a street-car which brought on certain physical disorders which his native [sic] strength had kept in abeyance, probably for many years. It is a continual source of pleasure to me to think that I had his company many hours for more than two years and our relation was and is such a brotherly one that I think he could accept from me what he would not be willing to accept from any of his other friends. I hope therefore that you will look at this matter in a different light and think no further of sending me any money for what I did. I have endorsed the draft back to you and hope that you will cash it and use it for the purpose that is nearest your heart. \* \* \*"

## GORDON NEWELL MOTT

Born Zanesville, Muskingum Co., Ohio 10-21-1812. French Huguenot extraction. Raised in Mt. Vernon, Knox Co., Ohio; farmer's son; common school education. Died San Francisco 4-27-1887.

Married 1844 Ohio. "On another occasion Gordon F. Mott, then a lawyer just married, afterward a member of Congress from Nevada, was strolling over the old bridge [at the head of Main Street in Piqua, Ohio] with his wife, who in playful mood was tilting up the boards of the old floor, when suddenly she found herself shot through the bridge and into the turbulent stream. Her husband gallantly leaped over the railing and rescued her from the river, and they both crawled up the bank, wetter but wiser people. \* \* \*"

Sons:           Rev. Edward Mott (Episcopal);  
                  John H. Mott; William Harrington Mott.

One daughter.

First a Democrat; by 1861 a staunch Republican; in 1882 "his attachment to the Republican party [had] been weakening"; listed as Democrat 1884, S.F.

Texas State Archives: Honorable discharge document, Army of Texas Mott was 6-foot, one-inch in height, fair complexion, age 24.

S.F. Daily Evening Post 9-23-1882 2:3-5 says: "The Judge is a man of very positive convictions on questions touching religion, politics and society. He was strictly reared in the Puritan faith, but has departed from his early training. He is a freethinker. He was taught that dueling was murder, but he believes that dueling is the proper way of settling serious disputes. He declares that war is only dueling on a large scale. He has never fought a duel, but has several times acted as second. He is an accurate shot. His sense of honor is very acute, and his nerve and courage undauntable [sic]. He has no patience with cowardice, but he says that the suicide is not a coward. In 1859, in the triangular contest for state officers, the Democrats being divided and the Republicans just rising into power, an adherent of Latham expressed his opinion to Judge Mott that Latham would get more votes for Governor than Stanford and Curry combined. The judge said that if that result happened he would leave the state. In order to make his word good, he removed to Nevada."

The Post penned in relation to Mott's military service: "Mr. Mott was enthusiastic, adventurous, of tall stature, splendid physique and robust health, and was one of the most ardent and eager young soldiers in the Texan army."

1836:           Studied law in Sydney, Ohio under Joseph Updegraf; admitted to practice Ohio Supreme Court; before commencing practice traveled to Indiana, Kentucky, Tennessee, Alabama, took a drove of horses from Ohio to the South.

10-1-1836/

- 5-11-1837: When Texas seceded from Mexico, Mott enlisted as private in Company F, 2nd Regiment of Permanent Volunteers, Republic of Texas. Honorably discharged (brother Samuel R. Mott in deposition stated that Gordon, before expiration of enlisted men had become “so ill as to render him unfit for service for the remainder of his term of enlistment,” and on application the honorable discharge had been forthcoming. The army disbanded about two weeks later). Mott’s brother, Col. Sam’l R. Mott, served with Gordon in same military company, which had been raised and organized in Mount Vernon, Knox County, Ohio, fought for the Republic of Texas. Also serving in same company was brother John G. Mott. The two brothers had joined at Mt. Vernon; Gordon joined company in Cincinnati. After discharge, Gordon returned to practice law in Miami County, Ohio.
- 1840: Practicing Piqua County Gordon K. Mott. Mott is mentioned as among, “The first pleaders before the Bench of Miami County [who were] men of worth and ability.” Harbaugh, Thomas C. Centennial History: Troy, Piqua and Miami County, Ohio. Richmond-Arnold Pub., 1909. Gordon’s brother, Samuel R. Mott, began the study of law in Gordon’s office at Piqua, Ohio.
- 1846-1847: Served as captain in war with Mexico, having raised company he commanded; returned to Ohio [Mexican War dates were 1846-1848]. Biographical Annals of the Civil Government of the United States. “\* \* \* We recollect standing on this bridge [at the head of Main Street, Piqua, Ohio.] and seeing a company of soldiers of the regular army from Fort Gratiot, in Michigan, pass down the canal to join the troops of Gen. Taylor, in the Mexican war, and also saw the company raised here for the same war by Gordon F. Mott, leave for their destination, from the same place \* \* \*.”

“One of the lawyers of that elder day was Gordon Mott, a man of fine presence. He inclined toward military ideas, and interspersed cases with drills. On the Rossville bridge [Rossville was a small community of blacks just across the Great Miami River on Piqua’s north edge] in one of these drills he was walking backward directing the maneuvers of a company, when he disappeared from view. A yawning hole in the floor of the bridge had swallowed Mr. Mott with all his military glory and legal attainments. However, he was rescued from a watery grave, to quote Mr. Mantalini, ‘a damned moist unpleasant body.’”

After formation of company for service in war with Mexico, Captain Mott was ordered to move his company to Camp Washington. Mott and most of his company were all Democrats, “and the Captain, being impertinently questioned as to how he and his subordinate officers would vote, replied that he would support the man whom he regarded as the most competent.” Since those responsible for making appointments to higher office were all Whigs, “This honest response deprived [Mott] of the glory of leading his fine company into battle. There being three more companies than were called for, his company was rejected and disbanded.” Col. Morgan, who had fought with Mott in the Texas war, then

offered Mott a 1st lieutenantcy in a company of Morgan's regiment, from which position Mott could advance to the position of Adjutant of the regiment. Mott joined the company, was elected 1st Lt.; but Mott's political views were so unpopular with Morgan's fellow officers that Mott resigned; Morgan asked him to accept the "moneymaking position of sutler of the regiment." To finance the project, Mott was referred by Morgan to a man who would be Mott's partner. The partner turned out to be one Norton, rich and a former schoolmate of Mott's. The first stock of goods was immediately sold but the partner failed to forward the next promised shipment. This ended the business. Mott spent about a year in Mexico, but was only able to clear about \$3,000 profit during what he termed "a most disagreeable, vexatious and dangerous year's work." He was never allowed to participate in battle. "I was thoroughly disappointed and utterly disgusted," he said, "with the thankless and contemptible office of sutler of a regiment of volunteers, but to be sutler of a regiment of regulars is more agreeable and respectable."

- 1847: Mott returned to Piqua, Ohio, bought a large stock of hardware, groceries, iron, steel, glass and nails, and opened a store, then traded the store for real estate. S.F. Daily Evening Post 9-23-1882 2:3-5
- 8-1849 : From Cincinnati to California, by Steamboat to Independence, Mo., then by wagon train. Arrived Sacramento 8-6-1849; thence to Auburn; took up mining. Then kept a general store, sold out to partners, took wagonload of flour to Illinoistown in the mountains; then engaged in practice of law. In Auburn engaged in "bushwacking law practice."
- 1850-1860: Practiced Yuba-Sutter counties.
- 1850: In spring to Marysville, then to Sutter County, where he was elected county judge.
- Spring 1850: A principal owner of land Yuba City.
- 4-1850: Elected county judge Sutter County. Elected by first California legislature.
- 5-1850: County Judge Mott (of Sutter County Court of Sessions) and his two associates threatened to hold court in Nicolaus unless suitable buildings were built in Oro by first meeting commencing on June 10. Comstock, David Allan. Gold Diggers and Camp Followers 1845-1851.
- 6-3-1850: Opened county court Sutter Co. T&W Sutter County.
- 6-10-1850: First session of Court of Sessions at Oro, Sutter Co. set Mott, C.J. No suitable buildings at Oro; buildings procured temporarily at Nicolaus, where court met the following day.

- 8-22-1850: Mott presented the design for a seal for the county. Court of Sessions adopted the design, which bore the inscription “The County Court of Sutter County, California.”
- 11-1850: Mott was appointed District Judge (Yuba) by Governor to position made vacant by removal of Judge WID. R. Turner, to a new Judicial District.
- c. 1851: Acted as second to Judge Stephen Field in duel between Field and Judge W. T. Barbour at Bear River. Both parties appeared but actual conflict was avoided. Barbour was judge of 10th Judicial District.
- 7-28-1851: Lawyer of Sutter County. Appointed by Governor, judge of 10th Judicial District. (Yuba, Nevada, Sutter). Stephen J. Field gave “what influence I had” in favor of Mott. It was supposed that appointment would continue until election of 1852. However, a special election was proclaimed by Governor and William T. Barbour was elected. Mott contended there was no vacancy. Matter went to the Supreme Court, which decided in favor of Barbour. Field appeared as counsel for Mott. This eventually led to enmity between Barbour and Field, and the duel which followed (see above), in which Mott seconded Field.
- 1851: Mott was presiding judge in second trial of Thomas Burdue [Berdue] for murder, a case of mistaken identity. The guilty man had been positively identified (after Burdue’s first trial) and executed by the vigilantes, and a new trial was held on the ground that the real culprit had been found. Nolle Prosequi entered and case dismissed. Trial was held at Marysville. [The original crime involved a prominent man of the Marysville area who had been robbed and murdered while on his way to San Francisco with \$5,000 or \$6,000 in gold dust on his person, the crime taking place between Marysville and Foster’s Bar. The man suspected of the crime and indicted was Jim Stewart, notorious throughout the state and “a bad man from Sydney.” Burdue denied that he was Stewart but was convicted anyway when 20 or 30 witnesses swore he was Stewart. When the vigilantes got the real Stewart, there was no longer reason to hold or execute Burdue.
- 12-1852: Son William Harrington Mott born Marysville.
- 6-1853: Mott a resident of San Francisco. Seconded Judge O. P. Stidger in duel with Col. Richard Rust in Sutter County. Neither party won and matter was settled by mutual agreement.
- 7-1853: In M’Nally, Resp. v. Mott, App. defendant Mott was sued and served by the name of George N. Mott; judgment entered against him in that name; later without notice plaintiff on his own motion got a court order to amend judgment altering name George to Gordon. On appeal, Court found against plaintiff since action was “against one person and the judgment against another.”



- 1854-1855: Mott elected Recorder of Marysville, to preside over Recorder's Court. Served one term. Recorder was elected annually by Marysville citizens.
- 1855-1873: Involved as counsel in eight California Supreme Court cases (Yuba, Sutter, San Francisco).
- 8-8-1855: David S. Terry nominated on second ballot for California Supreme Court short term over Mott (Yuba Co.) and several others at state convention of American (Know Nothing) party at Sacramento.
- 1857-1858: In partnership with General George Rowe at Marysville: Rowe and Mott.
- 6-25-1859: Mott worked with others electioneering for Charles E. DeLong.
- 1859: Mott & Fall's stage line over Beckwourth Pass took three days to reach the Comstock from Downieville. "Mott's hapless passengers had to vacate the coach for mules over the worst 25 miles between Yuba Gap and Sierra Valley, before taking another stage into the new diggings." Townley. The "terrible road" ascending the canyon of the West Carson River to Hope Valley was greatly improved by Mott and Reese when they constructed their toll road from Genoa to Hope Valley. The State of California refused to recognize their Nevada charter so they ended their project in Hope Valley. NHS QXIV/1. Sinnott, James J. History of Sierra County vol. IV says that on "November 5, 1859 Judge Mott instituted a combination saddle train and stage service between Downieville and V.C. via Sierra Valley, the passenger animals operating on the route from Downieville to the valley and the stage from the valley to V.C." Sierra Democrat, above date, announced that "both Marysville papers had announced the departure of Judge Mott for Downieville 'with stages and saddle-animals for a passenger line between Downieville and the Utah diggings; a saddle train from here to Sierra Valley, and a stage line in the valley to Virginia City.'" Mott's mules duly arrived in town and the stages went via Henness Pass Road to the valley.
- "Judge Mott arrived in Marysville, says the National Democrat, on Thursday evening, from the Washoe Diggings. It will be remembered that he has been running a stage and mule train, for some time, between the country on the western and that on the eastern slope of the Sierra Nevada. He left Sierra Valley with his mule train on Saturday, and arrived at Downieville, through the Yuba Gap, on Sunday evening, a distance of 27-1/2 miles. The traveling was comparatively slow, on account of a heavy snow storm which occurred just before he started.
- "Judge Mott pronounces the Yuba Gap a vastly superior pass to that on the Placerville route. He traveled over both routes, with the view of testing them, it being solely a business transaction with him, and it being his object to ascertain which was the better pass for his mule and stage train. He prefers the Yuba Gap in proportion of ten to one.

“Judge Mott has withdrawn his trains for the present, not because of the difficulty of travel, but on account of the high price of feed during the winter, the expense eating up the profits \* \* \*”.

- 1-23-1861: DeLong and Mott entered into co-partnership in practice of law, Yuba and Sutter counties. Mott was to take care of firm’s affairs for DeLong during DeLong’s absence in Sacramento for California legislature. On 1-27-1861, Appeal 3:1 reported that Mott had started for the East to be present at inauguration of President Lincoln.
- 2-9-1861: Made formal application to Edward Bates, Attorney General, for appointment to the office of Chief Justice of Nevada Territory. General Records of the Department of Justice Appointment File Nevada 1861-1865.
- 3-25-1861: Date of nomination for A.J., N.T. Residence California; commissioned 3-27-1861. Congressional Directory; United States Department of state, Commissions of Judges, vol. 2 (1856-1872); T&W 77; Lanman, Biog. Annals Civ. Gov’t U.S.; 14 CHSQ 397. (Appointment as Associate Justice made by President Lincoln).
- 6-1-1861: Marysville Daily Appeal 2:1. Mott, newly appointed associate justice for N.T. to arrive in California by the next steamer, back in Marysville by June 6. According to John W. North in letter to J. M. Edmunds, Commissioner, General Land Office, Washington, D.C., Mott was in Carson City on June 2. On July 17 Governor Nye assigned Mott to the First Judicial District, after Mott took oath of office before him 7-12-1861. Mott took another oath before Orion Clemens 9-26-1861. Appendix, Journals First Legislative Assembly, N.T. 1861. Mott signed an oath before Nye 7-12-1861. The First Judicial District. included a large portion of Carson County, embracing “what now [1881] is Washoe, Ormsby, Douglas, Storey, Lyon, and most of Churchill Counties. Within it was, practically, all the white population of the Territory.” Court was held principally in V.C.
- 8-26-1861: Building new residence western Carson City.
- 9-15-1861: Mott heard arguments concerning illegality of assessment and collection of taxes, a question raised by the changeover from territorial government of Utah to that of Nevada. Newspaper predicted Mott would rule that assessment was illegal. Detailed article in Silver Age.
- 11-27-1861: Marysville Daily Appeal 2:1. Carson City Age of 11-22 complained that assignment of Judge Mott to Second Judicial District., “where there will be little if any litigation, is an unjust aspersion upon his character for legal ability, which the Age intimates is deservedly higher than that of other Judges more favored by the act proposing the assignment, and which is still pending in the Legislature.” On December 17th, Appeal quoted TE: “\* \* \*Judge Mott is really the pioneer judge of this District, being the first Judge properly assigned to this part of the Territory. Our people we hope will properly appreciate him, and recollect that he

has done more upon former occasions towards establishing law and order here than anyone else. The Judge's advent into the territory was by no means flattering. There was no court, no court house, no office appropriated to his use, either by the citizens here or of the General Government, and no building could be procured without an advance in money of rents. The Territory had no credit even with her own citizens. Judge Mott struggled through all of this, receiving a salary of only \$1,800 a year. \* \* \* Judge Mott, we are credibly informed, will be in our city every Thursday to attend to business at chambers, until he finally locates permanently in the District."

- 1862: Kelly Directory 1862. Judge First Judicial District., N.T.; res. W side Carson City.
- 3-6-1862: S.F. Daily Evening Bulletin. After Chief Justice Turner had sentenced William Mayfield to be hanged for the murder of John L. Blackburn, Mott suspended the sentence until June by supersedeas; "\* \* \* all doubts favor the prisoner."
- 7-1862: Farris & Smith History of Plumas, Lassen and Sierra Counties at p. 373 says Mott "opened his court in the old Magnolia building, on the south side of Main Street" [Susanville]. (Because of arguments about the California-Nevada boundary about that time, authority of Mott and other "county" officers from Nevada was challenged).
- 8-12-1862: Marysville Daily Appeal 3:2 reported Mott had consented to be an independent candidate for delegate to Congress "after urgent solicitation by his friends. He is popular, and the people say of him: 'in gaining an able Delegate we lose an excellent Judge.'"
- 9-3-1862: Elected on Union ticket delegate to 38th Congress from N.T. over J. J. Musser (a sessionist), John D. Winters and J. H. Ralston. Legislature assigned Horatio M. Jones to Mott's First Judicial District., such assignment not to take effect until Mott should have resigned, or until March 4, 1863. The legislature apparently contemplated Mott's resignation "or invited it." Fatout, Paul. Mark Twain in V.C.; Bancroft History of Nevada; T&W 80; Biog. Annals Civ. Gov't U.S.; TW 63 Letter from Mott to Editor Marysville Weekly Appeal 5-22-1879 (Huntington Library). Territorial records contain a handwritten Certificate of Election of Mott signed by Governor Nye and dated 10-1-1862.
- 12-4-1862: There were heated arguments in the territorial legislature over a proposal to remove Mott from the First Judicial District, theoretically to complete his tenure in another district until his resignation to take office as delegate to Congress. Mott resisted the idea; Jones, who was proposed to replace Mott, asserted he had thought Mott was receptive to the idea. The hidden battle being fought was between opponents in the Chollar-Potosi lawsuit, the losing party desiring to get Mott out of the way and substitute one who was more favorably disposed to its interests.

- 12-20-1862: Legislature passed an act, approved 12-20, directing payment to the three judges of the territory the balance of salary due them for the period ending with date of act in order to increase their compensation to \$6,000 per annum.
- 1863: Res. W side Carson City. 1863 Kelly Directory. Mott was presiding judge in Chollar-Potosi litigation concerning single-ledge v. multi-ledge theories. He supposedly favored the Chollar Co. along with Judge Turner. "Mott was, therefore, worried or bribed into resigning, with no other object than to procure the elevation to the bench of [John] W. North \* \* \* who was known to hold an opinion adverse to the Chollar Company" (he eventually decided in favor of the Potosi Co.). Mott did not resign from the Supreme Court bench until 8-11-1863 although he had been elected territorial delegate to Congress 9-3-1862. It was said Mott had been paid by an official of the Potosi Co. \$25,000 to resign.
- 1863-1864: Term as territorial delegate to Congress.
- 2-6-1863: Marysville Daily Appeal 2:2. Legislature did pass act changing times for meeting of supreme and district courts, at same time reassigning Jones to Mott's district No.1, but "unfortunately the act and wishes of the Legislature, and also of the people, seems to be frustrated by some villain \* \* \* who abstracted the original bill before it reached the Governor." The Governor was forced, therefore, in the absence of the original, to sign a copy of the bill. "A certain district judge" notified certain members of the bar of the mystery and requested an inquiry. Matter was referred to Judge Norton of the California Supreme Court, the interested parties agreeing to abide by Judge Norton's written opinion. Norton declared the law to be of no effect. Mott proceeded to hold court under the old law and did not resign on schedule despite his election as delegate to Congress. On January 20 Mott came to Susanville and administered oath of office to county officers elected the previous September. Held term of District Court for Roop Co. Officials at Quincy, Plumas County seat, "resented this undoubtedly illegal intrusion."
- 3-18-1863: Mott heard Chollar SM Co. v. Potosi SM Co. in First Judicial District Court. Complaint was filed 1-17-1862. On hearing in Supreme Court, Turner, C.J., Mott, J., concurring, Jones, J., dissenting, judgment of District Court was affirmed with costs. Motion for rehearing was denied. Decision rendered 3-18-1863. Opposition eventually persuaded Mott to resign and secured the appointment of John W. North, who agreed with Jones, in his place. There were statements that North's seat had been bought for \$25,000. New lawsuits were filed. Litigation continued until 1864. Trial transcript; Gold and Silver Colossus William Morris Stewart and His Southern Bride, Ruth Hermann.
- 3-22-1863: Mott among four passengers on eastbound Overland Stage which arrived at Eight Mile station (White Pine County) where White Horse, Chief of the Goshutes, had killed the station keeper and lay in wait for the stage. The Indians killed stage driver Henry "Happy Harry" Harper, but Judge Mott managed to climb out of the

rocketing stage and, clinging to the sides of the coach, reach the driver's seat in time to grasp the reins and bring the stage with its dead driver and passengers into Deep Creek (Elko County). This incident set off the Overland War of 1863.

- 5-23-1863: Marysville Daily Appeal 2:1. Judge Mott was in Sac'to, and talked of "resigning his position as Federal Judge, and also as Delegate to Congress."
- 6-13-1863: TE 2:4. Absent from Supreme Court meeting in Carson City, visiting in Atlantic states. General Allen of the Washoe Times remarked (reprinted in Humboldt Register 2:4), "The good Lord deliver us if we are to wait for justice until the return of Judge Mott; for no one knows whether he intends ever to return, and a great many entertain very serious doubts as to whether he will be very instrumental in administering justice if he does return."
- 7-13-1863: Marysville Daily Appeal 2:4. Mott was in Salt Lake City, Utah, on July 11 on his way back from Washington to Washoe.
- 8-11-1863: Resigned from Supreme Court bench (it was said he had been paid \$25,000 by Potosi Co. to resign).
- 8-15-1863: TE 3:1 (VEB). Visiting family in Carson City.
- 9-6-1863: Marysville Daily Appeal 4:1. A meeting of the V.C. bar held September 1 passed a resolution "to wait upon Judge Mott and request him to state if he had resigned his position of associate justice of the Territory of Nevada; if he had resigned his position what time his resignation would take effect, and how long the Bar and people could be assured of his services as Judge of this Territory. \* \* \*" (The Bar also discussed the desirability of petitioning the President to suspend appointment of successors to Mott and Jones, resigned, in order that the people might, after formation and ratification of their contemplated state constitution, elect their own judges.) On September 12th the Reese River Reveille reported the rumor that Powhatan B. Locke of Missouri and John W. North of N.T. had been appointed associate justices and judges for the Second and Third District to fill the vacancies caused by the "welcome resignation" of Judge Mott and Judge Jones.
- 10-29-1863: Marysville Daily Appeal 3:1. Mott arrived in Marysville en route to S.F., to embark on November 13th for Washington to take his seat in Congress.
- 4-28-1864: Mott was absent from Washington to visit Ohio. "We understand that considerations of health had something to do with his excursion, but it is to be hoped that he has now fairly recovered and resumed his seat, where the interests of his constituents demand his close attention, and watchful care."
- 5-9-1864: Citizens' meeting passed a resolution opposing proposed tax on "gross proceeds of mines" being considered in Congress, and forwarded resolution to Senator Conness of California for appropriate action. This was interpreted as a slight to

Mott, Nevada's delegate, indicating his ineffectuality. Senator Conness was called "for the present, at least, the only champion upon whom we can rely."

- 7-23-1864: Humboldt Register. In an article endorsing Cradlebaugh as candidate for territorial delegate to Congress, read, " \* \* \* We agree in the common voice that anybody will be an improvement on Mott, who is not a bon Mott."
- 7-26-1864: TE. "We assert that [North's] place on the bench was bought for him. The price paid was \$25,000, the payee was G. N. Mott, the person paying it was John H. Atchison; the parties for whom it was paid were John H. Atchison and the Potosi Gold & Silver Mining Company. The reasons for buying Mott off and North on were these: The Potosi Company had litigation involving title to a valuable mine. As Judge Mott had shown himself hostile to the Potosi Company. Mott could not be bought to decide in favor of the Potosi Company, but he received \$25,000 to make room for North. We believe there was some flimsy pretext of railroad business which glossed over the payment of this money to Mott, but it will not be pretended that the object of paying Mott was any other than to get North on the bench. Mott's hostility to the Potosi Company sufficiently explains that Company's anxiety to get him off the bench \* \* \*."
- 7-27-1864: Reese River Reveille. When Mott reached St. Joseph from Washington on the 16th to take the Overland Stage for home, his health failed, and he instead purchased a span of horses for which he paid the enormous price of \$2,000 cash, departing for home in a buggy drawn by the valuable horses. The Reveille reported on July 31 that Mott had arrived direct from the states in the Overland Stage, in good health. On August 5 Mott departed for Carson City.
- 10-31-1864: Term as delegate to Congress expired; was not a candidate for reelection. Mott moved to San Francisco, residing there thereafter.
- 1869: Langley S.F. Directory 1869. Mott, Attorney at Law. Res. west side of Capp between 21st and 22nd Streets., S.F.; living with him, John H. Mott; Thomas R. Mott, laborer at Custom House; Wm. H. Mott, Clerk with McAllister's and Bergin.
- 4-1871: Langley Directory S.F. 1871-2. Mott, attorney, 19 Montgomery Block 1871; 520 Montgomery Block 1872.
- 2-6-1871: Documents from Texas State Archives. Applied to state of Texas for military pension. Enlistment date shown as August 22, 1836. One document indicate Mott was not entitled to pension because his date of commencement of service was after Battle of San Jacinto. The second document approved 8-26-1874 granted annual pension of \$250 for service in the Army of the Republic from 1836. The pension was payable in bonds up to July 1, 1874 equal to \$970. Mott was a resident of S.F.

- c. 1874: Became Court Commissioner for 19th District Court, California. He was still serving in 1879. TW 63 Letter from Mott to Ed. Marysville Weekly Appeal 5-22-1879 (Huntington Library).
- 10-12-1875: DTE 2:5. Mott had been nominated for County Judge by the Republicans of San Francisco.
- 2-22-1877: Appointed Commissioner of Deeds for State of Nevada; res. S.F.
- 6-30-1884: Swisher, Carl Brent. Stephen J. Field, Craftsman of the Law (S.F. Alta 6-30-1884). Of Field's proposed candidacy for president of the U.S.: "Judge Gordon N. Mott, Field's old friend in Marysville, now a feeble old man, declared 'If I can live to see Stephen J. Field President of the United States, I will die contented.'"

## JOHN WESLEY NORTH

Born Sand Lake, Rensselaer County, New York 1-4-1815

Died 2-22-1890 at home of daughter Emma B. Messer, Q Street., Fresno, Calif. Remains cremated L.A., interred in cemetery lot of son John G., Riverside

First wife: Emma Bacon, married 9-22-1845, Middletown, Conn.; she died of TB 5-6-1847

Second wife: Ann Hendrix Loomis, married 8-28-1848, DeWitt, Onondaga Co., New York: father George S. Loomis; died. 8-1-1904

Children by Ann: George Loomis born 9-6-1853  
 John Greenleaf born 9-16-1855  
 Chas. Lewis born 5-31-1858  
 Edward (Eddie) born 7-11-1860  
 Emma Bacon (married. E. C. Messer) born 3-3-1852  
 Mary Anne (married J. C. Shepherd [Shepard]) born 5-3-1865

Wesleyan Methodist (Methodist-Episcopal); later Unitarian. Father was traveling preacher, devoted follower of John Wesley.

Close friend and sometime law partner of George A. Nourse, first A.G., Nevada.

Spent boyhood working upon the farm, 3-month. attendance in district school. In 1850 weighed 169 pounds.

### **Descriptions:**

Merlin Stonehouse, John Wesley North and the Reform Frontier:

When the going got especially rough emotionally, North was subject to a form of nervous breakdown. Many times he took to his bed to recuperate. \* \* \*

One day in November when Ann had got up at three to start her washing and was not done until six-thirty; when she had the care of two children, a sick husband, and had prepared the usual meals for his temperance, religious, railroading, university, and political friends, she nevertheless closed her day writing, "I believe I hardly know how to appreciate what a treasure I have in my husband.\* \* \* Such efficient help he renders and with such cheerfulness. \* \* \* I believe if I do not improve at all, I shall owe it in a good measure to his constant good example. No one can know the real beauty of his character 'til they have lived with him and see him under all circumstances. \* \* \*"

North wrote: "I have often thought how pleasant it would be to live in a society wholly made up of educated, enterprising, progressive people; where every neighbor is a companion and friend; where each will vie with the other in building the schoolhouse, the church, the lyceum, the library, and the reading-room; and where the views of all would



harmonize in an onward march toward all that is pure, and beautiful, and good. We may never realize our highest hopes, even after doing the best we can; but good, united effort will put us a long way in advance of where we are. \* \* \*” [In Tenn. c.1867.]

“A man of noble aims, high purpose, and unselfish ambition \* \* \*

\* \* \* fascinating combination of idealism and practical good sense \* \* \*

Never a great lawyer, he was too impatient of the past to linger over precedents and too active in the present to accept the routine and confinement of office chores. But law opened to him two avenues of great interest, politics and speculations. \* \* \*”

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- 1828:           Converted at a summer camp meeting (Wesleyan Methodist).
- 1830:           At fifteen, after three months’ training in select school taught a district school in Rensselaer County, New York (N.Y.).
- 1832:           Moved with family to Cortland County N.Y.; taught district school near Albany.
- 1833            Licensed as exhorter (lay preacher) at Stockbridge; taught in a select school in Madison County, N.Y.
- 1835            Taught school, working his way through Cazenovia Theological Seminary, Cazenovia, N.Y.
- 10-21-1835:    Attended first abolition convention at Utica, N.Y.
- 1838-1841:    Entered Wesleyan University. During years in school delivered addresses against slavery all over Connecticut; was member of Philoretorian Society, student literary debating society; member of Missionary Lyceum, an organization primarily interested in foreign missions. Graduated 1841.
- 12-1838/  
1843:           North began a “pilgrimage” at South Manchester, Conn.; had entered Connecticut (New Haven) Anti-Slavery Society, talked and lectured, organized. After graduation from Wesleyan University in 1841, North worked full time until 1843 as lecturer for the society; spoke in every city and town in Connecticut save one, “going to-and-fro as a flaming firebrand.” His church failed to give active support to the movement and; therefore, North never entered the ministry, surrendering his license to preach in 1841.
- 1843:           Studied law, office of William and John Jay, New York, and with Benedict and Boardman; atmosphere was a “happy combination of law and reform.”

- 1845-1849: Admitted to bar, aged 30, in 1845. Practiced law with Forbes and Sheldon in Syracuse, N.Y.
- 9-22-1845: Married Emma Bacon of Middletown, Conn., daughter of Nathaniel, a lock manufacturer who agreed with North's antislavery sentiments.
- 1846-1849: Law office, Syracuse, in partnership with Israel Spencer.
- 5-6-1847: Wife Emma died of TB. In his illness brought on by grief over her death, North was attended by Dr. George S. Loomis ("typical" country doctor), who lived on a dairy farm at DeWitt near Syracuse. He was a link in the Underground Railroad for twenty years. Loomis' daughter Ann, sixteen years of age, nursed North back to health; he was fifteen years her senior. Eventually she became his wife. Ibid.
- 8-28-1848: Married Ann Hendrix Loomis, daughter of George S. Loomis (she was seventeen, he was thirty-three) at DeWitt, Onondaga County, N.Y.; visited Michigan colony settlements on honeymoon. Ibid.; Wesleyan University. Alumni Record; Obituary Record Wesleyan University.
- 1849: To Minnesota Territory. Instrumental in settlement of St. Anthony (St. Anthony's Falls), later St. Paul where he practiced law.
- 1850: Had law office in St. Anthony. Baby born to wife Ann; it turned blue and died.
- 1851: North wrote from St. Anthony to father-in-law Loomis that he had a claim on the Military Reserve (at Fort Snelling) in company with an officer of the fort, with an article of agreement and written permission from the Commanding Officer. "Mr. Finch, my brother-in-law, is going to move on to it in the Spring, in consideration of which I let him have one half of my share." Enough was included in the claim for three good farms. Expenses were to be shared. "We hope in that way that a very trifling expense will secure to us the preemption right to a valuable piece of Land. Such chances can rarely be got, and in no case except in the company of some Officer." Eventually the reservation was overrun with squatters, though their residences and claims were illegal.
- Winter 1851: Preacher Charles N. Harris, the husband of North's sister Eliza, with two of his sons, Charles N. and John H., moved in with North family at St. Anthony. He intended to stay the winter; but when his stay became prolonged, North's wife Ann complained and North finally suggested that the preacher leave while the boys stayed with the Norths.
- 1-1-1851: Second session Minnesota Territory. legislature opened; North a member of House of Representatives from St. Anthony. Was chairman of house committee on schools, which submitted a report on the proposed university and suggested that "it was none too soon to provide for 'liberal, scientific and classical education.'" The bill to incorporate the University of Minnesota passed almost

unanimously and the title was amended to specify that it be located “at the Falls of St. Anthony [Minneapolis].” North took on law partner Isaac Atwater.

- 2-13-1851: North returned to St. Anthony from legislature for a short stay, then returned and demanded of the legislature a university for St. Anthony. On February 13, 1851 he introduced bill, got it passed and signed by governor. University was situated near North’s block. North was chairman of house committee on schools, and thus was in a position to aid in the passage of the bill. He also raised money for its early construction and contributed one-third of the cost of initial construction, despite his poor financial condition. Arranged for employment of first professor, who resided with his family at the North home for some time, and as new teachers were added they also stayed with the North’s. North also served as agent for Aetna Insurance Company, speculated in land. Borrowed money from George Loomis, his father-in-law, for his land purchases. Loomis came to Minnesota to check on North’s activities.
- Summer  
1851: Partnership with Isaac Atwater terminated. (Atwater had become a competitor rather than friend of North, including opposing his political views.) North formed partnership with David A. Secombe.
- 8-4-1851: Set stakes for first building at University of Minnesota.
- Fall 1851: Defeated for reelection to legislature.
- 11-26-1851: Academy (University) opened for classes at St. Anthony. There were two classrooms and 24 students. Although there were several others actively involved in creation of the institution, North is credited with being the major founder.
- 1852: Involved in long, complicated lawsuit over water rights involved in purchases of shore land and equipment for mills by 54 partners, including North, to be used in development of St. Anthony industrial property. The partners eventually lost.
- 1-2-1852: North was president of the Sons of Temperance (St. Anthony). Sister Clarissa devoted her time to working in the cause. (In March Minnesota passed a “dry” law with provision for a referendum, which approved the legislation.)
- 3-3-1852: Daughter, Emma Bacon, born St. Anthony. Child was named “Emma” after North’s first wife. Mrs. North objected to use of Emma Bacon, but later when Emma wrote her memoirs she used the name Emma Bacon Messer.
- 1853: North continued land speculation. Was involved in planning railroad on banks of Mississippi. Worked hard in temperance movement; much criticized by the opposition for his “Unitarian” views and when he took his family to mass for the dedication of a newly built Catholic church. He estimated his property acquisitions worth \$5,000 and thanked his father-in-law for helping him acquire

them; Loomis had also benefited. North also loaned money to be repaid at interest.

- 1854: North was ill with Piles; did business from his sofa. At one time during a temperance convention was too weak to speak, “a frightful punishment for a man with a golden voice.” Wine and beer were prescribed by doctor for treatment; North followed directions religiously, peculiar for a temperance man. Got involved and invested in promotion of bridge over Mississippi between St. Anthony and Minneapolis. Construction of bridge began May 1854. In summer he was worth \$8,000 and could borrow a \$1,000 or \$2,000 on his signature. North was kicked by his cow. Promoted emigration to new settlements.
- 1-1-1854: North was looking for an appropriation from Congress to build a railroad to Dubuque and another to Lake Superior. North bought \$5,000 stock in each railroad company; was a director and treasurer of company (from St. Paul to territorial boundary).
- 2-1857: North was a director of Minneapolis & Cedar Valley RR. Later, North was elected president of the railroad, his chief function being selling railroad stock. By June 1858 shares of railroad stock were held chiefly by North and three others. North had sold many of his other interests in order to invest in the railroad.
- 1-1855: North was proprietor of Faribault (Minnesota) Townsite Co.; with two partners laid out town. Began traveling over lands in Cannon River valley. Faribault was an old English village. North founded Northfield north of Faribault, where he built two mills: a sawmill and a grist mill, on the Cannon River and developed the townsite. The family moved to Northfield before the end of the year. North invested in land, lumber, flour mills operated by water power, and in business buildings, for all of which he borrowed heavily.
- 3-29-1855: North and friends organized Republican Party in Minnesota, meeting in North’s parlor. North called the first meeting of 200 to order in Congregational church in St. Anthony. He presented resolutions, which were adopted, calling for abolition of slavery in D.C., all territories and new states, for repeal of the fugitive slave law, for complete prohibition of alcohol, free land for settlers, reduction of postal rates. North’s front room became first Minnesota Republican headquarters. Chief work of the convention was to call a territorial Republican convention in St. Paul July 25.
- 1856: North built two houses, an ice house using sawdust from his mill for power; he was interested in a railroad charter to Northfield; he was a commissioner for a territorial road to be established between Iowa and Northfield; and “viewer” to lay out road from Faribault to Northfield. After a schoolhouse was built, second year, a lyceum established. Citizens were interested in temperance, anti-slavery, free education and Republicanism. North was active supporter of General Fremont.

- 7-13-1857: North led a Republican delegation to Minnesota constitutional convention, which opened July 13, 1857, after much preliminary political maneuvering by both Democrats and Republicans, and was elected president of the convention. Republicans strongly advocated giving women and African-Americans the right to vote. "Much respectable eloquence was wasted on that theme. The able address of John W. North covers ten pages of the Debates."
- 1858: Began construction of Minneapolis and Cedar Valley Railroad with headquarters at Northfield; \$5,000,000 loan voted in April by State of Minnesota.
- 11-1858: North in New York to sell Minnesota State bonds for support and construction of railroad. Stonehouse.
- 7-1859: North was voted out as president of the railroad, replaced by General James Shields. Shields eventually challenged North to a duel as a consequence of their differences over running the railroad. North did not take the challenge seriously and passed it over. The matter was eventually forgotten. North was caught vastly overextended in converting mills to steam and promoting the railroad, with failure certain. Eventually North was blamed, along with the Democrats, for failure of the railroad and lost (because of his integrity) most of his investment. A recession at this time, coupled with North's being over-extended, caused the loss of the considerable fortune which he had accumulated.
- 1860: As a result of the unsuccessful railroad project, the financial depression, and political reverses, North's sawmill, grist mill, railroad interests and Northfield town lots were all lost and he "became an invalid." He refused offers to run for political office. He could not make financial contributions to the party and could only offer advice and endorsements. He did go to New York to raise campaign funds for Republicans. In the spring, North was chairman of the Minnesota delegation to Republican national convention in Chicago which nominated Lincoln for President. North was on a committee to travel on a special train of Illinois Central Railroad to Springfield to notify Lincoln, a 200-mile journey each way. They called on Lincoln in the evening and began their return trip at Midnight. North campaigned hard for Lincoln. When Lincoln won the election North traveled to Springfield to apply for a government position such as Superintendent of Indian Affairs, which paid \$3,000 a year. Visited with Lincoln in his home. North traveled to Chicago on the same train as the Lincolns (per Lincoln's suggestion) and was presented to Mr. Hamlin, who knew of North's reputation for being a strong fighter for abolition. In order to accept Lincoln's invitation to the inauguration in Washington D.C., North had to sell some of his worthless railroad stock to buy new clothes. On March 7<sup>th</sup>, North called at the White House to see Lincoln. The Minnesota delegation did not support North for the office of Superintendent of Indian Affairs. North's principles were too high and they did not want to be cut out of any benefits. Eventually, after all political considerations and maneuverings, North was given the position of Nevada Surveyor-General.

- 8-16-1860: M&CV RR sold at foreclosure sale.
- 1861-1862: 1862 Kelly Directory. U.S. Surveyor-General, NE corner Spear and Curry streets, Carson City; Miss Clarissa North [sister], housekeeper with Surveyor-General.
- 2-22-1861: Accepted Lincoln's invitation to inaugural ceremonies, arriving with Hamlin in Washington (see general remarks 1860 entry). Stonehouse.
- 3-1861: Attended Lincoln's inauguration in Washington, D.C. In Memories of a Frontier Childhood, Overland Monthly and Out West Magazine 8-1924, Emma North Messer says North met Vice President Hamlin in New York and completed his journey with Mr. and Mrs. Hamlin in their private car. When Nevada Territory was organized March 2, 1861, Lincoln named North Surveyor-General of the new territory. Stonehouse.
- 3-28-1861: North's appointment as U.S. Surveyor General Nevada was confirmed by U.S. Senate. North awaited instructions from the department in Washington, D.C., then at Dewitt, N.Y., home of father-in-law; instructions were delayed and North went to Minnesota for his family, intending to return to New York to sail with Governor Nye on May 11, 1861, but did not receive instructions until 16th; departed 21st, sailing for San Francisco on Steamer North Star; arrived Carson City June 22, 1861.
- 4-6-1861: Surveyor General of Public Lands for Territory of Nevada, \$30,000 bond. Unanimously endorsed by Minnesota congressional delegation. North's family stayed with Mrs. North's father in N.Y. for almost a year awaiting their departure for their new home in N.T. North and his sister Clarissa had gone ahead to receive household goods and prepare a home for the family. Family goods were shipped around the horn. During the Norths' stay, Mrs. North's father was engaged in active participation in the "Underground Railroad" transporting slaves from the South.
- 5-21-1861: North had to borrow money from a friend to make the trip to N.T. Even though North had the appointment as Surveyor-General N.T., Congress had appropriated no money for a salary.
- 6-13-1861: Arrived S.F. on Sonora. Teetotaler North expressed regret that he had not come across the plains by stagecoach, since the trip had been full of forced encounters with wild women and heavy drinkers. His sister's boils had continued "prosperous as usual." North visited preachers and Union sympathizers in S.F.; continued to Sacramento and attended the Republican Convention. Set out for Nevada in private covered wagon.
- 6-22-1861: Arrived Carson City, N.T.; put up at Penrod House. North was the first federal officer to arrive in N.T. He was established and drawing salary by end of June

1861. Admitted to Nevada Bar, opened law office, planned development of Washoe City as well as a sawmill and the Minnesota Mill. North immediately began inspection trips through surrounding lands to map out a work plan. Mack says, "North's reports show he eventually surveyed 417,433A during his tenure as Surveyor-General. But there were complaints about lack of accuracy, waste in surveying lands [which North did pursuant to orders] that were worthless for agriculture."

- 7-2-1861: By July 2, 1861, North had traveled extensively through countryside familiarizing himself with lakes, land and boundaries, had talked to local experts. His office was open for business but had not yet received the "outfit" for his office containing books, blanks, instruments and stationery. North's Chief Clerk and Draughtsman had arrived by last steamer. North had been unable to secure rooms for the office, rents being very high for relatively small space in downtown business area. North had concluded to rent a dwelling house on a back street for \$550 per-year. He expounded on expensive living costs, costs of transporting his family to this "remote place," and low government salaries. North's salary was \$3,000 per-year. At Governor's urging, North joined a party of Nye's friends on a visit to Indians of Walker Lake, Truckee, and Pyramid Lake reservations, in which they took government gifts and answered Indians' questions.
- 7-19-1861: In Carson City, Samuel F. Gilcrest sold to North an undivided interest in 30 feet of the Baltimore American Consolidated Mining Co. in the American Flat. Also North sold for \$500 to James W. Nye his interest in 22-1/2 feet of the Baltimore American Construction Mining Co. in the American Flat.
- 7-22-1861: North's house was completed in Carson City; sister Clarissa took in boarders (North's Chief Clerk, John F. Kidder, and Draughtsman Julius E. Garrett). North set up law practice to supplement his meager federal salary; planned development of quartz mill. Had great influence with Governor Nye, with whom he shared his office.
- 8-8-1861: North had finally received part of his "outfit" including U.S. statutes at large, manual of surveying instructions and public land laws.
- 9-12-1861: Had acquired office furniture "of the plainest kind and substantially made and the prices cheap for this territory." North continued to experience difficulty in receiving his office supplies from the East, some being omitted and some arriving in damaged and unusable condition. "The building I occupy as well as every desk, case and table in my office, are the product of trespass" and the progress of the surveys. North commented that lands on Indian reservations were barely adequate for their needs and acreage should not be reduced; also that much land had been taken up by mining claims, implying that the Indians actually still owned the land, though it was unproductive for other purposes. North recommended that public lands be sold as soon as surveys were completed, for "when men have an opportunity to purchase there is no longer any excuse for

trespass and ownership is the best protection against waste \* \* \*.” North was constantly justifying expenses of operation in N.T. and complained about inconvenience in transporting materials, and particularly moneys, across long distance over difficult terrain, causing long delays and chronic lack of funds for his own family and for operation of office.

12-10-1861: Appointed Washoe County Superintendent of Schools.

1862: North set up partnership with James F. Lewis; lawyers of Nevada bar (V.C.) encouraged North to become a federal judge, offering to see that the salary of \$3,000 was increased to \$6,000. North’s brother-and sister-in-law, George and Kate Loomis, arrived and, using money from Kate’s brother-in-law, C. N. Felton, the S.F. capitalist, and money raised by North, construction of a sawmill was commenced. On 1-2 North wrote that he was “arranging to have his family sail from New York in May.” North wanted to go to California on business and to meet his family; permission was granted, acknowledged by North 5-27. Stonehouse says further that when North’s family arrived they moved to Washoe Valley where Clarissa had opened a 20-foot by 30-foot school house which had cost \$1,000.

5-1862: North’s family departed New York by steamer to join him in N.T., after trip across isthmus, another steamer to S.F., riverboat to Sacramento, then by stage across the Sierras, the route North had taken on his journey a year before. Emma continues in her memoirs, saying that by the time the family arrived in N.T., North had left Carson City and resided in Washoe City, where their home awaited, and he had opened a law office:

“Our indoor life during the Nevada winters is chiefly memorable for the evening readings in the bare living room, whose only beauty was its wall of books with the blazing fire of pitch-pine in the ample fireplace. From two or three of the homes nearby, friends would thread their way to us through the sand and Sagebrush, and my mother, whose buoyant voice withstood the cares and fatigues of the days, would read. We children, of course were dispatched to our beds prior to the meeting of the small company. Father was fond of certain old Irish tales in Chambers Miscellany. They were fine and tender and withal full of humor. They appealed to the Celt in his blood, and he was played upon like an Irish harp. When he was at home one of these tales were quite likely to be read. \* \* \*”

6-2-1862: Admitted to practice Nevada Supreme Court.

7-5-1862: North wrote that he had received notification from the commissioner of the General Land Office, Washington, dated April 12, that pursuant to act of Congress the surveying district of Nevada Territory would be consolidated with that of California from and after June 30, 1862. North said he would be able to complete all necessary transactions, such as furniture sales, completion of



surveys, etc., by July 15th. On July 17, 1862, North reported he had sent records to S.F.; furniture had been sold, other matters disposed of.

- 12-9-1862: Members of the N.T. legislature, members of V.C. bar, Governor Nye, others, sent signed petitions, telegrams and letters to President Lincoln recommending North to replace Mott, expected to resign from territorial Supreme Court. John H. Atchison, Governor Nye (who stated he had known North for 20 years) traveled to Washington to plead North's cause. General Records of the Department of Justice Appointment File Nevada 1861-1865.
- 1863: Kelly Directory. Loomis' Mill, White's Canyon, Geo. Loomis, prop., off. E Street, Washoe City; North, attorney at law, off. E Street Washoe City; North and Lewis, attorneys at law, off. E Street Washoe City. (North and [James F.] Lewis advertised firm in Washoe Times 1-10-1863 1:1.)
- 1-10-1863: Washoe Times 2:5. The association of J.P. Foulks and North was surprising in view of North's temperance views. Newspaper reported that Foulks, "who is associated with General North in the contemplated experiment of supplying the good people of this city with water [can], it seems, supply his friends with something stronger than that innocent element on occasion. He very much astonished the Washoe Times, on Wednesday evening, by breaking in upon its solemnity with an armfull of uncorked champagne bottles and a monstrous pound cake. \* \* \* Mr. Foulks is now boss of the Union Saloon, where, it is authoritatively asserted, the very best of drinkables are dispensed \* \* \*."
- In the same newspaper, Washoe Mining and Manufacturing Company advertised availability of water for use of prospective quartz mills, adding praiseful words about the advantages of living in thriving Washoe City. The ad was signed by North as General Superintendent, Washoe City.
- 1-28-1863: Territorial Enterprise. North won election for School Superintendent, receiving 494 of 844 votes cast.
- 4-4-1863: Washoe Times 2:1. North was building quartz mill at Washoe City, to be driven by water from an extension of the Washoe Mining and Manufacturing Company's ditch. During political sniping just before North was later forced to resign his federal judgeship, North was accused of taking a bribe; the implication was that North had financed his mill by accepting financial backing from owners of the Potosi mine. (Since North had not yet been appointed judge, though he probably felt he would be) sources observed that while the action was probably not dishonest or corrupt, this was an error in judgment.

North's daughter Emma North Messer wrote: "In the course of time my father saw that the mining companies were becoming dissatisfied with some of the quartz-mills', whose processes were out of date and that there was good opportunity for a new and entirely modern mill which by new methods could

avoid the enormous waste of precious metal which the old ways entailed. This led to his building what was in that day one of the finest quartz mills of Nevada. He called it the Minnesota Mill, in memory of our older home. It was built in Washoe City, where good water-power was afforded by a mountain stream and between which place and the mines lay an excellent graded road. The mill was very successful and it also provided a new and absorbing diversion for us children. \* \* \*”

Mill construction was completed in September 1863, valued at \$100,000, specialized to handle only the best ore. North also owned part of a sawmill and interests in various mining ledges.

- 8-20-1863: North received temporary appointment to serve at the pleasure of President Lincoln as justice N.T. Supreme Court. Initially, North, who sat in V.C., was praised for his insistence on industry by lawyers and his hard work in making decisions and catching up on backlog of cases. Salary of Supreme Court judges had been increased from \$3,000 per-year to \$6,000 when North accepted appointment. U.S. Dept. of State Commissions of Judges, vol. 2 (1856-1872).
- 9-14-1863: Addressed to Edward Bates, A.G., U.S., oath of office, attested by Sam. E. Wetherill, J.P. Virginia Precinct. Papers of A.G. prior to 1870. In Memories of a Frontier Childhood daughter Emma says her father traveled 7 miles to V.C., stayed during the week and returned to Washoe City on the weekends, “his tall, spare figure bent, his face white and worn.” She described the pressure of an enormous workload, huge sums of money hanging on decisions, making decisions in which desperate men were involved, and at one time warned by friends that he should not travel alone and unarmed on the steep grade between V.C. and Washoe City for fear of being killed by desperadoes as the result of court actions. North refused to carry a gun and was never harmed.
- 10-27-1863: Signed a petition to Governor Nye asking approval “to raise and offer to the General Government one full and complete Volunteer Infantry Company for immediate and active service in the Atlantic States.” (Secretary of War replied to Nye’s inquiry that volunteers would be accepted to go to Salt Lake, but none were needed from Nevada in New York.)
- 11-2-1863: During Ophir v. Burning Moscow case, North felt it necessary to make a personal inspection of the Ophir mine, was met with “every possible obstruction on the part of the Ophir Company,” which finally permitted the judge to be guided by Mr. James, their surveyor. Judge’s inspection was with agreement of both parties and the newspaper opined that “this unpleasant action on their part most certainly looks bad, and decidedly against the Ophir Company.”

Upon convention of the 1863 constitutional convention N.T. by Acting Governor Orion Clemens, North was elected temporary president; then elected President, receiving 21 out of 30 votes cast. Daughter Emma in her “Memories of a Frontier

Childhood” said North stayed with Governor Nye while serving as President of the convention in Carson City. Emma attended Miss Clapp’s Sierra Seminary at that time and was invited and taken by her father to dinner at the Governor’s mansion.

- 11-3-1863: North resigned as Washoe County Superintendent of Schools.
- 11-11-1863: Argument in constitutional convention about proposed Section 8: “The state shall not subscribe to or be interested in the stock of any banking association or corporation,” interesting in view of North’s experience in Minnesota with \$5,000,000 railroad bond subsidy by state, which was required to be submitted to a vote of the people. The sudden reversal of public opinion and a “no” vote on the proposed issue caused the financial ruin of several, including North. North opposed the insertion of an exception allowing the state to participate in hastening the completion of the Pacific Railroad, saying the young state could not afford to become indebted to such an extent.
- 11-24-1863: North was in favor of taxation of mines “as a matter of justice.” William M. Stewart favored taxation of the net proceeds of mines only. This argument, plus Stewart’s political ambitions, eventually led to Stewart’s engineering defeat of the 1863 constitution by the electorate. His enmity toward North was enhanced by the court battles being presided over in 1864 on the single-ledge v. many-ledge theories of lode ownership. North wanted to run for governor under the provisions of the new constitution; an election was set for January 19, 1864. Due to Stewart’s manipulations North was not nominated at the Union convention held 12-31-1863, nor was the constitution approved. The controversy over the constitution climaxed in the V.C. area with a meeting on January 16, 1864, when Judge North clashed head-on with Stewart in a confrontation which, by this time, was more of a personal feud than a debate on the merits of the proposed constitution. It is quite possible that Stewart’s animosity to the constitution stemmed from the realization that if it passed, Judge North, as presiding officer of the convention, would get most of the credit and would be in an enviable spot for almost any political position he wanted.
- 11-27-1863: North vigorously opposed segregation of African-Americans and whites in public schools.
- 12-1-1863: North was member of committee appointed to draft resolutions of condolence and regret upon the death of member of convention Charles S. Potter.
- 12-11-1863: Constitutional convention adjourned.
- 12-17-1863: Gold Hill News 2:1. Stewart and North were both members of committee appointed by some members of constitutional convention to call Union party convention in C.C. on December 31, 1863 to nominate state candidates.

- 1864-1865: Collins Directory. Judge North, chambers, District Court, 41 South B Street, V.C.
- 1-20-1864: Commissioned as associate justice, 4-year term.
- 1-25-1864: Virginia Evening Bulletin 2:3. Stewart's accusations against North concerning his acceptance of a "bribe" to rule in favor of Potosi in Chollar v. Potosi case (namely a \$25,000 loan for construction of Minnesota Mill, and demand that Potosi produce high grade rocks for processing, subsequently complied with) were being hotly debated in newspapers, including Virginia Evening Bulletin. North considered himself blameless; some newspapers believed North, some believed Stewart. But North apparently did not attempt (at least by this date) to specifically justify his alleged actions.
- 2-22-1864: North was member of invitation committee from Washoe City for first annual ball of First Battalion, N.T. Militia, held in V.C. for benefit of First Infantry Regiment, N.T. Volunteers.
- 3-28-1864: Gold Hill Daily News 3-29-1864 3:2. North sentenced one Mrs. Deborah Phillips, found guilty of manslaughter, to serve one year in the territorial prison. Defendant's counsel had made strong plea showing extreme provocation. North "remarked that as the prisoner was a woman, he would not, as is customary in such cases, request her to rise; and [pronounced sentence]. At the conclusion of his words, the anguish of the prisoner found vent in half suppressed moans, such as might be expected from a woman under such circumstances."
- Gold Hill Daily News 4-9-1864 3:2 reported that Mrs. Phillips had been pardoned by Governor Nye, the petition for pardon having been presented by the jury which convicted her, by Judge North, the prosecuting attorney, sheriff and deputies, all city officials, a great number of prominent citizens.
- 4-13-1864: North in court informed V.C. attorneys that they would not be allowed to practice in his court until they had complied with law requiring payment for and obtaining licenses to practice. Gold Hill News 4-13-1864 2:1 was laudatory of North's attitude.
- 5-1864: Lyman Saga of the Comstock Lode. North, on hearing of duel between Mark Twain and James L. Laird of the Union, issued a warrant for Twain's arrest. Governor sent Twain a warning, and Twain left town.
- 5-23-1864: Gold Hills News 2-2. In the midst of outcry over alleged chicanery of members of the court and demands for resignations, North took to his bed and adjourned court until Monday, June 6, 1864. On that day Gold Hill Daily News 2:1 reported North to be quite ill at Placerville, and had telegraphed clerk to adjourn District Court for one week longer.

- 6-10-1864: Reese River Reveille reported, copied from Carson Independent, that North had recovered sufficiently to leave Placerville for home at Washoe by private conveyance. On June 14 1864, Marysville Daily Appeal 2:1 reported North had left Placerville and returned to Santa Clara; Court would not yet reconvene. Other newspapers speculated and reported. Mack Nevada Historical Society vol. IV 3-4, p. 41 reads that the Editor of The Old Daily Piute, V.C., June 29, 1864, wrote a most scathing article about Territorial Judge W. North, in which "it brought charges, surmises, and most pointed innuendos to bear. \* \* \* which it is difficult to believe would be so directly made without foundation whatsoever." The paper commented, "On his state of health and said that the sooner that official dies or resigns, the better it will be for the Territory." The next day, Gold Hill Daily News 2:2, quoting the Piute and commenting, opined, "We know nothing of the facts alluded to, but we do know that the manner in which the affairs of that court have been conducted, or rather not conducted, is an outrageous wrong, an inexcusable disregard of the rights of the people and an irreparable calamity to the country." The paper referred to a "long defense of the Judge, which does not satisfy the crying demand of the people" which had appeared in that day's Union. "Whether Judge North is an invalid from overwork and too close attention to his judicial duties, or from some other cause, is a matter of total indifference to the community. He is confessedly unable to fill the position and transact the business of the court; he has no moral right to retain his office of Judge, to the damage of the vast and vital interests of the public."
- 7-16-1864: Carson Daily Independent 2:1. North was in town yesterday on his way to Washoe with health very nearly restored.
- 8-22-1864: At one time, before second vote for Nevada statehood, when political pressures were at their worst, wife Ann wrote to her parents that her husband was so exhausted from his court duties that he fainted at the breakfast table. North would resign on August 22, 1864 at the opening session of the Supreme Court, his written resignation to President Lincoln stating that he had to resign because of ill health. A referee the preceding day had announced his decision that the single-ledge theory (opposite to North's belief) was correct. North's written resignation was addressed to Edward Bates, Attorney General on August 24, 1864. Reese River Reveille 8-23 1:1 noted that North might be a candidate for Governor under new Nevada state government. On August 23, 1864 Territorial Enterprise reported that the entire Bench had resigned. After his resignation, North's many friends of the Bar publicly endorsed him and expressed continuing confidence in his integrity. V.C. Daily Union 8-25-1864.
- 12-6-1864: North initiated a slander suit against William M. Stewart and owners of Territorial Enterprise. He probably had to wait to file the suits until new judges had been appointed after Nevada statehood and his own complete disassociation with the judicial office. The suit was withdrawn by consent from the courts September 1865 and evidence submitted to three referees. Referees deciding

question found North blameless, but in two instances probably guilty of bad judgment.

- 12-31-1864: Washoe Weekly Star 1:1. Ad: J. W. North, Chas. N. Harris, North and Harris, attorneys and counselors at law, Washoe City.
- 1865-1866: North involved in six Supreme Court cases as counsel; there were eight appeals from North's District Court decisions in Nevada Supreme Court.
- 5-13-1865: Washoe Weekly Times 1:2. Another ad: North and Harris.
- 5-20-1865: Washoe Weekly Times 2:4. "Judge North, after an absence of several weeks, rustivating in the beautiful valley of Santa Clara, California, returned to his home one day this week, and is looking remarkably fine and in buoyant spirits."
- 6-14-1865: Carson Daily Appeal 2:4; 6-17-1865 2:6. North had opened a law office in Carson City.
- 7-15-1865: Washoe Weekly Times 1:2. Ads: North and Harris, practicing Washoe City; North practicing law in C.C.
- 8-1-1865: Gold Hill Daily News noted that North's libel suits against Stewart for \$100,000 and Territorial Enterprise for another \$100,000 were coming up in District Court August 28th. "Judge North, if he knows what is best for him, had better drop the whole matter; he is opening an old sore that was very offensive to the public last year \* \* \*. Drop it, judge; you will save what is left of your character."
- 8-5-1865: Washoe Weekly Times 3:1. North with Dr. G. A. Weed, Chas. N. Harris, Judge Lewis and some women had made an ascent of Mount Rose.
- 8-28-1865: GHDN gleefully announced that North's suit against Stewart and TE had been withdrawn and submitted to three referees. "It was lucky for him that he did not sue us for we would not have agreed to such a private whitewashing."
- 10-7-1865: Washoe Weekly Times 10-14-1865 2:3. North invited to address Union at county convention at Washoe City. Remarks well received.
- 10-24-1865: GHDN. Washoe Times published full "findings" of arbitrators in case of North v. Stewart and the Enterprise. Verdict for North.
- 10-28-1865: Washoe Weekly Times 2:3. Enterprise of October 25, 1865 had charged North with "breach of faith" in placing the award in the North-Stewart suit on file. Times implied that the purpose of the suit by North was to clear himself and wondered if the verdict had gone in favor of the Enterprise whether it would not have filed the results.

- 12-9-1865: Eastern Slope 1:1. Ad appeared for North and Harris. North left in December 1865 after resignation and settlement of lawsuit in his favor, taking his earnings from his stay in Nevada, for Tennessee, intending to start a colony (white or African-American) to develop industry and foster education. Ann stayed in Santa Clara with the children so they could attend school there. North had sold his Washoe mill. Clarissa accompanied him to Memphis; family later joined them in the South. North's anti-slavery beliefs were not well received in the South so soon after the war.
- 12-29-1865: North left Washington, D.C. for Tennessee, reached Knoxville January 13, 1866; bought and operated a foundry there which made farm implements and building supplies.
- 2-3-1866: Eastern Slope 2:2. Published letter received from North, written December 31st, 1865, from Richmond, Virginia, to Lewis, in which North stated he was very surprised to see how general was the feeling that it was not safe to go south. North described conditions of property and political attitudes, stating that "most of the capital in business here is furnished by Yankees. Business men and those who were in the Confederate army seem to understand this fact and to appreciate it, but some of the rebel monsters, the women and fools do not seem to learn much from experience. I intend to go as far South as Knoxville \* \* \* I will write next from east Tennessee."
- 3-1-1866: North had convinced a dozen families to move to Tennessee from Faribault.
- 3-24-1866: Eastern Slope 2:6. North's name appeared among those admitted to practice before the United States Supreme Court from New York.
- 7-4-1866: North was promoting emigration and investment in Tennessee. He saved an African-American from lynching; became a marked man for his "radical" views and those of his family, who mingled with African-Americans and received them in their home. A boycott destroyed his enterprise, and he eventually lost all he owned, including money borrowed from his father-in-law, a staunch abolitionist.
- 2-11-1867: Because of his hard work and views expressed on free education in the state, North was sent by Knox County Union convention to the state convention meeting in Nashville. On February 22, 1867 he addressed the state convention on the subject of education, and was enthusiastically received.
- 5-16-1867: Organized Knoxville Industrial Association, was one of seven promoters of Knoxville and Jacksboro Turnpike Company; construction was approved. In June, governor appointed North a director of the Knoxville and Kentucky railroad. The position was without compensation.
- 1868: Promoted northern and English migration to Tennessee.

- 1869: North's enterprises were boycotted. Dr. James P. Greves and North, old associates, ran across each other in Knoxville. Atmosphere was hostile to both; realized they must try something else away from the South. They envisioned 10,000 settlers who could invest \$1,000 each in the proposed project, either in cash or with arrangements to payoff investment moneys due plus travel expenses in yearly increments, upon the full payment of which they would receive title to their land. A complete community was proposed, including schools, churches, a lyceum, public library. Each subscriber allowed to purchase 100-acre farmland, two city lots, settle on land and improve within 1 year; \$10 location fee was charged. (This area would become Riverside, California.)
- 10-1869: Ann had been back in DeWitt because of family's poverty in Knoxville. Brother George had loaned her money to come back to Tennessee. North had to admit failure of his plans for Tennessee, had had no success in establishing a colony, had spent all his capital and resources in his attempt to aid in reconstruction. In 1867 he had borrowed with the aid of father-in-law to keep his foundry going. Had sold foundry for less than was needed to cover debts. North had tried to get appointment as Commissioner of Indian Affairs from President Grant but failed. Thus, he left Tennessee for good.
- 1870: In Knoxville, North engaged in organizing his colony for settlement in California: California Colony Association. Returned to California, where he founded town of Riverside, San Bernardino Co., which became a flourishing orange-growing center. G. W. Beattie Memoirs say: "In Riverside one of the prominent families was that of the late Judge J. W. North. Judge North and my uncle Horatio M. Jones had held Federal judgeships in Nevada before it became a state, and cordial relations between the two families were resumed after they found themselves in California. The Norths were among my supporters."
- 3-17-1870: Aged 65, North published a mailer called "A Colony for California," issued from Knoxville, and made the first public announcement in Washington, D.C., proposing in association with Dr. James Porter Greves and others a plan for a California colony. Charles N. Felton, of San Francisco, related by marriage to North, was the principal backer. Settlers came from various parts of the country. The colony was to be south of S.F., a temperance colony, with all the amenities. Advertising was done in New England, middle and southern states, Middle West. North was hard pressed for funds, and thus inquiries of him were to be made to Onondaga, New York, where his wife had gone to live with her parents. North had to borrow money to travel there. He came west to look for proper location while prospective colonists took a train excursion from Chicago to view the location. Mrs. North remained in N.Y.
- 5-18-1870: Excursion (about 100) rode west on new railroad from Chicago to California to inspect possible sites. It was then necessary to take ship from S.F. to L.A. North wanted to locate at L.A. Others preferred the property of the Silk Center



Association, a defunct silkworm-breeding association near San Bernardino which was remote from civilization and in the desert.

- 8-6-1870: Eventually North and business partners acquired 8,600 acres which had been bought originally with the intention of forming a community centered around the business of Silkworm culture and development of the silk industry.
- 8-25-1870: Majority had decided in favor of Jurupa Ranch, the future site of Riverside. North's office was the first building to be erected. Fifty families invested in the colony plan. The cost of irrigating the arid colony was \$225,000. The Silk Center Association and the Southern California Colony Association joined forces to complete the irrigation system and get the colony built. North was president of the association.
- 9-18-1870: North took up residence as President of Southern California Colony Association.
- 11-30-1870: Mrs. North and the family came west; Mary North Shepard, "daughter of the founder," described her experiences watching her brothers dip water in pails from the clear stream and pour it into barrels.
- 1871: Completed irrigating canal and built first school in Riverside. Stonehouse. In the spring, orange tree seedlings were acquired. North is described as by now a humane agnostic whose friends were mostly church-minded people.
- 8-1-1872: Elected one of vice presidents of state Republican convention at Sacramento.
- 1873: President of Southern California Colony Association; established colony for eastern families at Riverside, California.
- 11-24-1873: North purchased for \$3,500 the Mathews flour mill some three miles above Riverside canal intake.
- 1874: North bought a grist mill on Santa Ana River, which carried water rights from Warm Creek. Son John later became Superintendent of the water company.
- 2-1875: Southern California Colony Association (S.C.C.A.) board purchased the flour mill from North for \$4,800.
- 6-1-1875: North was replaced as president of the S.C.C.A. Dr. George Loomis had died (he had come west to live with his daughter, Mrs. North), as had North's sister Clarissa. Mrs. North suffered from the heat and spent summers in S.F. and the east. North, in S.F., became the law partner of W.E.F. Deal and Judge James F. Lewis. Of his Riverside project, it was said, "Judge North was too busy helping others and directing municipal affairs to become a money-maker\* \* \*." North was eliminated from the management of Riverside but remained president until 1876; opened law offices in both Riverside and San Bernardino.

- 10-14-1878: Admitted California Supreme Court.
- 1879-1880: Practiced law S.F.
- 1879: Sold his Riverside town block and moved to S.F., where he joined the law firm of North, Lewis and Deal.
- 6-1879: Lost nomination for Associate Justice of Supreme Court by Republican state convention, Sacramento.
- 9-25-1879: Formation of law partnership by North and Lewis in S.F. Lewis retained his V.C. office, while North resided in S.F. On 11-16, NSJ 3:1 reported formation of firm of North, Lewis and Deal, 230 Montgomery Street., S.F.
- 1880-1889: North was general agent Washington Irrigated Colony, Fresno County, California. He lived, 8 miles south of Fresno, adjacent to the Central Colony, was indirectly responsible for the naming of the town of Oleander.
- 6-1880 Founded Oleander near Washington Irrigated Colony (Fresno), San Joaquin Valley. In June North became agent of Washington Irrigated Colony five miles from Fresno moved to Fresno. Success of land sales deprived North of a job by 1882 because one man bought all unsold land and became sole proprietor. North's promotion and management had caused the community's success. In Fresno he opened a substantial law office with his son in the best building. Wife, in Riverside, was sewing wedding garments for daughter Emma to go east to marry Edmund Clarence Messer. When she found North they would have to reside in Fresno and acquire land in the colony (which he did, depleting their finances so that she was unable to afford to go east with her daughter), she went for a prolonged visit to friends in Santa Cruz in order to escape the heat, taking daughter Mary with her. Son Eddie went to his father to tend the office in Fresno while North built a house in Oleander, leveled 30 acres for irrigation, rooted 9,000 vines, set out 675 fruit trees, 560 ornamentals, planted several acres of alfalfa and put additional acres into peach pits, all on money borrowed from his son, George. When Ann left Santa Cruz she moved to a boarding house on Post Street in S.F., feeling that Oleander was a wild goose chase, and refusing "to pioneer again." Boundary of colony lay along city limit line of Fresno, comprised of 2,880 acres barren land, put up for-sale in 20 acres tracts; and later 960 acres more were added to the original acreage by Hughes. The colony proved to be a success.
- 12-1880: Ann spent a month with North in the house in Oleander, which was 7 miles southeast of Fresno (his house had been overrun by red ants and his bed had to be stowed in cans of turpentine). North wrote thousands of letters promoting the project.

- 1881: Address: 22 Montgomery Street, S.F. Advertisements began to appear offering land for sale in Washington Irrigated Colony near Fresno, featuring name of John W. North, Riverside's founder. Organized colony at Oleander.
- 8-30-1882: Member of committee on resolutions, Republican state convention at Sacramento.
- 1883: Opened lands at Malaga and King's Canyon. In the fall was invited to Minneapolis, where he visited the St. Anthony section of the city, visited the University of Minnesota which he had almost single-handedly founded, was entertained by citizens of Northfield, went to New York for reunion with abolitionists (October 3rd).
- 1884: Invited to read paper on irrigation at state Irrigation Convention.
- 5-14-1884: President of state irrigation convention held at Riverside. Member of committee on legislation. Convention adjourned to Fresno December 3, 1884. North called convention to order but was not made permanent chairman; committee on legislation presented its recommendations.
- 6-1885: North was presiding officer of statewide irrigation convention in Riverside held to discuss problems of water ownership, control and use.
- 1889: Moved to daughter's home in Fresno; organized Unity club, a free-thought society.
- 12-1889: North at the age of 83, two months prior to his death at 84, delivered a long and learned lecture to the newly founded Unity Society of Fresno on the subject of "Science and Some Incidents in its History." The "incidents" dealt mainly with the attitude of churches over the ages toward new scientific discoveries v. religious tenets. He concluded, "For nearly 1,600 years the church has fought science and never gained a victory; science has won in every contest. The church has been driven backward into civilization, step by step, step by step, but always backwards. Will it never turn round, open its eyes, and welcome the glowing dawn? The future will determine."
- 1890: Buried at Riverside. Property left to widow by North, including his watch, library, tools, furniture, wagons, and animals, was worth \$5,302.50. This was all mortgaged to George A. Newhall for \$8,061.70; thus Ann inherited a \$3,000 debt. North had made great amounts of money, all of which had gone into his various projects.